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Title 3—

The President

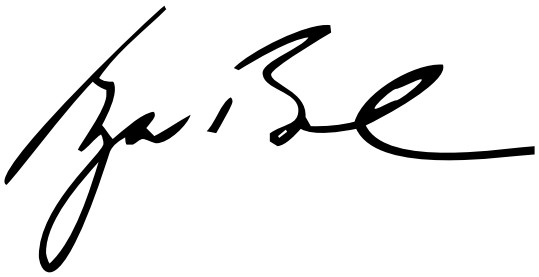
Presidential Determination No. 2001–30 of September 28, 2001

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $25 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet unexpected urgent refugee and migration needs of a new exodus of refugees from Afghanistan. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations, and as necessary, for administrative expenses of the Bureau of Population, Refugees, and Migration.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 28, 2001.

[FR Doc. 01–25389
Filed 10–5–01; 8:45 am]
Billing code 4710–10–M

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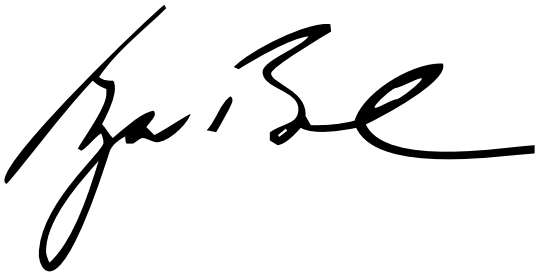
Presidential Determination No. 2001–31 of September 28, 2001

Assistance for Pakistan

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the ''Act''), I hereby determine that it is important to the security interests of the United States to furnish up to $50 million for Pakistan without regard to any provision of law within the scope of section 614(a)(1) of the Act. I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 28, 2001.

[FR Doc. 01–25390
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Presidential Documents

Proclamation 7477 of October 3, 2001

National Breast Cancer Awareness Month, 2001

By the President of the United States of America

A Proclamation

This October, as we mark the 12th observance of National Breast Cancer Awareness Month, we renew our commitment to the struggle against breast cancer and salute the courage of Americans living with this serious disease. The effects of breast cancer have touched many of us, whether through personal diagnosis or the diagnosis of a family member or friend.

We may know someone who has survived breast cancer due to early detection and improved treatment. Unfortunately, we also know that a cure cannot come soon enough. This year, approximately 192,000 women will be diagnosed with breast cancer. By increasing awareness about the importance of early detection and accelerating the use of recent innovative advances in medical research, we can reduce the incidence of breast cancer in our Nation.

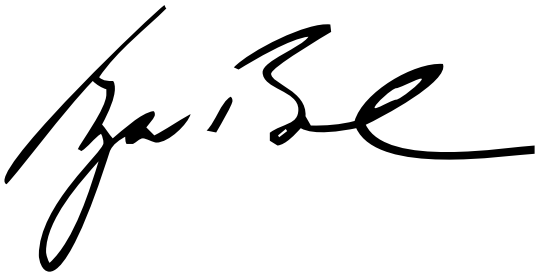
Until a cure is found, health care professionals agree that regular mammograms are essential to ensuring the early detection of breast cancer. The good news is that the message about early detection is being heard. In 1998, almost 70 percent of women age 40 and older had a mammogram in the last two years. And this year, Medicare coverage was expanded to include digital mammograms, offering women another approach for early detection.

As the primary agency in the United States for cancer research, the National Cancer Institute (NCI) leads the research efforts to find a cure for this disease. Our goal is a future free of breast cancer. We will achieve this goal by developing new treatments and therapies and by better understanding what causes breast cancer. The NCI will spend an estimated $463.8 million on breast cancer research this year. That figure will increase to an estimated $510 million next year; and overall National Institutes of Health (NIH) expenditures on breast cancer research are slated to reach $630 million for Fiscal Year 2002. My Administration supports an increase in spending for the NIH, of which NCI is a part, and has proposed that, by 2003, funding for NIH be twice what it was in 1998.

I urge all Americans at risk for breast cancer to use appropriate screenings that can detect it at its initial stages. Until we find a cure, early detection is our most essential tool in fighting this disease. Recent medical successes allow us to say that the war on breast cancer will succeed.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 2001, as National Breast Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to publicly reaffirm our Nation's strong and continuing commitment to controlling and curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Presidential Documents

Proclamation 7478 of October 3, 2001

National Disability Employment Awareness Month, 2001

By the President of the United States of America

A Proclamation

Our Nation's annual observance of National Disability Employment Awareness Month allows us to reflect upon, and consider the potential possessed by, the millions of Americans with disabilities who currently serve in our workforce, as well as those who are ready and willing to join the workforce. In keeping with this year's theme, ''Win with Ability,'' we recognize and salute the skills, creativity, and dedication of working people with disabilities and take appreciative note of their commitment to our Nation and its continued prosperity.

When President George H. W. Bush signed the Americans with Disabilities Act (ADA) in 1990, our Nation made a promise to no longer underestimate the abilities of disabled Americans. That Act, and its subsequent implementation, has liberated the energies and talents of millions of Americans with disabilities. We have seen evidence of progress in improved access to employment, public places, commercial facilities, information technology, telecommunication services, housing, schools, and polling places.

Although America has made great progress since the signing of the ADA, many opportunities for further improvement still exist. My Administration is committed to tearing down any barriers that unreasonably prevent the full participation of Americans with disabilities. I proposed my New Freedom Initiative to help disabled Americans realize their dreams through meaningful and successful careers. I also have proposed programs that will give persons with disabilities greater access to technology, which will increase their productive capacity and allow some to work at home. My proposed programs will expand educational opportunities, facilitate the inclusion of people with disabilities into the workforce, and will allow increased participation in community life. I have signed an Executive Order requiring full implementation of the Supreme Court's 1999 Olmstead Decision mandating that individuals with disabilities, who can receive support and treatment in a community setting, should be given a reasonable opportunity to live close to their families and friends, when appropriate.

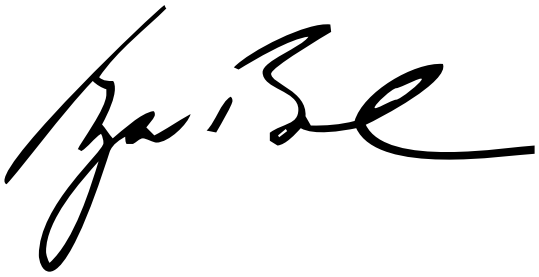
We can no longer accept the continued existence of barriers, whether physical or social, that unreasonably prevent persons with disabilities from full integration into our society. I ask every citizen to join me in recognizing and valuing the contributions that people with disabilities have made to our society and to commit to a collective effort that creates reasonable access for disabled persons to all that America has to offer.

By joint resolution approved August 11, 1945, as amended (36 U.S.C. 121), the Congress has, each year since 1945, called upon this Nation to recognize the contributions that workers with disabilities have made, and requested the President to issue a proclamation calling for appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 2001, as National Disability Employment Awareness Month. I call upon government leaders,

labor leaders, and employers to collaborate to ensure the full inclusion of our Nation's persons with disabilities in the 21st Century workforce.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–25440
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Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 66, No. 195

Tuesday, October 9, 2001

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM197; Special Conditions No. 25–186–SC]

Special Conditions: Boeing Model 737–700 Airplane; Certification of Cooktops

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 737–700 airplane modified by Schwartz Engineering Company (SEC). This modified airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an electrically heated surface, called a cooktop. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for addressing the potential hazards that may be introduced by cooktops. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 1, 2001. Comments must be received on or before November 23, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM197, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM197. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has previously been subject to the public comment process with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. The Administrator will consider all communications received on or before the closing date for comments. The special conditions described in this document may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM197.'' The postcard will be date stamped and returned to the commenter.

Background Information

On September 20, 2000, Schwartz Engineering Company (SEC), 115 Kestrel Drive, Spring Branch, Texas 78070, applied for a Supplemental Type Certificate (STC) to modify the Boeing Model 737–700 airplane. The Model 737–700 is a large transport category airplane powered by two CFM 56 engines, with a maximum takeoff weight of 171,000 pounds. The modified 737–700 airplane operates with a 2-pilot crew, up to 3 flight attendants, and can hold up to 18 passengers.

The modification incorporates the installation of an electrically heated surface, called a cooktop. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. These potential hazards to the airplane and its occupants must be satisfactorily addressed. Since existing airworthiness regulations do not contain safety standards addressing cooktops, special conditions are therefore needed.

Type Certification Basis

Under the provisions of 14 CFR 21.101, SEC must show that the Boeing Model 737–700 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. A16WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate Data Sheet No. A16WE are part 25, as amended by Amendments 25–1 through 25–77, with reversions to earlier amendments, voluntary compliance with later amendments, special conditions, equivalent safety findings, and exemptions listed in the Type Certificate Data Sheet.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 737–700 airplane modified by SEC because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, this Boeing Model 737–700 airplane must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should SEC apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the modification of the Boeing Model 737–700 airplane will include installation of a cooktop in the passenger cabin. Cooktops introduce high heat, smoke, and the possibility of fire into the passenger cabin environment. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards to protect the airplane and its occupants from these potential hazards. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

Currently, ovens are the prevailing means of heating food on airplanes. Ovens are characterized by an enclosure that contains both the heat source and the food being heated. The hazards represented by ovens are thus inherently limited, and are well understood through years of service experience. Cooktops, on the other hand, are characterized by exposed heat sources and the presence of relatively unrestrained hot cookware and heated food, which may represent unprecedented hazards to both occupants and the airplane.

Cooktops could have serious passenger and airplane safety implications if appropriate requirements are not established for their installation and use. These special conditions apply to cooktops with electrically-powered burners equipped with an automatic power shut off feature, which turns off the power to the cooktop whenever the cooktop cover is closed. This automatic shut off feature prevents the cooktop from being a hazard to the passengers and crew and from becoming a fire hazard when the cover is closed, thus increasing the level of safety.

The use of an open flame cooktop (for example natural gas) is beyond the scope of these special conditions and would require separate rulemaking action. The requirements identified in these special conditions are in addition to those considerations identified in Advisory Circular (AC) 25–10, Guidance for Installation of Miscellaneous Non-required Electrical Equipment, and those in AC 25–17, Transport Airplane Cabin Interiors Crashworthiness Handbook. The intent of these special conditions is to provide a level of safety that is consistent with that on similar airplanes without cooktops.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–700 airplane modified by SEC. Should SEC apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 737–700 airplane modified by SEC. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has previously been subjected to the notice and comment period and has been derived without substantive change. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunity for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

PART 25—[AMENDED]

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 737–700 airplane modified by SEC.

Cooktop Installations With Electrically-Powered Burners

1. Means, such as conspicuous burner-on indicators, physical barriers, or handholds, must be installed to minimize the potential for inadvertent personnel contact with hot surfaces of both the cooktop and cookware. Conditions of turbulence must be considered.

2. Sufficient design means must be included to restrain cookware while in place on the cooktop, as well as representative contents (soups or sauces, for example) from the effects of flight loads and turbulence.

(a) Restraints must be provided to preclude hazardous movement of cookware and contents. These restraints must accommodate any cookware that is identified for use with the cooktop.

(b) Restraints must be designed to be easily utilized and effective in service. The cookware restraint system should also be designed so that it will not be easily disabled, thus rendering it unusable.

(c) Placarding must be installed which prohibits the use of cookware that cannot be accommodated by the restraint system.

3. Placarding must be installed which prohibits the use of cooktops (that is, power on any burner) during taxi, takeoff, and landing (TTL).

4. Means must be provided to address the possibility of a fire occurring on or in the immediate vicinity of the cooktop caused by materials or grease inadvertently coming in contact with the burners.

Note: Two acceptable means of complying with this requirement are as follows:

- Placarding must be installed that prohibits any burner from being powered when the cooktop is unattended (this would prohibit a single person from cooking on the cooktop and intermittently serving food to passengers while any burner is powered). In addition, a fire detector must be installed in the vicinity of the cooktop, which provides an audible warning in the passenger cabin; and a fire extinguisher of appropriate size and extinguishing agent must be installed in the immediate vicinity of the cooktop. A fire on or around the cooktop must not block access to the extinguisher. One of the fire extinguishers required by § 25.851 may be used to satisfy this requirement if the total complement of extinguishers can be evenly distributed throughout the cabin. If this is not possible, then the extinguisher in the galley area would be additional.

or

- An automatic, thermally-activated fire suppression system must be installed to extinguish a fire at the cooktop and

immediately adjacent surfaces. The agent used in the system must be an approved total flooding agent suitable for use in an occupied area. The fire suppression system must have a manual override. The automatic activation of the fire suppression system must also automatically shut off power to the cooktop.

5. The surfaces of the galley surrounding the cooktop, which would be exposed to a fire on the cooktop surface or in cookware on the cooktop, must be constructed of materials that comply with the flammability requirements of part III of appendix F to part 25. This requirement is in addition to the flammability requirements typically required of the materials in these galley surfaces. During the selection of these materials, consideration must also be given to ensure that the flammability characteristics of the materials will not be adversely affected by the use of cleaning agents and utensils used to remove cooking stains.

6. The cooktop must be ventilated with a system independent of the airplane cabin and cargo ventilation system. Procedures and time intervals must be established to inspect and clean or replace the ventilation system to prevent a fire hazard from the accumulation of flammable oils. These procedures and time intervals must be included in the Instructions for Continued Airworthiness (ICA). The ventilation system ducting must be protected by a flame arrestor.

Note: The applicant may find additional useful information in Society of Automotive Engineers, Aerospace Recommended Practice 85, Rev. E, entitled ''Air Conditioning Systems for Subsonic Airplanes,'' dated August 1, 1991.

7. Means must be provided to contain spilled foods or fluids in a manner that will prevent the creation of a slipping hazard to occupants and will not lead to the loss of structural strength due to airplane corrosion.

8. Cooktop installations must provide adequate space for the user to immediately escape a hazardous cooktop condition.

9. A means to shut off power to the cooktop must be provided at the galley containing the cooktop and in the cockpit. If additional switches are introduced in the cockpit, revisions to smoke or fire emergency procedures of the AFM will be required.

Issued in Renton, Washington, on October 1, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–25293 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending the rule that delegates to its hearing examiners various powers in conducting parole release and revocation proceedings for United States Code and District of Columbia offenders. The amendment delegates to hearing examiners the authority to make probable cause determinations for parolees and supervised releasees charged with violating the conditions of release, and to determine the location of a revocation hearing and the witnesses who would attend the proceeding. Through this delegation, the Commission seeks to ensure an efficient allocation of workload between the Commission and its staff, identify and correct procedural errors in conducting revocation proceedings at an early stage of the process, and increase its consistency in scheduling revocation hearings within statutory and constitutional deadlines.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd, Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission's statute at 18 U.S.C. 4203(c)(2) permits the Commission to delegate to hearing examiners a number of powers, including the power to ''make findings of probable cause and issue subpenas for witnesses or evidence in parole revocation proceedings.'' Until now, the Commission has not delegated this power and has reserved to itself the duty of making these preliminary decisions. Because the transfer of jurisdiction over District of Columbia parolees on August 5, 2000 substantially increased its workload, the Commission has been reviewing the allocation of work between Commissioners and staff and exploring methods of reducing the time necessary to conduct revocation proceedings and make revocation decisions. This effort has become more urgent since the membership of the Commission has been reduced to only three Commissioners by a recent resignation. By using the authority provided in the above statute and delegating the functions of making probable cause decisions and issuing subpoenas to hearing examiners, the Commission seeks to eliminate several days of case processing time and still reserve to the Commissioners' review and judgment the most significant decisions for accused release violators, *i.e.,* the initial deprivation of the offender's liberty through the issuance of a warrant, and revoking parole or supervised release. The Commission anticipates that the increased efficiency achieved in its probable cause determinations will materially contribute to the agency's ability to meet its deadlines in concluding final revocation hearings for both U.S. Code and D.C. Code parolees.

In implementing the delegation, the Commission expects that the delegated functions would be exercised in almost all cases by the agency's Case Services Administrator, a position normally held by a senior-level hearing examiner. But this practice may vary, depending on changes in staff responsibilities and the agency's workload. Other Commission administrators or hearing examiners may be called upon to perform these duties, or the Commissioners may reassume these functions at any time. Though quality control of the Commission's work is exercised by all professional personnel, when the Case Services Administrator exercises these newly-delegated functions, that official is well-positioned to review and correct the work of the case analysts in preparing revocation cases. This built-in quality control review should reduce the incidence of errors which can slow down the revocation process or require a rehearing, and will assist supervisory staff in the ongoing training of case analysts in revocation procedures.

The amended rule also provides that, along with the probable cause determination, the hearing examiner would decide the location of the revocation hearing and those witnesses who would attend the proceeding. These procedural matters clearly fall within other powers that may be delegated to hearing examiners, namely the powers to ''conduct hearings and proceedings'' and to ''obtain and make a record of pertinent information.'' 18 U.S.C. 4203(c)(2). Moreover, as noted earlier, the statute expressly allows the Commission to delegate the authority to issue subpoenas to witnesses and to

produce documentary evidence. If a hearing examiner may require a witness's attendance at a revocation proceeding through compulsory process, he obviously may determine those witnesses who should attend the proceeding upon request and in the absence of a subpoena. Since subpoenas frequently have to be reissued because of rescheduled revocation hearings, delegation of the task of issuing subpoenas would reduce the number of file transfers to the Commissioners, and again reserve their review for final case decisions.

As a result of the delegation, in some cases a hearing examiner's order will result in the discharge of an accused violator from custody. But the exercise of this power is limited to cases where the examiner finds no probable cause for the alleged violation. The delegation does not include the authority to release an accused violator to the community if probable cause for violation is found. See 18 U.S.C. 4214(a)(1)(A). Section 4203(c)(2) expressly provides only for the delegation of the power to make a probable cause finding and is silent on the power of restoring a parolee to supervision despite a finding of probable cause for parole violation. On this point, the Commission has decided to take a cautious approach in interpreting its statutory delegation authority. If a hearing examiner finds probable cause and nonetheless believes that the parolee should be returned to the community either before or without a revocation hearing, the case will be referred to a Commissioner for a decision as to release. A recommendation for release may be made, but this is the extent of the hearing examiner's authority.[1]

Finally, the amended rule provides that the delegated powers apply to the relevant provisions for parole revocations for U.S. Code offenders and for parole and supervised release revocations for D.C. Code offenders. Due to Section 11233(c)(2)(A) of the National Capital Revitalization and Self-Government Act of 1997,[2] the Commission is authorized to use the same procedures to revoke supervised release terms for D.C. Code offenders that apply to federal parolees.

Since the rule is only a procedural rule and pertains only to the allocation of functions within the Commission, the Commission has determined that the rule is not subject to the notice and comment or the thirty-day delay provisions of 5 U.S.C. 553.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866. The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.23, paragraph (a) is amended by adding the following sentence to the end to read as follows:

§ 2.23 Delegation to hearing examiners.

(a) * * * Notwithstanding the provisions of §§ 2.48 through 2.51, §§ 2.101 through 2.104, and §§ 2.214 through 2.217, there is also delegated to hearing examiners the authority necessary to make a probable cause finding, to determine the location of a revocation hearing, and to determine the witnesses who will attend the hearing, including the authority to issue subpoenas for witnesses and evidence.

Dated: September 25, 2001.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 01–25111 Filed 10–5–01; 8:45 am]

BILLING CODE 4410–31–P

[1] In this regard it is worth noting that Section 4203(c)(2) only permits the delegation of the function of recommending revocation and reparole dispositions. Consequently, hearing examiners may not make final decisions on these matters.

[2] Public Law 105–33; 111 Stat. 749 (Aug. 5, 1997) (now codified at D.C. Code 24–1233(c)(2)(A)).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–01–022]

Drawbridge Operations Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Evergreen Point Floating Drawbridge on State Route 520 across Lake Washington between Seattle and Bellevue, Washington. This deviation allows the Washington Department of Transportation (WSDOT) to close the floating retractable span from 12:01 a.m. on August 13 to 12:01 a.m. on October 8, 2001. Normally, the draw does not open between the hours of 5 a.m. and 9 p.m. Monday through Friday, except federal holidays. This deviation allows the bridge owner to bolt the floating span closed to immobilize it for center-lock replacement and other refurbishment.

EFFECTIVE DATE: This deviation is effective from 12:01 a.m. on August 13 to 12:01 a.m. on October 8, 2001.

ADDRESSES: Unless otherwise noted, documents referred to in this notice are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067, room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintain the docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7282.

SUPPLEMENTARY INFORMATION: The Evergreen Point Floating

Bridge across Lake Washington at Seattle, Washington, provides no vertical clearance at the draw span when it is closed. Fixed transition spans from the floating portion of the bridge provide navigational openings. The West Fixed Span provides 45 feet of vertical clearance at all lake levels. The East Fixed Span has a gradient so that on the low (west margin) 57 feet is provided up to 64 feet on the side opposite (east margin). Most of the

vessels that ply Lake Washington can pass safely under the fixed transition spans. The number of draw openings have decreased so that the span has opened as little as 10 times annually in recent years. Most of these openings have been for construction equipment serving other WSDOT projects. State Route 520 is a major commuter route with a high daily traffic count. This deviation allows WSDOT to refurbish the bridge as quickly as possible without disrupting roadway traffic. Furthermore, this drawbridge is vulnerable to water and wind pressure because of its floating nature. This closure also facilitates completion of work at a time of year when these weather factors are minimal.

This temporary deviation, authorized under 33 CFR 117.35, allows the floating drawspan to remain closed from 12:01 a.m. on August 13 to 12:01 a.m. on October 8, 2001.

Dated: September 25, 2001.

Erroll Brown,

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

[FR Doc. 01–25288 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–01–024]

Drawbridge Operations Regulations; Duwamish Waterway, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the dual First Avenue South Drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington. This deviation allows the Washington Department of Transportation (WSDOT) to close the bascule span from 12:01 a.m. on October 6 to 12:01 a.m. on October 7, 2001. Presently, the dual bascule need not open between the hours of 6 a.m. and 9 p.m. and from 3 p.m. to 6 p.m. Monday through Friday, except federal holidays. Openings are provided at any time for vessels of at least 5000 gross tons, vessels towing such vessels, or vessels enroute to tow such vessels. This deviation allows the bridge owner to repair a leaking hydraulic cylinder at one of the center locks.

EFFECTIVE DATE: This deviation is effective from 12:01 a.m. on October 6 to 12:01 a.m. on October 7, 2001.

ADDRESSES: Unless otherwise noted, documents referred to in this notice are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067,room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintain the docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7282.

SUPPLEMENTARY INFORMATION: The First Avenue South Drawbridges across the Duwamish Waterway, mile 2.5, at Seattle, Washington, provide 32 feet of vertical clearance above Mean High Water for the central 100 feet horizontally. Navigation on the waterway include tugs, large container barges, construction equipment, and recreational vessels. First Avenue South is a major commuter route Monday through Friday. The weekend was selected for the work because the large vessel traffic and road vehicle passage is reduced from normal weekday frequencies. The leaking cylinder for one of the cylinders will be replaced during this closure to prevent spillage in the waterway and maintain the span in operational condition. The center lock was probably damaged in the earthquake that occurred in Seattle on February 28, 2001.

This temporary deviation, authorized under 33 CFR 117.35, allows the dual First Avenue South drawspans to remain closed from 12:01 a.m. on October 6 to 12:01 a.m. on October 7, 2001.

Dated: September 25, 2001.

Erroll Brown,

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

[FR Doc. 01–25281 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–176]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills and Their Tributaries, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens, New York. This deviation allows the bridge to remain in the closed position from 7 a.m. on October 20, 2001 through 8 p.m. on October 21, 2001, to facilitate painting at the bridge.

DATES: This deviation is effective from October 20, 2001 through October 21, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Pulaski Bridge, at mile 0.6, across Newtown Creek has a vertical clearance of 39 feet at mean high water, and 43 feet at mean low water in the closed position.

The existing drawbridge operation regulations are listed at 33 CFR 117.801(g) and require the draw to open on signal if at least a two-hour advance notice is given.

The bridge owner, New York City Department of Transportation, requested a temporary deviation from the drawbridge operating regulations to facilitate painting at the bridge that can only be safely performed while the bridge is in the closed position.

This deviation to the operating regulations allows the Pulaski Bridge to remain in the closed position from 7 a.m. on October 20, 2001 through 8 p.m. on October 21, 2001.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 27, 2001.

G.N. Naccara,

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

[FR Doc. 01–25282 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–177]

Drawbridge Operation Regulations: Hampton River, NH

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR1A Bridge, mile 0.0, across the Hampton River in New Hampshire. This deviation from the regulations, effective on October 16, 2001, allows the bridge to remain in the closed position for vessel traffic between 3 a.m. and 6 p.m. This temporary deviation is necessary to facilitate scheduled maintenance repairs at the bridge.

DATES: This deviation is effective on October 16, 2001.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The existing drawbridge operating regulations are listed at 33 CFR 117.697.

The bridge owner, New Hampshire Department of Transportation (NHDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary mechanical repairs at the bridge.

This deviation to the operating regulations, effective on October 16, 2001, allows the SR1A Bridge to need not open for vessel traffic between 3 a.m. and 6 p.m.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 27, 2001.

G.N. Naccara,

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

[FR Doc. 01–25283 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–01–025]

Drawbridge Operations Regulations; Chehalis River, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Chehalis River Bridge (State Route 101) across the Chehalis River, mile 0.1, at Aberdeen, Washington. This deviation allows the Washington Department of Transportation (WSDOT) to open both leaves of the bascule span from 12:01 a.m. on September 17 to 12:01 a.m. on November 16, 2001, only if 12 hours notice is provided. Single-leaf openings would be provided on signal according the normal operating schedule of the bridge. Presently, the draw opens on signal from one hour before sunrise to one hour after sunset, except that from 7:15 a.m. to 8:15 a.m. and 4:15 p.m. to 5:15 p.m. Monday through Friday, except federal holidays, the draw need not open for vessels of less than 5000 gross tons. At all other times it opens if at least one hour notice is given. This deviation allows the bridge owner to perform maintenance on the four counterweight link arms of the draw span.

EFFECTIVE DATE: This deviation is effective from 12:01 a.m. on September 17 to 12:01 a.m. on November 16, 2001.

ADDRESSES: Unless otherwise noted, documents referred to in this notice are available for inspection and copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067, room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays. The Bridge Section of the Aids to Navigation and Waterways Management Branch maintain the docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7282.

SUPPLEMENTARY INFORMATION: The Chehalis River Bridge on State Route 101 across the Chehalis River at mile 0.1 provides 35 feet of vertical clearance above Mean High Water. Navigation on the waterway include tugs, barges, commercial fishing boats, oceangoing ships, and recreational vessels. Most of the vessels traveling the Chehalis River can safely pass through a single-leaf opening or the closed draw. The infrequent passage of large piloted vessels always requires double-leaf openings. These large vessels arrive about twice a month or less. The 12-hour minimum notice imposed by this deviation should not produce unreasonable hardship on piloted vessels.

This temporary deviation, authorized under 33 CFR 117.35, allows the Chehalis River Bridge to provide double-leaf openings only after at least 12 hours notice is given from 12:01 a.m. on September 17 to 12:01 a.m. on November 16, 2001.

Dated: September 25, 2001.

Erroll Brown,

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

[FR Doc. 01–25284 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–178]

Drawbridge Operation Regulations: Shaw Cove, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations which govern the Amtrak Bridge, mile 0.0, across Shaw Cove at New London, Connecticut. This deviation allows the bridge to remain in the closed position from 10 p.m. on October 21, 2001 through 10 p.m. on October 24, 2001. This action is necessary to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective October 21, 2001, through October 24, 2001.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, at mile 0.0, across the Shaw Cove has a vertical clearance of 3 feet at mean high water, and 6 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.223.

The bridge owner, the National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance at the bridge, the replacement of the vertical shaft couplings at the bridge.

This deviation from the operation regulations allows the bridge to remain in the closed position from 10 p.m. on October 21, 2001 through 10 p.m. on October 24, 2001. Vessels that can pass under the bridge without a bridge opening may do so at all times.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and all work will be performed with due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 27, 2001.

G.N. Naccara,

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

[FR Doc. 01–25285 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–156]

Drawbridge Operation Regulations: Annisquam River, Blynman Canal, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR 127 Bridge, mile 0.0, across the Annisquam River, Blynman Canal, in Gloucester, Massachusetts. This deviation allows the bridge to remain in the closed position from November 5, 2001 through November 16, 2001, at various times, to facilitate the emergency repair of the bridge power supply cable.

DATES: This deviation is effective from November 5, 2001 through November 16, 2001.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The SR 127 Bridge, at mile 0.0, across the Annisquam River Blynman Canal in Gloucester, Massachusetts, has a vertical clearance of 7 feet at mean high water, and 16 feet at mean low water in the closed position.

The existing drawbridge operation regulations require the draw to open on signal at all times except at Christmas and New Years eve and day when the bridge operates on a two-hour advance notice.

The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate the emergency repair of the bridge power supply cable.

The contractor must work five eight-hour days from November 5, 2001 through November 9, 2001, during daylight hours, at slack tide in order to excavate the underwater trench for the new power supply cable. The working hours will vary each day depending upon the time period that slack tide occurs. During these eight-hour work periods each day the bridge will not open for vessel traffic; however, the bridge will operate according to its normal schedule, opening on demand, for the remaining sixteen hours each day.

Additionally, the bridge will remain in the closed position to navigation from 7 a.m., Monday, November 12, 2001 through midnight on Friday, November 16, 2001, to change over to the new cable and connect all the power supply wires at the bridge.

This deviation to the operating regulations allows the owner of the SR 127 Bridge to keep the bridge in the closed position eight-hours a day during daylight hours at slack tide from November 5, 2001 through November 9, 2001 and to keep the bridge in the closed position from 7 a.m. on November 12, 2001 through midnight on November 16, 2001.

This deviation from the operating regulations is authorized under 33 CFR 117.35 and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 27, 2001.

G.N. Naccara,

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

[FR Doc. 01–25286 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–170]

RIN 2115–AA97

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: As a result of the several apparent terrorist attacks September 11, 2001 on the World Trade Center, the Pentagon, the State Department, and other governmental installations, the Coast Guard is establishing temporary emergency safety and security zones covering the New York Marine Inspection Zone and Captain of the Port Zone. The safety and security zones are needed to safeguard the public, vessels, and vessel crews from further consequences of the aforementioned attacks, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into or movement within these zones by any vessel of any description whatsoever, except emergency response vessels, without the express authority of the Captain of the Port, New York, or his authorized patrol representative is strictly prohibited.

DATES: This rule is effective from September 12, 2001 through September 14, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective less then 30 days after publication in the **Federal Register**. Good cause also exists for not publishing a NPRM for this regulation. Due to the catastrophic nature and extent of damage realized from the aircraft crashes into the two towers of the World Trade Center, this rulemaking is urgently necessary to

protect the national security interests of the United States against further adverse consequences of these and future potential terrorist strikes within the Port of New York/New Jersey. Any delay in the establishment and enforcement of this regulation's effective date would be clearly contrary to public interest since immediate action is needed to protect the public and the United States' interests against similar acts of terrorism.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center, located within the Port of New York/New Jersey, were destroyed as a result of two commercial airliner crashes that can only be explained as resulting from terrorist attacks. In addition to the two airliner crashes into the World Trade Center, two other commercial airliners were also apparently highjacked and intentionally crashed, one into the United States Pentagon and another in a rural area of Pennsylvania. These acts were unforeseen and accomplished without warning. The safety and security zones are needed to protect and safeguard the public, vessels, and vessel crews from further consequences of the aforementioned attacks, and from future sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety and security zones have identical boundaries. All persons, other than those approved by the Captain of the Port or his authorized patrol representative are prohibited from entering into or moving within the zones without the prior approval of the Captain of the Port. Emergency response vessels must keep the Captain of the Port apprised of intended movements while working within the port. The zones encompass all waters of the New York Marine Inspection Zone and Captain of the Port Zone. In addition to this publication in the **Federal Register**, the public will be made aware of the existence of these safety and security zones, their exact locations within these boundaries, and the restrictions involved, via Broadcast Notice to Mariners made from U.S. Coast Guard Activities New York.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The duration and sizes of the zones are the minimum necessary to provide adequate protection for public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

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.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities. Maritime advisories will be initiated by normal methods and means, and will be widely available to users of the area.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT Mike Day, telephone (718) 354–4012. 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 comments 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 collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

power and responsibilities between the Federal Government and Indian tribes.

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–170 to read as follows:

§ 165.T01–170 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following area has been declared both a safety zone and a security zone: starting on the south shore of Long Island at 40°35.4′N, 073°46.6′W and proceeds southeasterly along a line bearing 127.5°T to 38°28′N, 070°11′W; thence northwesterly along a line bearing 122°T from the New Jersey coast at 40°18′N; thence west along 40°18′N to 074°30.5′W; thence northwesterly to the intersection of the New York-New Jersey-Pennsylvania boundaries at Tri-state; thence northwesterly along the east bank of the Delaware River to 42°00′N, thence east to 074°39′W; thence north to the Canadian border; thence easterly along the Canadian Border to the northeast corner of the Orleans county line in Vermont; thence following the eastern and southern boundaries of Orleans, Franklin, Chittenden, Addison, and Ruthland Counties to the Vermont-New York boundary; thence southerly along the New York boundary to 41°01.5′N, 073°40′W; thence southerly to the southern shore of Manursing Island at 40°58′N, 073°40′W; thence southeasterly to 40°52.5′N, 073°37.2′W; thence southerly to 40°40′N, 073°40′W; thence southwesterly to the point of origin.

(b) *Effective dates.* This section is effective from September 12, 2001 through September 14, 2001.

(c) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Captain of the Port New York or his authorized patrol representative. Emergency response vessels are authorized to move within the zones, but must at all times keep the Captain of the Port apprised of intended movements within the port, and must abide by restrictions imposed by the Captain of the Port as necessary to accomplish the purposes of this rule.

(2) No person may swim upon or below the surface of the water within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port New York or his authorized patrol representative.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, and the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) Exact locations and restrictions within these boundaries will be announced via Broadcast Notice to Mariners and facsimile, as appropriate, until the need to enforce such zones is no longer necessary.

(5) The general regulations covering safety and security zones in §§ 165.23 and 165.33, respectively, of this part apply.

Dated: September 12, 2001.

R.E. Bennis,

Rear Admiral, U.S. Coast Guard, Captain of the Port.

[FR Doc. 01–25292 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–102]

RIN 2115–AA97

Safety and Security Zones; Port of New York/New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: As a result of the several apparent terrorist attacks September 11, 2001 on the World Trade Center, the Pentagon, the State Department, and other governmental installations, the Coast Guard is establishing temporary safety and security zones within the entire bounds of the Port of New York, which will be enforced effective immediately. The safety and security zones are needed to safeguard the public, vessels, and vessel crews from further consequences of the aforementioned attacks, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into or movement within these zones by any vessel of any description whatsoever, except emergency response vessels, without the express authority of the Captain of the Port, New York, or his authorized patrol representative is strictly prohibited.

DATES: This rule is effective from September 11, 2001, through September 14, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation, and good cause exists for making it effective less

then 30 days after publication in the **Federal Register**. Good cause also exists for not publishing a NPRM for this regulation. Due to the catastrophic nature and extent of damage realized from the aircraft crashes into the two towers of the World Trade Center, this rulemaking is urgently necessary to protect the national security interests of the United States against further adverse consequences of these and future potential terrorist strikes within the Port of New York/New Jersey. Any delay in the establishment and enforcement of this regulation's effective date would be clearly contrary to public interest since immediate action is needed to protect the public and the United States' interests against similar acts of terrorism.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center, located within the Port of New York/New Jersey, were destroyed as a result of two commercial airliner crashes that can only be explained as resulting from terrorist attacks. In addition to the two airliner crashes into the World Trade Center, two other commercial airliners were also apparently highjacked and intentionally crashed, one into the United States Pentagon and another in a rural area of Pennsylvania. These acts were unforeseen and accomplished without warning.

The safety and security zones are needed to protect and safeguard the public, vessels, and vessel crews from further consequences of the aforementioned attacks, and from future sabotage or other subversive acts, accidents, or other causes of a similar nature. The safety and security zones have identical boundaries. All persons, other than those approved by the Captain of the Port or his authorized patrol representative are prohibited from entering into or moving within the zones without the prior approval of the Captain of the Port. Emergency response vessels must keep the Captain of the Port apprised of intended movements while working within the port. The zones encompass the area south of a line 500 yards north of the George Washington Bridge on the Hudson River; south of a line drawn 500 yards north of the Triborough Bridge on the East River; east of a line from Constable Hook Front Range Light (LLNR 37250) to 40°38′55.5″N, 074°05′05.7″W (NAD 1983), on St. George, Staten Island. The public will be made aware of the existence of these safety and security zones via Broadcast Notice to Mariners made from U.S. Coast Guard Activities New York.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The duration and sizes of the zones are the minimum necessary to provide adequate protection for public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

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.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. Maritime advisories will be initiated by normal methods and means, and will be widely available to users of the area.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT Mike Day, telephone (718) 354–4012. 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 comments 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 collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

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 concern an environmental risk

to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–102 to read as follows:

§ 165.T01–102 Safety and Security Zones: Port of New York, New York/New Jersey.

(a) *Location.* The following area within the Port of New York, New York/New Jersey has been declared both a safety zone and a security zone: the area south of a line 500 yards north of the George Washington Bridge on the Hudson River; south of a line drawn 500 yards north of the Triborough Bridge on the East River; east of a line from Constable Hook Front Range Light (LLNR 37250) to 40°38′55.5″N 074°05′05.7″W (NAD 1983), on St. George, Staten Island.

(b) *Effective dates.* This section is effective from September 11, 2001 through September 14, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Captain of the Port New York or his authorized patrol representative. Emergency response vessels are authorized to move within the zones, but must at all times keep the Captain of the Port apprised of intended movements within the port, and must abide by restrictions imposed by the Captain of the Port as necessary to accomplish the purposes of this rule.

(2) No person may swim upon or below the surface of the water within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port New York or his authorized patrol representative.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, and the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The general regulations covering safety and security zones in §§ 165.23 and 165.33, respectively, of this part apply.

Dated: September 11, 2001.

R.E. Bennis,

Rear Admiral, U.S. Coast Guard, Captain of the Port.

[FR Doc. 01–25291 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–165]

RIN 2115–AE84 and 2115–AA97

Regulated Navigation Area and Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing regulated navigation areas and safety and security zones for vessels operating within the New York Marine Inspection Zone and Captain of the Port Zone. This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to recent terrorist attacks on sites in Manhattan, NY. The rule will prohibit vessels from entering certain areas of the port and impose restrictions on vessel operations in other areas.

DATES: This rule is effective September 14, 2001 through September 28, 2001.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD01–01–165 and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant K. Garza, Waterways Oversight Branch, Coast Guard Activities New York (718) 556–4407.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, 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. This rulemaking is urgently required to facilitate emergency services responding to terrorist attacks recently perpetrated upon the World Trade Center in Manhattan, NY, and to prevent future terrorist strikes within and adjacent to the Port of New York/New Jersey. The delay inherent in the NPRM process is contrary to the public interest insofar as it may impair urgent life-saving efforts by emergency personnel or render individuals, vessels and facilities within the Port vulnerable

to subversive activity, sabotage or terrorist attack.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to facilitate ongoing, emergency response efforts and prevent future terrorist attack. Immediate action is needed to accomplish these objectives. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

Terrorist attacks against the World Trade Center in Manhattan, New York on September 11, 2001 inflicted catastrophic human casualties and property damage. Federal, state and local personnel are engaged in ongoing efforts to rescue survivors and secure other potential terrorist targets from attack. The Coast Guard has established regulated navigation areas and safety and security zones within defined areas of water in order to facilitate emergency response and rescue activities, protect human life, and safeguard vessels and waterfront facilities from sabotage or terrorist acts. If a change in conditions during the effective period of this rule warrants lifting or mitigating any restriction imposed in the rule, the decision to modify or waive enforcement of that restriction will be communicated by broadcast notice to mariners. These regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1221, 1223, 1225 and 1226.

Regulated Navigation Area

The rule establishes a regulated navigation area (RNA) that includes portions of the Hudson River, as well as New York Harbor Upper and Lower Bays, Sandy Hook Bay, Raritan Bay, Newark Bay, Arthur Kill and Kill Van Kull. Deep draft vessels are required to meet certain conditions before entering the RNA. The conditions are imposed in order to protect the subject vessels from subversive or terrorists acts and to prevent their use as platforms for terrorist acts against individuals, other vessels, waterfront facilities or adjoining population centers. In addition, the rule restricts passenger ferry services to specific points on Manhattan Island at which they may land to embark or disembark passengers. This restriction is intended to prevent undue congestion in areas where emergency response and rescue vessels are operating and to limit the introduction of pedestrian traffic in restricted, hazardous portions of lower Manhattan. Any vessel authorized by its Certificate of Inspection to carry more than 49 passengers will be required to submit a Vessel Security Plan before being allowed to operate within the RNA. While operating within the RNA, passenger vessels authorized to carry more than 49 passengers must employ methods to secure the vessel from hijacking. These security requirements will help to ensure that passenger vessels operating in close proximity to population centers and waterfront facilities cannot be commandeered for use by terrorists or saboteurs.

Included within the regulated navigation area is a special sector, designated ''Area A'', which includes all waters within the RNA consisting of the Hudson River south of the Holland Tunnel ventilators; thence west of line drawn from the Governor's Island ventilators to the western end of the Brooklyn Bridge; thence from the SW corner of Pier Lima on Governor's Island to Liberty Island Gong Buoy 29 (LLNR 34995) thence to the southeast corner of Pier 7 at Liberty State Park. Only emergency response vessels directly assisting with the disaster in lower Manhattan may operate in Area A. Commercial vessels assisting with the disaster recovery efforts in Area A must contact Vessel Traffic Services New York (VTSNY) prior to entering this emergency response zone. All vessels operating within Area A must do so at no wake speeds, or 10 knots, whichever is less. This restriction is imposed in order to prevent interference with emergency response personnel and equipment operating on and adjacent to the affected shoreline.

Violations of the regulated navigation areas are punishable by civil penalties (not to exceed $25,000 per violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000) and in rem liability against the offending vessel.

Safety and Security Zones

The rule also establishes five distinct safety and security zones. Three of the zones are established by reference to fixed boundaries and are intended to protect individuals, other vessels and waterfront facilities from subversive or terrorist acts. Two of the zones are defined by reference to a fixed radius around vessels capable of movement throughout the Port of New York/New Jersey. These zones are intended principally to protect the vessels themselves from subversive or terrorist acts.

No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a safety and security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The sizes of the zones are the minimum necessary to provide adequate protection for the public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

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.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities. Maritime advisories will be initiated by normal methods and means and will be widely available to users of the area.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT Kathleen Garza, telephone (718) 556–4407. 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 comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–165 to read as follows:

§ 165.T01–165 Regulated Navigation Area: New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Regulated navigation area.* The following waters within the boundaries of the New York Marine Inspection Zone and Captain of the Port Zone are established as Regulated Navigation Areas:

(1) All waters of the Hudson River, New York Harbor Upper and Lower Bays, Sandy Hook Bay, Raritan Bay, Newark Bay, Arthur Kill and Kill Van Kull, within the following boundaries: south of the George Washington Bridge on the Hudson River; west of a line drawn from the Governor's Island ventilators to the western end of the Brooklyn Bridge; north of a line drawn between Rockaway Point, NY and the northern tip of Sandy Hook, NJ; south of Leigh-Valley Bridge; and east of the Raritan River Cut-off.

(2) Within the RNA is a smaller sector designated Area A—Lower Manhattan: All waters within the RNA consisting of the Hudson River south of the Holland Tunnel ventilators; all waters west of a line drawn from the Governor's Island ventilators to the western end of the Brooklyn Bridge, thence from the SW corner of Pier Lima on Governor's Island to Liberty Island Gong Buoy 29 (LLNR 34995) thence to the southeast corner of Pier 7 at Liberty State Park.

(b) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law enforcement;

(2) Emergency response;

(3) Servicing aids to navigation; or

(4) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(c) *Effective dates.* This section is effective from September 14, 2001 through September 28, 2001.

(d) *Regulations.* (1) Only emergency response vessels directly assisting with the disaster in lower Manhattan may operate in the sector designated Area A. Commercial vessels assisting with the disaster recovery efforts in Area A must contact Vessel Traffic Services New York (VTSNY) prior to entering the area. Vessels transiting Area A must do so at no wake speed, or speeds not to exceed 10 knots, whichever is less.

(2) Passenger ferry services operating within the RNA are not authorized to use ferry slips south of 14th Street in Manhattan, without receiving express authorization from VTSNY.

(3) Any passenger ferry operating within the RNA is required to contact VTSNY before getting underway to ensure compliance with the foregoing requirements in this section and to inform VTSNY of the vessel's destination.

(4) No vessel whose Certificate of Inspection authorizes it to carry more than 49 passengers may enter, transit or operate within the RNA until Coast Guard Activities New York, Inspection Division, has reviewed and approved that vessel's Security Plan. An approved Vessel Security Plan submitted in accordance with 33 CFR 120 will satisfy the requirements of this section. A Vessel Security Plan shall, at a minimum:

(i) Describe all measures taken to ensure the physical security of the vessel and the security, safety and identity of persons on board the vessel;

(ii) Identify those areas and spaces on the vessel that passengers are restricted or prohibited from entering or accessing; and

(iii) Establish a procedure to address and report terrorist or hijacking threats.

(5) Each passenger vessel entering, transiting or operating with the RNA shall keep its pilothouse door closed and locked while underway to ensure maximum protection of the passengers and crew.

(6) All deep draft vessels operating within the RNA must enter the Port via Ambrose or Sandy Hook Channels. Before entering the RNA, the following conditions must be met:

(i) The vessel must be inspected to the satisfaction of the U. S. Coast Guard;

(ii) The vessel's agent must confirm that the vessel's berth is ready to receive the ship;

(iii) The vessel must embark a pilot; and

(iv) The vessel must be escorted by two tugs when transiting the harbor inside of one nautical mile (1 NM) south of the Verrazano Narrows Bridge or the Outerbridge Crossing.

3. Add temporary § 165.T01–166 to read as follows:

§ 165.T01–166 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones.* The following are established as safety and security zones:

(1) *Safety and Security Zone A.* Indian Point Nuclear Power Plant: All waters of the Hudson River within 1000 yards of the Indian Point Nuclear Power Station, located south of Peekskill Bay, from Charles Point on the north to the overhead power cables to the south.

(2) *Safety and Security Zone B.* OEM Emergency Command Post and USNS COMFORT: All waters of the Hudson River bound by the following points: from the southeast corner of Pier 95, Manhattan, where it intersects the seawall; thence to approximate position 40°46′20.4″ N 074°00′01.0″ W; thence to 40°45′56.4″ N 074°00′19.1″ W; thence to the southeast corner of Pier 84, Manhattan, where it intersects the seawall; thence along the shoreline to the point of origin (NAD 83).

(3) *Safety and Security Zone C.* USNS COMFORT: A moving security zone including all waters within a 200-yard radius of the USNS COMFORT while it is transiting, moored or berthed in any portion of the Port of New York/New Jersey.

(4) *Safety and Security Zone D.* U.S. Coast Guard vessels: All waters within a 50-yard radius of any anchored U.S. Coast Guard vessel.

(5) *Safety and Security Zone E.* Bridge stanchions: All waters within 25 yards of any bridge stanchion in the Port of New York/New Jersey including, but not limited to, the following bridges at the specified mile markers:

(i) In the East River: Brooklyn Bridge (Mile 0.8), Manhattan Bridge (Mile 1.1), Williamsburg Bridge (Mile 2.3), Queensboro Bridge (Mile 5.5), Triboro Bridge (Mile 7.8), Whitestone Bridge (Mile 13.8) and Throgs Neck Bridge (Mile 15.8);

(ii) In the Hudson River: George Washington Bridge (Mile 11.8)

(iii) In the Kill Van Kull: Bayonne Bridge (Mile 1.5);

(iv) In the Arthur Kill: Outerbridge Crossing (Mile 2.0), Goethals Bridge (Mile 11.5) and AK Lift Bridge (Mile 11.6); and

(v) In New York Harbor: Verrazano Narrows Bridge.

(b) *Effective dates.* This section is effective from September 14, 2001 through September 28, 2001

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

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

Dated: September 14, 2001.

G.N. Naccara,

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

[FR Doc. 01–25289 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[AR–13–1–7526a; FRL–7072–2]

Clean Air Act (CAA) Full Approval of Operating Permits Program and Approval and Promulgation of Implementation Plans; State of Arkansas; New Source Review (NSR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to fully approve the Operating Permit Program of the State of Arkansas and to also approve this rule as it pertains to the Arkansas State Implementation Plan (SIP). Arkansas' Operating Permit Program was submitted in response to the directive in the 1990 CAA Amendments that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted interim approval to Arkansas' Operating Permit Program on September 8, 1995. Arkansas revised its program to satisfy the conditions of the interim approval, and this action approves those revisions. Regulation 26, the Regulation of the Arkansas Operating Air Permit Program, is a comprehensive State air quality program which is designed to address all applicable air contaminant emissions and regulatory requirements in a single permit document; as such it incorporates the NSR permitting

requirements for major sources, as defined by title V, CAA section 501–507, 42 U.S.C. 7661–7661f. The EPA is also approving the revised and recodified Regulation 26 as it pertains to the Arkansas SIP.

DATES: This direct final rule is effective on December 10, 2001 without further notice unless EPA receives adverse comments in writing by November 8, 2001. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, Air Permits Section (6PD–R), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document and documents related to the fee demonstration, are available for public inspection during normal business hours at the following locations:

EPA, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Arkansas Department of Environmental Quality, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Daron Page, EPA, Region 6, at (214) 665–7222.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA. This section provides additional information by addressing the following questions:

I. Title V Operating Permit Program
A. What is the operating permit program?
B. What is being addressed in this document?
C. What are the program changes that EPA is approving?
D. What is involved in this final action?
II. State Implementation Plan (SIP)
A. What is a SIP?
B. What is the Federal approval process for a SIP?
C. What Does Federal approval of a State regulation mean to me?
D. What is being addressed in this action?
E. Why is EPA approving the NSR provisions of Regulation 26 into the Arkansas SIP?
F. Have the requirements for approval of a SIP revision been met?
G. What action is EPA taking?
III. Conclusion
IV. Administrative Requirements

I. Title V Operating Permit Program

A. What Is the Operating Permit Program?

The CAA Amendments of 1990 require all States to develop Operating Permit Programs that meet certain Federal criteria. In implementing the Operating Permit Programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the Operating Permit Program is to facilitate compliance and improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into a single document, the source, the public, and the regulators can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution as defined by title V. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter nominally 10 microns and less (PM_{10}); those that emit 10 tpy of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tpy or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. There are currently no areas classified as nonattainment in Arkansas.

B. What Is Being Addressed in This Document?

Where an Operating Permit Program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 CFR part 70, EPA granted interim approval contingent on the State revising its program to correct the deficiencies. Because Arkansas' Operating Permit Program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on September 8, 1995 (60 FR 46771). In this **Federal Register** document, EPA identified three deficiencies that needed to be addressed before the State could receive full approval (60 FR 46773). Arkansas submitted revisions to its interim approved Operating Permit Program on August 4, 2000. This document describes the changes that have been made to Arkansas' Operating Permit Program.

C. What Are the Program Changes That EPA Is Approving?

The first condition for full approval of Arkansas' Operating Permit Program was that the State was required to amend Regulations 26.4 and 26.7 to incorporate the date of promulgation of the rule at 40 CFR part 70. The purpose of this requirement was to make clear that the permit application and permit content were fully incorporated into the State's regulations (60 FR 46773). Instead, the State chose to incorporate the language for the permit application and permit content directly into their regulation. We agree that revising Regulation 26.402 to include the language from 40 CFR 70.5(c) and revising Regulations 26.701–26.703 to include the language from 40 CFR 70.6(a)–(c) corrects this deficiency.

The second condition for full approval of Arkansas' Operating Permit Program was that the language in the State's Regulation 26.10(B)(1) regarding emission levels must be deleted to make the regulation consistent with the Federal rule at 40 CFR 70.7(e)(2)(i)(A) and the State's Regulations 26.10(b)(7) and 19.2. *Id.* Regulation 26.10(B)(1) (now Regulation 26.1002(A)) provided that ''increases of not over 20% of the applicable definition of major source, or 15 tpy of PM_{10} or 0.6 tpy of lead (potential to emit basis), whichever is less, of a regulated air pollutant over permitted rates'' could be processed as a minor permit modification. Regulation 19.2 defined a modification as any increase in emissions.[1] Thus, EPA believed that the Arkansas minor permit modification process was inconsistent with itself and 40 CFR part 70.

The purpose behind Regulation 26.1002(A) is to prohibit significant New Source Review (NSR) changes from being processed under the title V minor permit modification procedures. Some of the emission increases proposed

[1] The reference to section 19.2 refers to a designation in Regulation 19 on the date of our interim approval of Arkansas' title V Operating Permit Program on September 8, 1995. On February 15, 1999, the Arkansas Department of Environmental Quality (ADEQ) revised and recodified Regulation 19.

under Regulation 26.1002(A) are title I modifications, CAA sections 101–193, 42 U.S.C. 7401–7515, and thus cannot be processed as title V minor permit modifications.

Title I modifications include any major modification under major NSR. For example, Regulation 26.1002(A) provides that an emissions increase of 0.6 tpy of lead or 15 tpy of PM_{10} could be processed as a minor permit modification. However, these emission increases would be considered major modifications under PSD.[2] Thus, these changes are considered title I modifications, and cannot be processed as a minor permit modification under Regulation 26.1002 and remain consistent with 40 CFR part 70. However, it is our understanding that Arkansas intends that the other gatekeeper provisions of Regulation 26.1002 would prevent such increases from being processed as a minor permit modification to part 70 operating permits. In fact, Regulation 26.1002(G) prevents minor permit modification procedures from being used for any changes that are ''modifications under any provision of title I of the Act,'' consistent with part 70.

With this understanding that the gatekeeper provisions would prevent all title I modifications—or any other gatekeeper category prohibition under Regulation 26.1002—from being processed as minor permit modifications, we no longer have any objection to this provision.[3]

The third and final condition for full approval of Arkansas' operating permit program was that Arkansas ''must ensure consistency between the operating permits program (Regulation 26) and the State Implementation Plan (SIP) (Regulation 19).'' 60 FR 46773. Regulation 19 was submitted to EPA as a revision to the SIP on March 5, 1999. We approved Regulation 19 into the SIP on October 16, 2000. See 65 FR 61103. With regard to title V, this is no longer an interim approval issue. We believe that the Regulation 19 submittal satisfies the title V deficiency identified as Item 3 in the September 8, 1995, **Federal Register** notice.

Arkansas adopted the changes as discussed above on July 21, 2000. The rules became effective on August 10, 2000. Arkansas submitted these revisions to EPA on August 4, 2000.

The State is also adjusting its title V fee accounting procedures to include a two-step process to separate monies that represent amounts attributed to activities that incorporate Federal requirements from those that represent State-only requirements. The comprehensive fee of $19.12 per ton is assessed for all title V sources, based on allowable emissions, less HAPs. That amount attributed to activities that incorporate Federal requirements into the permits will be $15.296 per ton and the rest of the fee will be attributed to activities incorporating State-only conditions. Arkansas requires $5,191,370 to cover the cost of the title V program as delineated in the fee demonstration. The State plans to collect a total of approximately $7,189,943 per year in fees from title V sources. $5,310,000 will represent the amount collected for activities that incorporate Federal requirements and $1,879,943 will represent the amount collected for those activities associated with State-only requirements. The current proposal will result in $5,310,000 in title V fee revenue, which will be sufficient to cover the program costs with an adequate margin of safety. The amount collected to incorporate Federal requirements into the title V permit are considered as meeting the requirement that the State must collect enough fees to sustain the title V program. The ADEQ has the authority to adjust the fee as necessary using its rulemaking authority. The demonstration submitted by Arkansas meets the requirements of 40 CFR 70.4(b)(7) and (8).

D. What Is Involved in This Final Action?

The State of Arkansas has fulfilled the conditions of the interim approval granted on September 8, 1995 (60 FR 46771), so EPA is taking final action to fully approve the State's Operating Permit Program. EPA is also taking action to approve other nonsubstantive program changes made by the State since the interim approval was granted. Other changes include recodifying the entire Regulation 26 and making such editorial changes as deleting the words ''Department of'' and adding the word ''Commission'' to the name of the agency ''Arkansas Pollution Control & Ecology Commission.''

II. State Implementation Plan (SIP)

A. What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each State must submit these regulations and control strategies to EPA for approval and incorporation into a Federally enforceable SIP. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable provisions and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What Is the Federal Approval Process for a SIP?

In order for State regulations to be incorporated into the Federally enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a State-authorized rulemaking body. Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us. All State regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

C. What Does Federal Approval of a State Regulation Mean To Me?

Enforcement of the State regulation before and after it is incorporated into the Federally approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address

[2] Section 19.904(a) incorporates 40 CFR 52.21(b)–(r), except section 52.21(i)(12). 40 CFR 52.21(b)(2)(i) and 52.21(b)(23)(i) define the net emission increases that are considered major modifications for PSD.

[3] In addition, Arkansas revised the definition of ''modification'' in Regulation 19, Chapter 2. This removed the final impediment to approval of this provision. See 60 FR at 46772.

violations as described in section 304 of the CAA.

D. What Is Being Addressed in This Action?

We are approving Regulation 26 as it pertains to the Arkansas SIP. When Arkansas revised Regulation 26 to address the interim approval issues, it made some minor changes, such as recodifing the entire rule. When we approved the Arkansas SIP last October this revised rule was not finalized, so we approved the original Regulation 26. We are now approving the recodified rule as submitted on August 4, 2000. However, there are no significant changes, and the rule remains substantially the same as was approved in our October 16, 2000 action. See 65 FR 61103.

E. Why Is EPA Approving the NSR Provisions of Regulation 26 Into the Arkansas SIP?

Chapter 11 of Regulation 19 (approved October 16, 2000, FR 61103) addresses the NSR permitting procedures for major sources which are also subject to Regulation 26—Regulations of the Arkansas Operating Permit Program. Regulation 26 is Arkansas' regulation for its Operating Permit Program under title V of the CAA. Chapter 9 of Regulation 19 describes the process already approved by EPA, for issuance of a permit to a new major source or a major modification of a permit to of an existing source which is major for purposes of the PSD program, by virtue of incorporation by reference of the provisions of 40 CFR 52.21(b)-(r). Chapter 11 requires major sources which are subject to Regulation 26 to also have their permit applications processed in accordance with the procedures contained in Regulation 26, which are incorporated by reference. Thus, Chapter 11 creates the connection between the PSD and title V programs to allow Arkansas to issue one permit to its sources which are defined as major under both programs.

For minor sources, the permitting process is described in Chapter 4 of Regulation 19, which complies with 40 CFR 51.160–51.164. Chapters 4 and 9 of Regulation 19 do not, however, fully address all sources defined as major sources under section 302(j) of the CAA. Chapter 11 is necessary to provide a process for permitting the following:

- Sources which are major for purposes of PSD but undergo a physical change or change in the method of operation which does not result in a significant net emission increase, i.e., minor modifications. Such a change therefore is not subject to PSD review.[4] Subpart I, however, applies to the construction and modification of all sources, including major and minor sources. Such a change, therefore, must meet the applicable requirements of 40 CFR 51.160–51.164. Regulation 26 contains the provisions which satisfy these provisions of subpart I.[5] These provisions are incorporated into Regulation 19 by Chapter 11.
- A source which is major for title V but not major for PSD. This would include a source whose potential to emit is 100 tpy or more but less than 250 tpy and is not one of the source types listed in 40 CFR 52.21(b)(1).[6] Although a new or modified source which is not a PSD major source is not subject to PSD, the applicable requirements of 40 CFR 51.160–51.164 nonetheless continue to apply as explained above. Regulation 26 contains the provisions which satisfy these provisions of subpart I. These provisions are incorporated into Regulation 19 by Chapter 11.

Chapter 11 of Regulation 19, incorporates the applicable requirements of 40 CFR part 51, subpart I[7] (subpart I) that are in Regulation 26 into Regulation 19, which we have approved into the SIP. Through Chapter 11, the subpart I provisions of Regulation 26 are incorporated by reference.

Through Chapter 11 of Regulation 19, Arkansas ensures that the construction and modification of sources subject to the preconstruction review requirements of the Act will meet the applicable requirements of subpart I. Our October 16, 2000, action includes our analysis of the provisions of Regulation 26 which Arkansas incorporated by reference into Regulation 19 and describes how Regulation 26 meets the requirements of subpart I. It further demonstrates that the procedures in Regulation 26 will ensure that modifications which occur at title V sources will satisfy the requirements of the Act and subpart I.

On October 16, 2000 we approved portions of Regulation 26 which Arkansas adopted July 23, 1993, and submitted to us on October 29, 1993, into the SIP. We had previously approved this version of Regulation 26 at 60 FR 46171 (September 8, 1995) as satisfying the requirements for interim approval under 40 CFR part 70. We have reexamined Arkansas' revisions to Regulation 26 which it submitted to us on August 4, 2000. We find that the revised Regulation 26 continues to meet the requirements of subpart I.

F. Have the Requirements for Approval of a SIP Revision Been Met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which accompanies this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

G. What Action Is EPA Taking?

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate receiving any adverse comments.

III. Conclusion

We are taking final action to fully approve the Operating Permit Program of the State of Arkansas and to also approve Arkansas Regulation 26 as it pertains to the State Implementation Plan (SIP). EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates receiving no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant final full approval should adverse comments be filed. This

[4] For purposes of PSD, 40 CFR 52.21(i)(1) provides that no stationary source or modification to which the paragraphs (j)–(r) apply shall begin actual construction without a permit which states that the source or modification meets such requirements. The provisions of § 52.21(j)–(r) apply to the construction of major sources and major modifications. ''Major stationary source'' is defined in § 52.21(b)(1) and ''major modification'' is defined in § 52.21(b)(2). A major modification is a physical change or change in the method of operation at a major stationary source which results in a significant net emissions increase. ''Net emissions increase'' is defined in § 52.21(b)(3) which describes how the net emissions increase is determined. Such increase is significant if it equals or exceeds the significance thresholds in § 52.21(b)(23). Thus, minor modifications at major stationary sources do not fall within the purview of the PSD requirements.

[5] According to Regulation 26, Chapter 2 Definitions, ''applicable requirement'' is defined as ''Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act * * *'' (PSD *inter alia*) (this includes Regulation 19, Chapter 3 which requires protection of the NAAQS).

[6] Section 52.21(b)(1) is the definition of ''major stationary source.'' Under this definition, a source is major for PSD if its potential to emit (PTE) is 100 TPY or more *and* the source belongs to one of the source categories listed in § 52.21(b)(1)(i)(*a*). Otherwise, a source is a PSD major only if its PTE is 250 TPY or more, pursuant to § 52.21(b)(1)(i)(*b*). Under section 302(j) of the Act and 40 CFR part 70, a ''major source'' includes any stationary source with a PTE of 100 TPY or more.

[7] 40 CFR part 51, subpart I contains the requirements that a SIP-approved program for review of new and modified sources must meet. The subpart consists of §§ 51.160–51–166.

action will be effective December 10, 2001 unless the Agency receives adverse comments by November 8, 2001.

If EPA receives such adverse comments, then EPA will withdraw the final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 10, 2001 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

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

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

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

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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 December 10, 2001. 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

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, New source review, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 20, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

Parts 52, chapter I, title 40 of the CFR 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 E—Arkansas

2. In § 52.170(c), the table is amended as follows:

(a) Under the heading ''Regulation 26: Regulations for the Arkansas Operating Permit Program,'' remove the existing entries for Section 3, Section 4, Section 5, and Section 6, and add new entries for Chapter 3, Chapter 4, Chapter 5, and Chapter 6 as shown below;

(b) Remove the heading ''Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control'; and remove the entries for Section 1, Section 2, Section 3, Section 4, Section 5, and Section 6 under the heading ''Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control';

(c) Remove the heading ''Regulation for the Control of Volatile Organic Compounds'' and remove the entries for Section 1, Section 2, Section 3, Section 4, Section 5, and Section 6 under the heading ''Regulation for the Control of Volatile Organic Compounds.''

§ 52.170 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
Regulation 26: Regulations of the Arkansas Operating Permit Program Chapter 3: Requirements for Permit Applicability				
Section 26.301	Requirement for a permit	08/10/00	10/9/01 [and page number]	
Section 26.302	Sources subject to permitting	08/10/00	10/9/01 [and page number]	
Chapter 4: Applications for Permits				
Section 26.401	Duty to apply	08/10/00	10/9/01 [and page number]	
Section 26.402	Standard application form and required information	08/10/00	10/9/01 [and page number]	
Section 26.407	Complete application	08/10/00	10/9/01 [and page number]	
Section 26.409	Confidential information	08/10/00	10/9/01 [and page number]	
Section 26.410	Certification by responsible official	08/10/00	10/9/01 [and page number]	
Chapter 5: Action on Application				
Section 26.501	Action of part 70 permit applications	08/10/00	10/9/01	Subsection B Not in SIP
Section 26.502	Final action on permit application	08/10/00	10/9/01 [and page number]	
Chapter 6: Permit Review by the Public, Affected States, and EPA				
Section 26.601	Untitled introduction to Chapter 6	08/10/00	10/9/01 [and page number]	
Section 26.602	Public participation	08/10/00	10/9/01	Only Subsection A(1), A(2), A(5), and D in SIP
Section 26.603	Transmission of information to the Administrator	08/10/00	10/9/01 [and page number]	
Section 26.604	Review of draft permit by affected States	08/10/00	10/9/01 [and page number]	

* * * * *

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

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

2. Appendix A to Part 70 is amended by revising paragraph (b) in the entry for Arkansas to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Arkansas

* * * * *

(b) The Arkansas Department of Environmental Quality submitted program revisions on August 4, 2000. The rule revisions adequately addressed the conditions of the interim approval effective on October 10, 1995, and which would expire on December 1, 2001. The State is hereby granted final full approval effective on December 10, 2001.

[FR Doc. 01–24902 Filed 10–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WV–T5–2001–02a; FRL–7073–9]

Clean Air Act Approval of Operating Permit Program Revisions; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the operating permit program of the State of West Virginia. West Virginia's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of West Virginia's operating permit program on November 15, 1995. West Virginia has revised its operating permit program since receiving interim approval and this action approves those revisions. Any parties interested in commenting on this action proposing to approve discretionary revision to West Virginia's title V operating permit program should do so at this time. A more detailed description of West Virginia's submittal and EPA's evaluation are included in a Technical Support Document (TSD) in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

DATES: This rule is effective on November 23, 2001 without further notice, unless EPA receives adverse written comment by November 8, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at campbell.dave@.epa.gov.

SUPPLEMENTARY INFORMATION: On June 1, 2001, the State of West Virginia submitted amendments to its State operating permit program. These amendments are the subject of this document and this section provides additional information on the amendments by addressing the following questions:

What is the State operating permit program?
What is being addressed in this document?
What is not being addressed in this document?
What changes to West Virginia's operating permit program is EPA approving?
What action is being taken by EPA?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

What Is Being Addressed in This Document?

On June 1, 2001, West Virginia submitted revisions to its currently EPA–approved title V operating permit program. In general, West Virginia made minor technical and administrative corrections to its existing operating permit program regulations. The revisions consist primarily of typographical and editorial corrections to definitions and other program elements. These program revisions were submitted pursuant to 40 CFR 70.4(i) which provides that a State with an approved program may initiate a program revision when the relevant State regulations are modified or supplemented. West Virginia's operating permit program received interim approval in 1995. West Virginia has modified and supplemented its permit program regulations since that time. West Virginia submitted the revisions for EPA action according to 40 CFR 70.4(i)(2)(iii).

What Is Not Being Addressed in This Document?

As part of its June 1, 2001 submittal, West Virginia also provided amendments to its operating permit program regulations to address deficiencies identified by EPA when it granted final interim approval of West Virginia's program in 1995. Since these program amendments are not directly relevant to this rulemaking action approving revisions to West Virginia's operating permit program, they are being considered in a separate rulemaking action.

On December 11, 2000, EPA announced a 90-day comment period for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs. [See 65 FR 77376.] The public was able to comment on all currently-approved operating permit programs, regardless of whether they have been granted full or interim approval. The EPA Region III did not receive comments germane to West Virginia's currently-approved operating permit program.

What Changes to West Virginia's Program Is EPA Approving?

The EPA has reviewed West Virginia's June 1, 2001 program revisions in conjunction with the portion of West Virginia's program that was earlier approved by EPA. Based on this review,

EPA is approving revisions to West Virginia's operating permit program. The EPA has determined that the revisions to West Virginia's operating permit program appropriately clarify and improve the currently approved version of its program. The revisions fully meet the minimum requirements of 40 CFR part 70.

In general, West Virginia revised its permit program regulations in order to clarify certain definitions and minor procedural matters. The following describes the revisions made to West Virginia's operating permit program.

Changes to West Virginia's Operating Permit Program

1. Minor renumbering of sections has occurred.
2. Added section 1.5.
3. In section 2.7, removed ''§ 111 or'' from the definition of ''Area source''.
4. In section 2.12, clarified definition by adding, ''such other person to whom the director has delegated authority of duties pursuant to W.Va. Code §§ 22–1–6 or 22–1–8'' and revised capitalization.
5. In section 2.13, removed ''that Division of'' and revised capitalization.
6. In section 2.38.c, revised ''part'' to ''rule''.
7. Removed parentheses at the beginning of the last sentence of section 4.1.a.2.
8. In section 4.3.c.1, ''subsection'' revised to ''subdivision''.
9. In section 5.1.j.3, revised ''part'' to ''rule''.
10. In section 5.9.f, revised ''reivew'' to ''review''.
11. In section 6.4.c, revised ''part'' to ''rule''.
12. In section 6.5.a.5, revised ''permitee'' to ''permittee''.
13. Removed section 12.2 pursuant to federal regulations implementing section 112(g) of the CAA deleting the requirement to do a case-by-case technology-based standard for existing sources which modify their facilities.
14. Removed ''Caprolactam'' from Table 45–30A.

What Action Is Being Taken by EPA?

The State of West Virginia submitted revisions to its operating permit program on June 1, 2001 in order to clarify and improve certain aspects of its program. The operating permit program revisions that are the subject of this document considered together with that portion of West Virginia's operating permit program that was earlier approved by EPA fully satisfy the minimum requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is taking direct final action to approve revisions to the State of West Virginia's title V operating permit program in accordance with 40 CFR 70.4(i)(2)(iii).

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program approval if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on November 23, 2001 without further notice unless EPA receives adverse comment by November 8, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State operating permit program 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 an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2001. 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 approving revisions to West Virginia's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (d) in the entry for West Virginia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

West Virginia

* * * * *

(d) The West Virginia Department of Environmental Protection submitted program revisions on June 1, 2001. The rule revisions contained in the June 1, 2001 submittal revise West Virginia's existing approved program. The State is hereby granted revised approval effective on November 23, 2001.

* * * * *

[FR Doc. 01–24711 Filed 10–5–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7769]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq.; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended

unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Virginia:				
Franklin County., Unincorporated Areas. ...	510061	May 23, 1974, Emerg.; May 19, 1981, Reg. October 5, 2001.	10/05/01	10/05/01
Region II				
New York:				
Carmel, Town of, Putnam County.	360669	March 21, 1975, Emerg.; June 18, 1987, Reg. October 19, 2001.	10/19/01	10/19/01
Lumberland, Town of, Sullivan County, ...	360825	April 21, 1975, Emerg.; February 27, 1984, Reg. October 19, 2001.	do	do
Region III				
Pennsylvania:				
Green Lane, Borough of, Montgomery County.	421902	November 22, 1974, Emerg., September 2, 1981, Reg. October 19, 2001.	do	do
Limerick, Township of, Montgomery County	421912	November 7, 1974, Emerg.; March 16, 1981, Reg. October 19, 2001.	do	do
Lower Frederick Township of, Montgomery County.	420952	January 28, 1974, Emerg.; September 30, 1977, Reg. October 19, 2001.	do	do
Marlborough, Township of, Montgomery County.	421913	August 14, 1974, Emerg.; September 2, 1981, Reg. October 19, 2001.	do	do
New Hanover, Township of, Montgomery County.	421914	August 1, 1974, Emerg.; September 16, 1981, Reg. October 19, 2001.	do	do
Perkiomen, Township of, Montgomery County.	421915	October 29, 1974, Emerg.; February 3, 1982, Reg. October 19, 2001.	do	do
Salford, Township of, Montgomery County	422497	August 29, 1975, Emerg.; February 3, 2002, Reg. October 19, 2001.	do	do
Trappe, Borough of, Montgomery County ..	421907	January 20, 1975, Emerg.; January 20, 1982, Reg. October 19, 2001.	do	do
Upper Frederick, Township of, Montgomery County.	421916	November 15, 1974, Emerg.; August 17, 1981, Reg. October 19, 2001.	do	do
Upper Merion, Township of, Montgomery County.	420957	December 17, 1973, Emerg.; November 16, 1977, Reg. October 19, 2001.	do	do
Region VI				
Texas:				
Gillespie County, Unicoporated Areas	480696	May 31, 1974, Emerg.; May 1, 1987, Reg. October 19, 2001.	do	do
Region IX				
California:				
San Mateo, City of San Mateo County	060328	December 26, 1974, Emerg.; March 6, 1981, Reg. October 19, 2001.	do	do

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 28, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–25242 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2205; MM Docket No. 00–169; RM–9953]

Radio Broadcasting Services; Oswego and Granby, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 65 FR 57800 (September 26, 2000) this document reallots Channel 288A from Oswego to Granby, New York and provides Granby with its first local aural transmission service. The coordinates for Channel 288A at Granby are 43–17–44 North Latitude and 76–26–16 West Longitude.

DATES: Effective November 5, 2001.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–169, adopted September 12, 2001, and released September 21, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor: Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, D.C. 20554.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Granby, Channel 288A, and removing Channel 288A from Oswego.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–25116 Filed 10–5–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF57

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Scaleshell Mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the scaleshell mussel (*Leptodea leptodon*) to be an endangered species under the Endangered Species Act of 1973, as amended (Act). The scaleshell mussel historically occurred in 55 rivers in 13 states in the eastern United States. Currently, the species is known to exist in 14 rivers (and may occur in 6 others) within the Mississippi River Basin in Missouri, Oklahoma, and Arkansas. Its abundance and distribution have decreased markedly due to habitat loss and adverse effects associated with water quality degradation, sedimentation, channelization, sand and gravel mining, dredging, and reservoir construction.

DATES: This final rule is effective on November 8, 2001.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Columbia Field Office, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201.

FOR FURTHER INFORMATION CONTACT: Andy Roberts (at the above address or telephone 573–876–1911, ext. 110; fax 573–876–1914). TTY users may contact us through the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Buchanan (1980), Cummings and Mayer (1992), Oesch (1995), and Watters (1995) provide descriptions of the scaleshell mussel. The shell grows to approximately three to ten centimeters (one to four inches) in length. The shells are elongate, very thin, and compressed. The anterior (front) end is rounded. In males, the posterior (rear) end is bluntly pointed. In females, the periostracum (the outside layer or covering of the shell) forms a wavy, fluted extension of the posterior end of the shell. The dorsal (top) margin is straight and the ventral (bottom) margin is gently rounded. Beaks (the raised or domed part of the dorsal margin of the shell) are small and low, and nearly even with the hinge line. The beak sculpture is inconspicuously compressed and consists of four or five double-looped ridges. The periostracum is smooth, yellowish green or brown, with numerous faint green rays. The pseudocardinal teeth (the triangular, often serrated, teeth located on the upper part of the shell) are reduced to a small thickened ridge. The lateral teeth (the elongated teeth along the hinge line of the shell) are moderately long with two indistinct teeth occurring in the left valve (shell) and one fine tooth in the right. The beak cavity (a cavity located inside the shell that extends into the beak) is very shallow. The nacre (the interior layer of the shell) is pinkish white or light purple and highly iridescent.

Life History

The biology of the scaleshell mussel is similar to the biology of other bivalved mollusks belonging to the family Unionidae. Adult unionids are filter-feeders, spending their entire lives partially or completely buried in the stream bottom (Murray and Leonard 1962). The posterior margin of the shell is usually exposed and the siphons extended to facilitate feeding. During periods of activity, movement is accomplished by extending and contracting a single muscular foot between the valves. Extension of the foot also enables the mussel to wedge itself into the river bottom. Their food includes detritus (disintegrated organic material), plankton, and other microorganisms (Fuller 1974). Some freshwater mussel species are long-lived. Individuals of many species live more than 10 years and some have been reported to live over 100 years (Cummings and Mayer 1992).

Unionids have an unusual and complex mode of reproduction, which includes a brief, obligatory parasitic

stage on fish. Males release sperm into the water column in the spring, summer, or early fall, and females using the incurrent water flow draw in the sperm. Fertilization takes place in the shell of the female. Fertilized eggs develop into microscopic larvae (glochidia) and are brooded within special gill chambers of the female. Once the glochidia are mature, they are expelled into the water where they must quickly attach to the gills or the fins of an appropriate fish host to complete development. Following proper host infestation, glochidia transform into juveniles and excyst (drop off). Juveniles must drop off into suitable habitat to survive. Host fish specificity varies among unionids. Some mussel species appear to require a single host species, while others can transform their glochidia into juvenile mussels on several fish species. For further information on the life history of freshwater mussels, see Gordon and Layzer (1989) and Watters (1995).

Mussel biologists know relatively little about the specific life history requirements of the scaleshell mussel. Baker (1928) surmised that the scaleshell mussel is a long-term brooder (spawns in fall months and females brood the larvae in their gills until the following spring or summer). Glochidia found in the gill chambers in September, October, November, and March support that conclusion (Gordon 1991). The scaleshell mussel uses the freshwater drum (*Aplodinotus grunniens*) as the fish host for its larvae (Chris Barnhart, Southwest Missouri State University, pers. comm. 1998). Other species in the genus *Leptodea* and a closely related genus *Potamilus* are also known to use freshwater drum exclusively as a host (Watters 1994).

Little is known about the life expectancy of the scaleshell mussel. However, recent collections from Missouri indicate that it is relatively short-lived compared to other species. A sample of 33 dead specimens and 2 living individuals collected in 2000 from a Gasconade River site did not contain any individuals exceeding seven years old (Chris Barnhart, pers. comm. 2000). Likewise, no individuals over six years old were observed out of 44 living individuals collected in 1997 from the Meramec Basin (Roberts and Bruenderman 2000). Based on these collections, it appears that the life expectancy of the scaleshell mussel may be less than 10 years. In addition, the sex ratio of the above collections are significantly different from a 50/50 ratio (Chi-Square Test, $P < 0.05$). The Gasconade collection only contained eight females (including one living) out of 35 individuals, and the Meramec Basin collection only contained 15 females out of 44 living individuals. The reason females appear to be less common than males in the Gasconade River and Meramec Basin is unknown.

Habitat Characteristics

The scaleshell mussel occurs in medium to large rivers with low to moderate gradients in a variety of stream habitats. Buchanan (1980, 1994) and Gordon (1991) reported the scaleshell mussel from riffle areas with substrate consisting of gravel, cobble, boulder, and occasionally mud or sand. Oesch (1995) considered the scaleshell mussel a typical riffle species, occurring only in clear, unpolluted water with good current. Conversely, Call (1900), Goodrich and Van der Schalie (1944), and Cummings and Mayer (1992) reported collections from muddy bottoms of medium-sized and large rivers. Roberts and Bruenderman (2000) collected the scaleshell mussel primarily from mussel beds (areas with a high concentration of mussels that contain more than one species) with stable, gravel substrates. The characteristic common to these sites appears to be a stable stream bed and good water quality. These habitat observations are consistent with the current distribution of the scaleshell mussel. The scaleshell mussel is restricted to rivers that have maintained relatively good water quality (Oesch 1995) and to river stretches with stable channels (Buchanan 1980, Harris 1992). The scaleshell mussel is also usually collected in mussel beds in association with a high diversity of other mussel species.

Distribution and Abundance

The scaleshell mussel historically occurred in 13 states in the eastern United States. While the scaleshell mussel had a broad distribution, it appears that it was a rare species locally (Gordon 1991, Oesch 1995, Call 1900). Williams *et al.* (1993) reported the historical range as Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Missouri, Ohio, Oklahoma, South Dakota, Tennessee, and Wisconsin. Historical records also exist for the Minnesota River, Minnesota (Clarke 1996). Williams *et al.* (1993) also listed Michigan and Mississippi as part of the scaleshell mussel's range, but no valid records exist in these states. Therefore, its presence cannot be confirmed (Bob Jones, Mississippi Wildlife Fisheries and Parks, Museum of Natural Science, pers. comm. 2000; Szymanski 1998). Gordon (1991) included a portion of the St. Lawrence drainage in describing the distribution of the scaleshell mussel. However, the specimens that were the source of the St. Lawrence River record were later identified as wingless examples of *Leptodea fragilis* (fragile papershell), which are often seen in New York (David Strayer, Institute of Ecosystem Studies, New York, *in litt.* 1995). Given this and that no other authentic specimens have been found (David Stansbery, Ohio State Museum, *in litt.* 1995), the historical occurrence of the species in St. Lawrence Basin is doubtful.

Within the last 50 years the scaleshell mussel has become increasingly rare and its range greatly restricted. Historically, the scaleshell mussel occurred in 55 rivers. Today, the species is known from only 14 rivers including the Meramec, Bourbeuse, Big, Gasconade, and Osage Rivers in Missouri; Frog Bayou and the St. Francis, Spring, South Fork Spring, South Fourche LaFave, and White Rivers in Arkansas; and the Little, Mountain Fork, and Kiamichi Rivers in Oklahoma. An additional six rivers (Cossatot, Little Missouri, Saline, and Strawberry Rivers, and Myatt and Gates Creeks) in Arkansas and Oklahoma may support the scaleshell mussel, but the existence of the species in these rivers is uncertain. With the exception of the Meramec, Bourbeuse, and Gasconade Rivers, all rivers listed as supporting the scaleshell mussel are based on the collection of a few or a single individual specimen.

Assessment of the Presumed Health of Individual Populations

For the purposes of this rule, the term ''population'' is used in a geographical sense and, unless otherwise indicated, is defined as all individuals living in one river or stream. By using this term we do not imply that a scaleshell mussel population is currently reproducing or that it is a distinct genetic unit. Using the term in this way allows the status, trends, and threats to be discussed separately for each river where the scaleshell mussel occurs, improving the clarity of the discussion.

Due to the low densities of current scaleshell mussel populations, ascertaining status (an assessment of the current existence of a population) and trends (an assessment of change in a population's numbers and its probable future condition) is difficult. To facilitate population comparisons, a single classification system was devised to evaluate the probable current health of individual populations. The indicators of (or criteria for) the presumed health of scaleshell mussel populations are as follows. The

presumed health of a population is considered ''stable'' if (1) there is no evidence of significant habitat loss or degradation, *and* (2) there has been post-1980 collection of live or fresh dead mussels and, if surveys were thorough, evidence of recruitment was found. The presumed health of a population is considered ''declining'' if (1) habitat is limiting due to its small size, or a significant decrease in habitat quality or quantity has occurred, (2) there is no evidence of recruitment despite one or more thorough surveys, *or* (3) a significant decline in number of individual mussels has occurred. The presumed health of a population is considered ''extirpated'' if (1) despite one or more thorough post-1980 surveys, no scaleshell mussels, or only old dead shells, have been found, *or* (2) all known suitable habitat has been destroyed. The presumed health of a population is considered ''unknown'' if the available information is inadequate to place the population in one of the above categories. In a few cases, additional biological information not listed above was used to categorize a population that otherwise would have been called ''unknown'' or which appeared to fit into multiple categories.

Based on the above criteria, 14 scaleshell mussel populations are considered extant. Of these populations, the presumed health of 1 is thought to be stable and 13 are believed to be declining. Six other populations may also be extant, but their health is unknown due to lack of recent collections or surveys. The 14 extant populations and 6 potentially extant populations are listed in Table 1 and included in the discussions below.

TABLE 1.—PRESUMED POPULATION HEALTH OF EXTANT AND POTENTIALLY EXTANT SCALESHELL MUSSEL POPULATIONS. S = STABLE, D = DECLINING, UK = UNKNOWN

Population	Presumed health
Big (MO)	D
Bourbeuse (MO)	D
Cossatot (AR)	UK
Frog Bayou (AR)	D
Gates Creek (OK)	UK
Gasconade (MO)	D
Kiamichi (OK)	D
Little Missouri (AR)	UK
Little (OK)	D
Meramec (MO)	D
Mountain Fork (OK)	D
Myatt Creek (AR)	UK
Osage River (MO)	D
St. Francis (AR)	D
Saline (AR)	UK
South Fork Spring (AR)	S
South Fourche LaFave (AR)	D
Spring River (AR)	D
Strawberry (AR)	UK
White River (AR)	D

River Basin Specific Discussion of the Scaleshell Mussel Status

Upper Mississippi River Basin

The scaleshell mussel formerly occurred in eight rivers and tributaries within the upper Mississippi River Basin, including the Mississippi River in Illinois, Iowa, and Wisconsin; the Minnesota River in Minnesota; Burdett's Slough in Iowa; the Iowa and Cedar Rivers in Iowa; and the Illinois, Sangamon, and Pecatonica Rivers in Illinois. However, the scaleshell mussel has not been found for more than 50 years in the upper Mississippi River Basin and is believed extirpated from that basin (Kevin Cummings, Illinois Natural History Survey, *in litt.* 1994).

Middle Mississippi River Basin

Historically, the scaleshell mussel occurred in 26 rivers and tributaries within the middle Mississippi River Basin including the Kaskaskia River in Illinois; the mainstem Ohio River in Kentucky and Ohio; the Wabash River in Illinois and Indiana; the White River and Sugar Creek in Indiana; the Green and Licking Rivers in Kentucky; the Scioto, St. Mary's, and East Fork Little Miami Rivers in Ohio; the Cumberland River in Kentucky and Tennessee; Beaver Creek in Kentucky; Caney Fork in Tennessee; the Tennessee River in Alabama and Tennessee; the Clinch, Holston, and Duck Rivers in Tennessee; Auxvasse Creek in Missouri; the Meramec, Bourbeuse, South Grand, Gasconade, Big, Osage, and Big Piney Rivers in Missouri; and the mainstem Missouri River in South Dakota and Missouri. The scaleshell mussel has been extirpated from most of the middle Mississippi River Basin. Currently, the scaleshell mussel is extant in five rivers within the Meramec River basin and tributaries of the Missouri River drainages in Missouri.

Ohio River Drainage—The scaleshell mussel has been extirpated from the entire Ohio River system. The most recent collection date from the Ohio River Basin is 1964 from the Greene River (Wayne Davis, Kentucky Department of Fish and Wildlife, *in litt.* 1994). All other records are pre-1950 (Kevin Cummings, *in litt.* 1994; Catherine Gremillion-Smith, Indiana Department of Natural Resources, *in litt.* 1994; Ron Cicerello, Kentucky Department of Fish and Wildlife, *in litt.,* 1994; Paul Parmelee, University of Tennessee, pers. comm. 1995).

Meramec River Basin (Missouri)—In 1979, Buchanan surveyed for mussels at 198 sites within the Meramec River Basin (Buchanan 1980). Of these sites, 14 had evidence of live or dead scaleshell mussels. Seven of the 14 sites were in the lower 180 kilometers (km) (112 miles (mi)) of the Meramec River, five in the lower 87 km (54 mi) of the Bourbeuse River, and two in the lower 16 km (10 mi) of the Big River. Buchanan found that the species comprised less than 0.1 percent of the 20,589 living mussels he examined in the basin. He collected live scaleshell mussels at only four sites, three in the Meramec and one in the Bourbeuse. Although the lower 174 km (108 mi) of the Meramec River had suitable habitat for many rare species, live scaleshell mussels were found only in the lower 64 km (40 mi) (Buchanan 1980). Both the Bourbeuse and Big Rivers had lower species diversity and less suitable habitat than the Meramec River. Suitable habitat occurs only in the lower 87 km (54 mi) of the Bourbeuse River and lower 16 km (10 mi) of the Big River (Buchanan 1980).

The Missouri Department of Conservation (MDC) sampled 78 sites in an intensive resurvey of the Meramec River basin in 1997 (Roberts and Bruenderman 2000). Similar to Buchanan's findings (1980), scaleshell mussels represented only 0.4 percent of the living mussels. Live specimens were collected from the mainstem Meramec River (34 specimens from 9 sites), the Bourbeuse River (10 specimens from 5 sites), and the Big River (2 specimens from 1 site). In addition to the nine sites surveyed by Buchanan (1979), new sites were included in the 1997 survey. Living or dead scaleshell mussels were found at four of the five sites in the Meramec River and two of the four sites in the Bourbeuse River. The three sites where the presence of scaleshell mussels was not reconfirmed no longer support suitable mussel habitat due to stream bed degradation. Other species that were found in mussel beds at those sites in the earlier surveys were no longer present in 1997. Although portions of the Meramec River basin continue to provide suitable habitat, mussel species diversity and abundance have declined noticeably since 1980 and

significant losses of mussel habitat have occurred (Roberts and Bruenderman 2000).

The number of scaleshell mussel specimens the MDC collected in 1997 is greater than that reported by Buchanan's study (Buchanan 1980); however, the small number of specimens collected, especially from the Bourbeuse and Big Rivers, indicates that the long-term viability of these populations is tenuous. Moreover, the long-term persistence of populations in the Meramec Basin is in question because of the limited availability of mussel habitat and the loss of mussel beds since 1980 from bank and channel degradation, sedimentation, and eutrophication (excessive fertilization caused by pollution of plant nutrients) (Roberts and Bruenderman 2000; Alan Buchanan, MDC, *in litt.* 1997; Sue Bruenderman, MDC, pers. comm. 1998).

Missouri River drainage (South Dakota and Missouri)—Within the Missouri River drainage, Buchanan (1980, 1994) and Oesch (1995) reported scaleshell mussels from the Missouri, Gasconade, Big Piney, South Grand, Osage Rivers, and Auxvasse Creek. The last collection of scaleshell mussels from Auxvasse Creek was in the late 1960s (Alan Buchanan, *in litt.* 1997). Similarly, the last known collection date for the South Grand is the early 1970s. This collection site is now inundated by Truman Lake and is unsuitable for the scaleshell mussel (Alan Buchanan, *in litt.* 1997). A single, fresh dead specimen was collected from Big Piney River in 1981 (Sue Bruenderman, *in litt.* 1998). However, the scaleshell mussel has not been found in recent surveys of this river. Between 1994 and 1996, 70 sites were sampled in the Big Piney River from the mouth to the headwaters. While 3,331 mussels of 26 species were collected, no evidence of scaleshell mussels were found (Janet Sternberg, MDC, pers. comm. 2000). Another survey was conducted in 1998, in which 10 sites were sampled between river miles 53.6 and 96.0. Over 1,000 living mussels were collected representing 15 species, but no living or dead scaleshell mussels were found (Sue Bruenderman, pers. comm. 2000).

Only two records (both single dead shells) of scaleshell mussels exist for the mainstem of the Missouri River. In 1981 and 1982, the Missouri River was surveyed from Santee to Omaha, Nebraska (Hoke 1983). A single fresh dead shell was found during this study just below Gavin's Point Dam, South Dakota. This occurrence represents the westernmost record of the scaleshell mussel in North America. However, this species has not been found in subsequent surveys on the Missouri River just below Gavin's Point dam. In 1995, Clarke (1996) found no evidence of scaleshell mussels in a survey conducted from Gavin's Point Dam to 48 river km (30 mi) downstream. However, high water conditions limited Clark's search efforts, and only 10 individual mussels were found. In 1999, the Omaha District of the U.S. Army Corps of Engineers (Corps) funded a mussel survey between Gavin's Point Dam and Ponca, Nebraska, a distance of 96 river km (60 mi). In all, 355 live and 1,709 dead individual mussels were collected representing 16 species, but no living or dead scaleshell mussels were found (Candace M. Gordon, Corps, Omaha District, *in litt.* 2000). The second scaleshell mussel record from the mainstem of the Missouri River is a single fresh dead individual that was collected in 1990 from Gasconade County, Missouri. This specimen was found during an extensive survey conducted from Gavin's Point Dam to St. Louis (Hoke 2000). However, the site of this collection was subsequently destroyed.

Since no living scaleshell mussel has been found in the Missouri River, its habitat cannot be determined. However, both dead shells were collected from areas shielded from the main flow of the river in relatively stable, sandy bottoms with moderate current (Hoke 2000). Hoke (2000) described scaleshell mussel as ''extremely rare'' and its habitat ''very uncommon * * * and existing in only widely separated locals'' in the Missouri River. Based on the criteria used to assign presumed health to scaleshell mussel populations (Table 1), we consider this potential population to be extirpated at this time. Of the two known Missouri River records for scaleshell mussel, one locality has been destroyed and recent surveys have not found any evidence of this species at or in the vicinity of the other site. Further, no other scaleshell mussel specimens were found during Hoke's survey from Gavin's Point Dam to St. Louis. More information is needed on the existence of the scaleshell mussel and its habitat in the Missouri River. Furthermore, more information is needed on the location of sampling sites, distribution and habitat use of mussels, etc. from Hoke's survey work on the Missouri River, which is unavailable at this time.

Buchanan (1994) surveyed the lower 137 km (85 mi) of the Gasconade River, and documented 36 species of freshwater mussels. He collected scaleshell mussel specimens at eight sites between river miles 6.0 and 57.7. Buchanan found only dead shells at two sites and eight live specimens from the remaining six sites. Overall, scaleshell mussels comprised less than 0.1 percent of the mussels collected. In 1998–99, the Gasconade River was surveyed at 46 sites from mile 92.0 to 256.0. At sites where scaleshell mussels were collected, living individuals represented less than 0.5 percent of the total number of mussels found. A total of 12 living scaleshell mussels were found at 9 sites, and dead shells were found at an additional 10 sites between river miles 92.0 and 230.3 (Sue Bruenderman, pers. comm. 2000).

A scaleshell mussel has recently been discovered in the lower Osage River in Osage County, Missouri. On July 16, 2001, one live male specimen was found at river mile 20 (Heidi Dunn, pers. comm.). This individual was found during a mussel survey that is currently underway in the lower 80 miles of the Osage River and its tributaries. To date, 33 sites have been surveyed including 24 in the mainstem. A total of 3,904 living mussels have been found representing 29 living species. No other evidence of scaleshell mussels were found during the survey, but more intensive sampling is planned for these same sites in the near future.

Until this recent discovery, the scaleshell mussel had never been reported from the Osage system in past surveys. Utterback (1917) found 34 species in the basin. No other information is available because his notes and collections have since been lost. Oesch (1995) collected mussels in the 1970s at a number of sites in the basin and reported 39 species. In 1980, a detailed study of mussel distribution was conducted by Grace and Buchanan (1981) of the Lower 80 miles of the Osage River and two tributaries below Bagnell Dam. A total of 43 sites were surveyed and 21,593 living mussels were found representing 36 species. No evidence of scaleshell mussels was found in any of these surveys.

This new record of the scaleshell mussel does not significantly increase its range or lessen its risk of extinction. Similar to other records for the species, the one individual found indicates that a small population is present. No other evidence of the species was found during the 2001 survey. If a significant population of scaleshell mussels existed in the Osage River, dead shells would have been found. This is because dead shells accumulate over time, which makes them easier to detect than live specimens. Additionally, there are significant threats to scaleshell mussel in the Osage River from the operation of Bagnell Dam and instream gravel mining. Due to these habitat conditions, we categorized the Osage River

scaleshell mussel population's presumed health as declining.

Middle Mississippi River Basin summary—Of the 26 rivers and tributaries in the middle Mississippi River Basin that historically supported scaleshell mussels, the species is still present in 5 including the Meramec, Bourbeuse, Big, Osage, and Gasconade Rivers. The presumed health of all of these populations is thought to be declining.

Lower Mississippi River Basin

The scaleshell mussel historically occupied 21 rivers and tributaries in the lower Mississippi River Basin. These include the St. Francis, White, James, Spring, Little Missouri, Middle Fork Little Red, Saline (of the Ouachita River), Ouachita, Cossatot, Saline (of the Little River), South Fourche LaFave, Mulberry, and Strawberry Rivers in Arkansas; South Fork Spring, Frog Bayou, and Myatt Creek in Arkansas; Poteau, Little, and Kiamichi Rivers in Oklahoma; and Gates Creek and Mountain Fork in Oklahoma. These rivers are organized and discussed below according to drainage (St. Francis, White, Arkansas, and Red River drainages).

St. Francis River drainage (Arkansas)—Bates and Dennis (1983), Clarke (1985), and Ahlstedt and Jenkinson (1987) conducted mussel surveys on the St. Francis River in Arkansas and Missouri. Of these surveys, scaleshell mussels were only documented from two sites, both of which are single-specimen records (Clarke 1985). Records of dead shells of various species indicate that at one time freshwater mussels occurred throughout the river (Bates and Dennis 1983). Bates and Dennis (1983) determined that of the 54 sites sampled, 15 were productive, 10 marginal, and 29 had either no shells or dead specimens only; scaleshell mussels were not documented at any of the 54 sites. They identified 77 km (48 mi.) of habitat generally suitable for mussels: Wappapello Dam to Mingo Ditch, Missouri; Parkin to Madison, Arkansas; and Marianna to the confluence with the Mississippi River at Helena, Arkansas. They indicated that the remaining portions of the river were no longer suitable for mussels. If the scaleshell mussel is extant in the St. Francis River, it is restricted to the few patches of suitable habitat.

White River drainage (Arkansas)—Clarke (1996) noted a 1902 collection of a single specimen from the White River near Garfield, Arkansas. A late 1970s survey of the White River between Beaver Reservoir and its headwaters failed to relocate live or dead scaleshell mussel individuals. However, in 1999, a single live specimen was collected from the White River near Newport by John Harris (John Harris, Arkansas Department of Transportation, pers. comm. 2000). Navigation maintenance activities have relegated the mussel fauna to a few refugial sites (Bates and Dennis 1983). Specimens have not been collected from the James River, a tributary of the White River, since before 1950 (Clarke 1996).

An eight-mile section of the Spring River in Arkansas supports a diverse assemblage of freshwater mussels (Gordon *et al.* 1984, Arkansas Highway and Transportation Dept 1984, Miller and Hartfield 1986). The collections from this river total eight scaleshell mussel specimens (Kevin Cummings, *in litt.* 1994; Clarke 1996, Arkansas State Highway and Transportation Department, 1984). Gordon *et al.* (1984) surveyed the river and reported suitable mussel habitat between river miles 3.2 and 11.0, although species richness below river mile 9 had declined markedly compared to past surveys. Gordon *et al.* (1984), as well as Miller and Hartfield (1986), reported that the lower 5.0 km (3.0 mi) of river were completely depleted of mussels and contained no suitable habitat. Harris did not find scaleshell mussels in a 1993 survey of the Spring River (John Harris, *in litt.* 1997).

Scaleshell mussels were collected from the South Fork of the Spring River in 1983 and 1990. During the 1983 survey, Harris (*in litt.* 1997) collected four specimens near Saddle, Arkansas, and one specimen and one valve north of Hunt, Arkansas. During a subsequent visit in 1990, Harris collected young adults (Harris, pers. comm. 1995). Although juveniles were not found, the presence of young adults suggests that reproduction recently occurred.

Records of scaleshell mussels from the Strawberry River and the Myatt Creek are based on single specimen collections, both made in 1996 (John Harris, *in litt.* 1997). Harris collected a live specimen from the Strawberry River near the confluence with Clayton Creek in Lawrence County. He also collected a single relict (a weathered shell that has been dead a long period of time) specimen from Myatt Creek in Fulton County (John Harris, *in litt.* 1997). Comprehensive surveys have not been conducted in these rivers since 1996.

The historical locality (near Shirley, Van Buren County, Arkansas) where a single scaleshell mussel specimen was collected from the Middle Fork of the Little Red River no longer provides mussel habitat. Clarke (1987) stated that suitable mussel habitat was restricted to a 9.6 km (6.0 mi) stretch from the confluence of Tick Creek upstream to the mouth of Meadow Creek.

Arkansas River drainage (Oklahoma and Arkansas)—The scaleshell mussel has been collected from the following streams from the Arkansas River drainage: Poteau River in Oklahoma (Gordon 1991), Frog Bayou in Arkansas (Harris and Gordon 1987), and the South Fourche LaFave and Mulberry Rivers in Arkansas (Gordon 1991; Harris 1992). A single scaleshell mussel specimen was collected in the Poteau River (Gordon 1980). However, it has not been documented in subsequent surveys of this river (Branson 1984; Harris 1994). The existence of scaleshell mussels in Poteau River is doubtful.

Gordon (1980) collected two scaleshell mussel specimens from Frog Bayou. Beaver Reservoir now inundates one of the Frog Bayou collection sites. The most recent collection was a fresh dead individual during a 1979 survey (Gordon 1980). Gordon noted that stream bank bulldozing upstream recently disturbed this site and other nearby sites. He also reported in-stream gravel mining activities at several sites. Within Frog Bayou, potential habitat is restricted to the area between Rudy and the confluence of the Arkansas River. Above Rudy, two reservoirs impact the river; one near Maddux Spring and the other at Mountainburg. Live mussels have not been found at the confluence of the Arkansas River, likely due to dredging activities (Gordon 1980). Although the current status of the scaleshell mussel in Frog Bayou is uncertain, any remaining individuals are in potential jeopardy due to limited habitat and in-stream mining activities.

The only scaleshell mussel record from the South Fourche LaFave River is based on a single live specimen found in 1991 (Harris 1992). An 86-acre reservoir is approved for construction on Bear Creek approximately six miles upstream from this site. However, the effect of this impoundment on scaleshell mussels is uncertain. The potential for discovering additional scaleshell mussel sites in this river is unlikely due to the limited availability of suitable substrate. Similarly, other major tributaries of the South Fourche LaFave River provide little mussel habitat. Like Frog Bayou, the persistence of scaleshell mussels in this river is in doubt.

Although Gordon (1991) reported scaleshell mussels from the Mulberry River, documentation is lacking. Recent surveys did not find the species in the Mulberry River (Craig Hilborne, U.S. Forest Service, pers. comm. 1995;

Stoeckel *et al.* 1995). The existence of scaleshell mussels in the Mulberry River is unlikely.

Red River drainage (Oklahoma and Arkansas)—The scaleshell mussel has been documented from the following streams in the Red River drainage: the Kiamichi River, Gates Creek, Little River, Mountain Fork; and the Cossatot, Ouachita, Little Missouri, and Saline Rivers. Isley (1925) first collected scaleshell mussels from the Kiamichi River in 1925. Based on his account, the Kiamichi River historically supported a diverse and abundant mussel fauna. He collected 36 scaleshell mussel specimens at one of 22 stations visited. A single specimen was also collected from Gates Creek, a tributary of the Kiamichi River, by Valentine and Stansbery (1971). As recently as 1987, Clarke described the Kiamichi River as ''in remarkably good condition'' and a ''faunal treasure'' (Clarke 1987). However, despite extensive searches of the Kiamichi River over the last 11 years, only a single fresh dead shell of scaleshell mussel (in 1987) has been collected (Caryn Vaughn, Oklahoma Biological Survey, pers. comm. 1997; Charles Mather, University of Science and Arts of Oklahoma, *in litt.* 1984 and 1995). Vaughn (pers. comm. 1997) failed to find even a dead shell during three years (1993–1996) of surveys in the Red River Basin. However, the mussel habitat in the Kiamichi River is in relatively good condition above the Hugo Reservoir (Clarke 1987) and may still support a remnant population of scaleshell mussels.

Although there is no evidence of scaleshell mussels persisting in the Little River, healthy mussel beds exist above the Pine Creek Reservoir (Caryn Vaughn, *in litt.* 1997). Below Pine Creek Reservoir, the mussel fauna is severely depleted but recovers with increasing distance from the impoundment (Caryn Vaughn, *in litt.* 1997). Although scaleshell mussels have not been documented during extensive surveys throughout the length of the Little River, suitable habitat remains and the species may persist (Caryn Vaughn, *in litt.* 1997). However, the discharge of reservoir water from Pine Creek and periodic discharge of pollution from Rolling Fork Creek may seriously impact any remaining viable scaleshell mussel populations and prohibit any future recolonization (Clarke 1987). Valentine and Stansbery (1971) reported a single specimen from Mountain Fork. Clarke (1987) hypothesized that, based on the presence of mussels at the confluence of Mountain Fork and beyond the Arkansas border, damage to Mountain Fork from the Broken Bow Reservoir has not occurred. However, Vaughn (*in litt.* 1997) indicated that these areas have been severely depleted with most no longer containing live mussels.

If scaleshell mussels still occur in the Red River drainage in Oklahoma, extant populations are probably small and are likely restricted to isolated areas of suitable habitat in the Kiamichi and Mountain Fork Rivers. Given the extensive survey effort over the last decade, long-term survival of the scaleshell mussel in Oklahoma is doubtful.

Harris collected single scaleshell mussel specimens from the Cossatot and Saline Rivers in Arkansas in 1983 (John Harris, *in litt.* 1997) and 1987 (John Harris, pers. comm. 1995), respectively. No other information is available for either river.

The existence of scaleshell mussels in the Ouachita River and its two tributaries, the Saline River and Little Missouri River, is questionable as well. Both the Little Missouri and Saline Rivers records are based on single specimens. The Saline River specimen was collected in 1964 (Clarke 1996), and the Little Missouri River collection record is from 1995 (John Harris, *in litt.* 1997). Four undated museum specimens of scaleshell mussels from the Ouachita River in Arkadelphia, Clark County, Arkansas are listed in Clarke (1996), but details are unavailable. Based on the few collections and the limited habitat available, the long-term persistence of scaleshell mussel in Cossatot, Saline, Little Missouri, and Ouachita Rivers appears precarious.

Lower Mississippi River Basin summary—Of these 21 rivers and tributaries in the lower Mississippi River Basin that historically supported scaleshell mussels, nine, and possibly an additional six, support the species today. Of these populations, the South Fork Spring River could possibly be stable; the St. Francis River, Kiamichi River, Little River, Mountain Fork, Spring River, Frog Bayou, South Fourche LaFave River, and White River are presumed to be declining; and the status of the Myatt and Gates Creeks and the Strawberry, Cossatot, Saline, and Little Missouri Rivers populations are unknown.

Previous Federal Action

We had identified the scaleshell mussel as a Category 2 candidate species in a notice of review published in the **Federal Register** on May 22, 1984 (49 FR 21664). The scaleshell mussel remained a Category 2 candidate species in subsequent notices including January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Prior to 1996, a Category 2 candidate species was one that we were considering for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. We discontinued designating Category 2 species in the February 28, 1996, Notice of Review (61 FR 7596). We now define a candidate species as a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule. We designated the scaleshell mussel as a candidate species on October 16, 1998.

On August 13, 1999 (64 FR 44171), we published a proposal to list the scaleshell mussel as an endangered species and opened a 60-day comment period on the proposal. On November 29, 1999 (64 FR 66600), we reopened the comment period for 39 days in order to hold a public hearing. The hearing was held in Jefferson City, Missouri, on December 8, 1999.

Summary of Comments and Recommendations

In the August 13, 1999, proposed rule, and through associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, County governments, scientific organizations, and interested parties and requested their comments. We published notices inviting public comment in the following newspapers in 1999: The Chicago Sun Times, The Chicago Tribune, The Peoria Journal Star, State Journal-Register, The Journal Gazette Co., The Indianapolis Star, The Columbia Daily Tribune, The Kansas City Star, The St. Louis Post-Dispatch, The South Bend Tribune, The Cedar Rapids Gazette, Quad City Times, The Des Moines Register, The Cincinnati Post, The Cleveland Plain Dealer, The Columbus Dispatch, Cuba Free Press, Steelville Star-Crawford Mirror, Jefferson County Journal, Jefferson County Leader, Jefferson County News Democrat Journal, Meramec Journal, Jefferson County Watchman, TriCounty Journal, County Star Journal West, Chesterfield Journal, Clayton-St. Louis County Watchman, North County Journal-West, Florissant Valley Reporter, North County Journal-East, North Side Journal, County Star Journal-East, Concord Call, Mid-County Journal, Oakville Call, Oakville/Mehlville Journal, St. Louis Countian, South

County Journal, South County Times, Southwest County Journal, Webster-Kirkwood Times, West County Journal, Citizen Journal, Webster/Kirkwood Journal, South County News-Times, Press Journal, New Haven Leader, St. Clair Missourian, Sullivan Independent-News, Franklin County Watchman, Union Missourian, Washington Missourian, Bland Courier, Advertiser-Courier, Gasconade County Republican, Unterrified Democrat, Dixon Pilot, The Richland Mirror, Fort Leonard Wood Essayons, and The Daily Guide.

The Service hosted a public hearing (December 8, 1999, in Jefferson City, Missouri) at the request of Two Rivers Levee and Drainage Association, Law Offices of John C. Franken, Howard/Cooper County Regional Port Authority, and 180 private citizens. To accommodate this request, we reopened the comment period from November 29, 1999, to January 7, 2000, to allow for consideration of, and to provide an opportunity for, further comments. A notice of the hearing and reopening of the comment period was published in the **Federal Register** on November 29, 1999 (64 FR 66600), and in legal notices in the newspapers listed above.

We received 26 letters providing comments and information during the comment periods. Additionally, six individuals provided oral statements at the public hearing. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule. All pertinent comments have been considered in the formulation of this final rule. Written comments received during the comment periods and written comments and oral statements presented at the public hearings are addressed in the following summary. Comments of a similar nature or point are grouped together (referred to as ''Issues'' for the purpose of this summary) below, along with the Service's response to each.

Issue 1: One respondent was unsure of what this listing would accomplish beyond the recovery efforts of other mussel species already federally listed in Missouri.

Response: This action will extend the Act's protection to this species. Federal listing results in an increased awareness of this species' status and its need for conservation attention. It also provides for opportunities for funding research, management activities, and conservation actions specifically targeted for this species. In addition to better funding opportunities, Federal endangered status encourages scientists and natural resource managers to focus research and conservation actions specifically for the scaleshell mussel.

There are currently four federally listed mussel species in Missouri (Missouri Natural Heritage Database 1999). These are the pink mucket (*Lampsilis abrupta*), Curtis pearlymussel (*Epioblasma florentina curtisi*), Higgins' eye (*Lampsilis higginsii*), and fat pocketbook (*Potamilus capax*). We agree that where overlap of listed mussels occurs, the prohibitions of the Act will provide little additional protection of habitat. However, the current range of scaleshell mussel extends to areas where there are no federally listed species. The Act will provide protection from further habitat loss and degradation in these areas.

Issue 2: One respondent was concerned that the public will not know what impacts this listing will have on activities on private property until after the recovery plan is completed. The respondent was referring to potential impacts of recovery actions on private land in particular.

Response: While recovery plans are not developed until after a species is listed, there is opportunity for public input in the recovery planning stage. The purpose of the recovery plan is to set recovery objectives (goals) and identify the tasks needed to meet those objectives before a species can be downlisted or delisted. As the draft recovery plan is announced in the **Federal Register**, we will solicit comment from species experts, natural resource managers, and other interested parties. To ensure broad participation in the review of the recovery plan, we will notify all interested parties that were identified during the listing process (for example, those that provided comments or requested to be on our mailing list).

Although actions that could be affected by the listing were identified in the proposed rule, we acknowledge that impact upon private actions cannot be fully assessed until a recovery plan is developed. However, in ascertaining whether a species warrants Federal protection under the Act, we may consider only biological factors. In accordance with 16 U.S.C. sec. 1533(b)(1)(A) and 50 CFR 424.11, listing decisions are made solely on the basis of the best scientific and commercial data available. The legislative history of the 1982 Act amendments states: ''The addition of the word ''solely'' is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of the species. * * *'' H.R. Rep. No. 567, Part I, 97th Congress, 2nd Session 20 (1982). Thus, the impact of listing on private activities, although of great interest and importance to the public, is not a factor we may consider in our listing determination.

Issue 3: One respondent questioned whether the range of the scaleshell mussel, particularly in the Missouri River, is based on records that were identified correctly. Scaleshell mussels can be easily confused with the fragile papershell (*Leptodea fragilis*) or the pink papershell (*Potamilus ohioensis*), which are more common and widespread.

Response: We acknowledge that scaleshell mussels may be confused with other species by the casual observer. Freshwater mussels are often difficult to identify by shell shape alone. However, to malacologists (a person who studies mollusks) and other properly trained biologists, there are no ambiguities in distinguishing scaleshell mussels from other species. Female scaleshell mussels are unique and unlikely to be mistaken with any other species. Females are small, very elongated, and the posterior edge is ruffled. Male scaleshell mussels can possibly be confused with other species, particularly the fragile papershell. However, several external characteristics distinguish male scaleshell mussels from the fragile papershell, the pink papershell, and other species. These characteristics include the presence of green rays, light brown periostracum, pointed posterior end, absence of dorsal wings, elongated shell, straight dorsal margin, and rounded ventral margin (Parmalee and Bogan 1998, Oesch 1995, Watters 1995).

While it is possible that a small number of scaleshell mussel specimens have been misidentified, we are confident that the range of this species is based on valid specimens because many records are represented by voucher specimens that are housed in museums. The identification of these specimens has been verified by expert malacologists. In particular, the records of scaleshell mussel from the Missouri River were identified by Dr. David H. Stansbery, who is a leading authority in North America on freshwater mussel identification at the Ohio State Museum located at Ohio State University in Columbus, Ohio.

Issue 4: The proposed rule states that gravel mining has recently become a more serious threat for scaleshell mussel range-wide because the Corps' authority to regulate instream gravel mining has been reduced. One respondent stated that this issue will probably not be

overlooked by the State agencies. In other words, gravel mining will probably be regulated by State agencies now that the Corps has less authority to regulate this activity.

Response: Section 404 of the Clean Water Act of 1972 (CWA) provides regulations for discharge of dredged and fill materials in surface waters, including a permit program to ensure that such discharges comply with other State and Federal environmental regulations. The Corps is the Federal agency responsible for implementing this section of the CWA. Until 1997, instream mining was more strictly regulated, because incidental fallback of material during a dredging action was considered fill in surface waters, and thus triggered section 404 compliance. Due to a 1997 Federal court decision, however, incidental fallback of material is no longer considered fill. Consequently, only activities that result in discharge of fill material greater than incidental fallback are regulated under section 404 (see factors A and D under the ''Summary of Factors Affecting the Species'' section for further information on this issue).

As discussed in Issue 1, federally listed species frequently coexist with scaleshell mussels. Section 7 of the Act requires all Federal agencies, including the Corps, to consult with the Service regarding any action that may adversely affect listed species. Through this consultation process, the Service identifies conservation measures, which minimize adverse impacts to listed species. With incidental fallback no longer requiring a Corps section 404 permit, the section 7 consultation process is no longer applicable for many instream gravel mining activities.

Some State agencies have authority to regulate gravel mining within their state. In Arkansas, instream gravel mining is regulated by the Arkansas Open-Cut Mining and Land Reclamation Code, which contains guidelines to reduce impacts (Roell 1999). The Missouri Department of Natural Resources (MDNR) also has the authority to regulate gravel mining in Missouri under the Land Reclamation Act. However, their regulatory authority is limited. First, only commercial operators are required to obtain a permit to remove gravel from streams and rivers. City, county, and state operators using their own equipment and private operations are not required to obtain a permit from MDNR. Also, these operators are not obligated to comply with permit conditions that are crucial in avoiding adverse impacts to the stream environment. Second, MDNR's conditions for gravel mining permits are less stringent than those required previously by the Corps (Mike Larson, Missouri Department of Natural Resources, pers. comm. 2000). For example, the MDNR permit does not prohibit the modification of water conveyance, limit excavation to unconsolidated areas, require bank and water buffer strips, or minimize the removal of aquatic and terrestrial vegetation. All of these factors could adversely affect the scaleshell mussel and its habitat.

Issue 5: Several respondents are concerned that this listing will impact activities on private property. One respondent was concerned that impoundments will be more difficult to construct after the listing.

Response: This listing will protect scaleshell mussels from take under section 9 (Prohibited Acts) of the Act. Take is defined by the Act as ''harass, harm, pursue, hunt, shoot, wound, capture, collect, or attempt to engage in any such conduct.'' Take is further defined by regulation to include ''significant habitat modification or degradation that actually kills or injures wildlife,'' (50 CFR 17.3 ''*Harm*''). Non-Federal property owners, such as private landowners, corporations, or State or local governments, wishing to conduct activities on their land that might result in the incidental take of scaleshell mussels can obtain an incidental take permit from the U.S. Fish and Wildlife Service. Section 10 of the Act provides for the issuance of permits to conduct otherwise prohibited activities. Through section 10, there is an opportunity to provide species protection and habitat conservation for non-Federal development and land use activities that may result in incidental take of a listed species. For landowners and local governments, these incidental take permits, and their associated habitat conservation plans (HCP), provide long-term assurances that their activities will be in compliance with the requirements of the Act. Biologically, they provide the Service with a tool to offset the incidental take of listed species by reconciling species conservation with economic development. The HCP process allows private development to proceed while promoting listed species conservation.

The No Surprises policy provides assurances to non-Federal landowners participating in HCP efforts through the section 10(a)(1)(B) process. Essentially, landowners are assured that if ''unforeseen circumstances'' arise, the Services will not require, without the consent of the permittee, the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in the HCP. The government will honor these assurances as long as a permittee is implementing the terms and conditions of the HCP, permit, and other associated documents in good faith. In effect, this regulation states that the government will honor its commitment as long as HCP permittees honor theirs.

An activity on private land could also possibly be affected by this listing if that project (1) would need to be authorized, permitted, or funded by the Federal government, (2) would be located in habitat occupied by the scaleshell mussel or in designated critical habitat for the species, and (3) would have a direct or indirect effect on the species or its designated critical habitat. Federal programs and activities of this nature would usually require consultation with the Service under section 7 of the Act to evaluate the nature and extent of the adverse impacts and determine if project modification is necessary to reduce those impacts. Proposed impoundments within currently occupied streams and rivers are one type of activity that will require consultation. See the ''Available Conservation Measures'' section for additional examples of activities that will and will not require consultation.

While certain activities may require consultation, projects are rarely terminated due to the presence of a federally listed species, and private landowners are usually not affected. The consultation process is the responsibility of the Federal agencies involved. The majority of section 7 consultations are resolved informally. For example, consultation is ended at an early stage if the potential impacts of a proposed project are expected to be discountable, insignificant, or beneficial to the species. Even if a significant adverse effect is expected, the consultation can usually be concluded by developing minor modifications to project plans or designs that avoid those impacts. If potential impacts are of such nature that a federally listed species is likely to be adversely affected and such effects cannot be removed, formal consultation would be required. However, section 7(b)(4) of the Act allows incidental take of the listed species resulting from Federal actions if such take is not likely to jeopardize the continued existence of the species and if reasonable and prudent measures are implemented to minimize the adverse impacts of such take. A General Accounting Office audit (1992), which found that 99.9 percent of all projects reviewed between 1988 and 1992 went

forward unchanged or with only minor modifications as a result of the section 7 consultation, attests to the regulatory flexibility afforded by the Act.

Issue 6: One commenter stated that the same threats (*i.e.,* water pollution, sedimentation, channelization, and impoundments) listed as impacting scaleshell mussel in the past (prior to 1950) are stated for present and future populations. The commenter stated that these conditions have improved. In Missouri, most of the channelization was established before the 1930s. Since 1950 land management practices have also evolved to more effectively control erosion and runoff, and the impacts of water pollution and sedimentation have been reduced.

Response: The Service recognizes that some of these factors have improved, particularly land management practices to reduce erosion and runoff. In fact, the reason scaleshell mussels continue to persist could possibly be due to these improvements. However, the same threats that contributed to scaleshell mussels' decline before 1950, are still being observed and continue to impact scaleshell mussels. Channelization and new impoundments are currently proposed within the range of the scaleshell mussel, and water quality degradation and siltation has recently been documented as a serious threat in areas still occupied by scaleshell mussels. These threats are ongoing and qualify the scaleshell mussel for listing (See factor A in the ''Summary of Factors Affecting the Species'' section). The small number and low density of the remaining populations exacerbate threats and adverse effects of chance events on the species.

Issue 7: The data cited in the notice of proposed listing provide inadequate support for listing the scaleshell mussel as an endangered species. The decline of the scaleshell mussel is not serious enough to warrant listing. The six potential additional populations (status unknown), which would increase the current number of populations by almost 50 percent, merit further investigation before the listing decision is made.

Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available regarding the species' biological status and threats to its existence. Endangered status is assigned to species which are in danger of extinction throughout all or significant portion of their range. 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. These factors include (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

The scaleshell mussel has undergone one of the most extensive range reductions of all the federally listed freshwater mussel species. It is considered extirpated from ten states and from 39 of the 55 rivers within its historical range. Although 14 populations, and possibly six others, persist, the long-term viability of these populations is threatened by a variety of ongoing threats (see ''Summary of Factors Affecting the Species'' discussion). Given the extent of range reduction that has occurred and the persistence of threats to the remaining populations, we believe the scaleshell mussel is in danger of extinction throughout a significant portion of its range.

Issue 8: Detecting population changes by using available data for a rare species is speculative. Specifically, the proposed rule states that the long-term viability of scaleshell mussel populations in the Meramec basin is tenuous. In a recent survey on the Meramec River, more scaleshell mussels were found than in a past survey. The respondent did not understand how those data could support a conclusion that the species is declining.

Response: The Service acknowledges that rare species are difficult to census, and thus, deriving population trends based on counts of individuals is difficult and sometimes impossible. It is a common problem in rare species conservation that, as numbers of a rare species continue to decline, it becomes increasingly difficult to find and count the individuals in order to ''prove'' the decline is continuing. However, reliable inferences on the status and long-term viability of individual populations, as well as for a species as a whole, can be made based on ecological principles, small population biology theory, and observations of threats and habitat loss from field investigations. For example, population stability implies that recruitment exceeds mortality. For freshwater mussels, the presence of juveniles serves as the best evidence for recruitment. Thus, failure to collect juvenile specimens suggests that the population is declining. Similarly, small populations are more susceptible to extinction due to chance events, such as disease, drought, accidental spills of contaminants, or other fluctuations in local environmental conditions. Thus, even without multiple years of survey data, we know that low density mussel populations are vulnerable. Small populations must also rely on movement of individuals among populations to remain genetically viable. Thus, mussel populations that are isolated are threatened. In addition to these biological factors, the presence of threats, regardless of population size, can substantially influence the conservation status of a population. Using these factors, the health of individual populations and the species can be determined.

To ensure consistency and objectivity, Szymanski (1998) developed criteria based on the aforementioned factors to assign status and trend categories to each scaleshell mussel population. These criteria were utilized in the proposed rule. However, a discussion of status and trends using the same set of limited data was confusing and redundant to readers. Therefore, in this final rule, we devised a single classification system (*i.e.,* combined status and trend categories) to assess population health (Table 1). The revised classification system differs only in the presentation of the data and the results of its application are similar to those derived from the Szymanski (1998) methodology. As a result of additional information that was obtained during the public comment period, the status or trends reported in the proposed rule for a few populations differs from those reported herein. For example, the status of the White River population changed from extirpated to presumed declining as new information documented a 1999 live scaleshell mussel collection from this river. A discussion of the criteria used for this classification system is provided in the ''Distribution and Abundance'' section.

With respect to the recent survey work in the Meramec River, the greater number of scaleshell mussels found in the 1997 survey was likely due to two aspects of the survey, and not a result of a population increase (Roberts and Brunderman 2000). First, a special effort was made to collect this species (*i.e.,* raking the top layer of the substrate by hand) because it often lies buried in the substrate. This method likely increased the probability of finding the species compared to past surveys. Second, lower water levels from drought conditions exposed a mussel bed at one site, causing scaleshell mussels to actively crawl on top of the substrate. The collection of only 19 scaleshell mussels, when viewed in light of the modified survey techniques and the

high visibility of individual mussels at one mussel bed, is strong evidence of the extreme rarity of this species.

When attempting to monitor rare species, for which surveys usually locate only one or several surviving individuals, it is not uncommon for variations in survey methodology, weather conditions, and even time of day to affect the results of the survey. For species of extreme rarity, the effects of these factors can easily obscure the true population trend for the species. For this reason, we usually use criteria, in addition to population or density estimates, to evaluate the health of individual populations and the species as a whole.

Based on the criteria described earlier, the three scaleshell mussel populations in the Meramec Basin (the Meramec, Bourbeuse, and Big Rivers) are believed to be declining at the present time. The long-term persistence of these populations is considered questionable because of marked habitat loss and other existing threats. Furthermore, the small number of individuals and low density of these populations exacerbate the magnitude and adverse impacts of threats (see ''Summary of Factors Affecting the Species''). Thus, despite the fact that more scaleshell mussels were collected from the Meramec River in a recent survey than in the past, other factors indicate that these populations are threatened and are declining.

Issue 9: One respondent requested clarification of references to historical and existing distribution and abundance of scaleshell mussels. The respondent asked if the terms ''populations'' and ''occurrences'' are equivalent and if populations are equal in size and other qualities.

Response: A ''historical record'' is any site where the scaleshell mussel has been documented regardless of when it was collected. The Service believes that recently discovered sites do not represent areas that have been colonized recently, but rather, they are sites that have existed historically (*i.e.,* in historical times) and have not been previously known or sampled by collectors. A description of the historical range of the scaleshell mussel includes all known records. In contrast, a description of the existing distribution of the scaleshell mussel would include only its extant (that is, currently existing) range.

An ''occurrence'' refers to a site where a scaleshell mussel specimen has been collected. An occurrence, which may be represented by one or more specimens, usually indicates the species is present or once existed in that area, depending on whether the specimen(s) is living or dead.

In the context of this rule, the term ''population'' refers to all the current and historical occurrences of scaleshell mussels within a single river.

It is impossible to determine if past and present scaleshell mussel populations are equal in size (in terms of number of individuals or length of stream inhabited), because many surveys conducted near the turn of the century were not thorough. However, it is believed that scaleshell mussels historically have always been rare relative to many other mussel species. Inferences regarding population trend can be made from existing data (*e.g.,* age-structure, historical vs. current collections, habitat availability and condition, and threats). For example, scaleshell mussels were locally abundant in the Kiamichi River in the past (with 36 specimens collected from one sampling station). Today, however, no living scaleshell mussel specimens and only 1 fresh dead specimen were found during exhaustive survey efforts. It is apparent that scaleshell mussels, although always rare, occur today at lower densities than in the past in the Kiamichi River (see Issue 8 for further discussion regarding assessing conservation status). Within this final rule, populations that were assigned to the same conservation status do not necessarily have similar population size (although all populations persist at very low densities) or habitat quality.

Issue 10: The proposed rule states that scaleshell mussels have not been found in the Upper Mississippi River basin in over 50 years. One respondent asked how often sampling has been conducted in the Upper Mississippi River basin, and what is the likelihood of detecting a locally rare species.

Response: The historical range of the scaleshell mussel in the Upper Mississippi River basin includes the states of Illinois, Iowa, Minnesota, and Wisconsin. Natural resource agencies in these states are confident enough to consider the scaleshell mussel extirpated since it has not been collected in over 50 years despite a considerable number of surveys. Rivers with documented scaleshell mussel occurrences in the Upper Mississippi River basin include the Mississippi, Minnesota, Iowa, Cedar, Illinois, Sangamon, and Pecatonica Rivers, and Burdett's Slough of the Mississippi River (see ''Distribution and Abundance''). All of these rivers have been surveyed in the last 10–15 years. Surveys considered here are formal mussel surveys published in technical reports and scientific journals. Numerous other surveys, which are not discussed here, also have been conducted in these streams at selected sites for various Federal projects (*e.g.,* proposed bridges, pipelines, channelization, etc.). Surveys have been conducted on the Minnesota River in 1977 and 1999 (Marian Havlik, Malacological Consultants, *in litt.* 2000; Tim Yager, Corps, St. Paul District, in litt. 2000). The Mississippi River mainstem, in particular, has been surveyed extensively since 1950. The Illinois, Sanagamon, and Pecatonica Rivers have also been surveyed extensively in the last 15 years (Kevin Cummings, pers. comm. 2000).

The likelihood of detecting a locally rare species depends on the amount of time spent searching and the search methods employed. The most common method used for surveys is timed searches, which produce a measurement of the number of mussels collected per unit of time spent searching. Timed searches produce the most complete list of species (including rare species) at a given site (Strayer *et al.* 1997, Vaughn *et al.* 1997).

Furthermore, the deficiency of suitable mussel habitat, both in quality and quantity, remaining in this drainage also suggest that scaleshell mussel persistence is highly unlikely. This is not to say individuals may not persist in the Upper Mississippi River drainage, but that the best available scientific information indicates that population viability is doubtful.

Issue 11: One respondent believes that water turbulence produced by jet boat motors may be adversely affecting scaleshell mussels and other freshwater mussels in the Meramec River in Missouri.

Response: The Service recognizes that jet boats, which can produce powerful water turbulence, could potentially have adverse affects on freshwater mussels including scaleshell mussels. Jet wash from motors may contribute to substrate destabilization and/or could dislodge adult and juvenile mussels from suitable habitat, particularly from shallow riffles where mussels typically occur. The magnitude and extent to which this factor may threaten populations, however, is unknown.

Peer Review

In accordance with our July 1, 1994, Interagency Policy on Peer Review (59 FR 34270) we requested the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the supportive biological and ecological information in the proposed rule. The purpose of such review is to

ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We requested a formal scientific peer review from four malacologists who possess expertise on the scaleshell mussel. We received a written response and comments from two of these experts within the open comment periods. These experts strongly supported the listing proposal and agreed with the Service that this species is in need of Federal protection as an endangered species. One reviewer stated that the Service was thorough in reviewing this species and that the status and threats are accurately described. This reviewer felt that the threats posed by the zebra mussel to the scaleshell mussel, as discussed in the proposed rule, should not be underestimated. Additionally, more information was provided in one response regarding the extant distribution of the scaleshell mussel and threats to its existence. That information is incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine that the scaleshell mussel should be classified as an endangered species. We followed the procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) implementing the listing provisions of the Act. 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). These factors and their application to the scaleshell mussel (*Leptodea leptodon*) are as follows:

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

Arguably, the scaleshell mussel has suffered a greater range reduction than any other unionid. The range of this species was once expansive, spanning the Mississippi River Basin in at least 55 rivers in 13 states (Szymanski 1998). Today, the range is significantly reduced with known extant populations persisting in only 14, potentially 20, rivers in three states. The scaleshell mussel has been eliminated from the entire upper and most of the middle Mississippi River drainages. Although much of the decline occurred before 1950, population declines continue in most portions of the species' range, and numerous threats are impacting the few remaining extant populations. Water pollution, sedimentation, channelization, sand and gravel mining, dredging, and impoundments contribute to the decline of the scaleshell mussel throughout its range and continue to affect existing populations. A general description of how these factors affect mussels is given below, followed by specific examples of how these threats are affecting scaleshell mussels in its extant range. Refer to Szymanski (1998) for a more detailed discussion of threats to freshwater mussels.

Mussel biologists generally agree that contaminants are partially responsible for the decline of mussels (Havlik and Marking 1987, Williams *et al.* 1993, Biggins *et al.* 1996). Mussels are sedentary filter feeders and are vulnerable to contaminants that are dissolved in water, associated with suspended particles, or deposited in bottom sediments (Naimo *et al.* 1992).

Contaminants enter streams from point and nonpoint sources. Point source pollution is the entry of material from a discrete, identifiable source such as industrial effluents, sewage treatment plants, and solid waste disposal sites. Freshwater mussel mortality from toxic spills and polluted water is well documented (Ortmann 1909, Baker 1928, Cairns *et al.* 1971, Goudreau *et al.* 1988). Decline and elimination of populations may be due to acute and chronic toxic effects that result in direct mortality, reduced reproductive success, or compromised health of the animal or host fish.

Nonpoint source pollution is the entry of material into the environment from a diffuse source such as runoff from cultivated fields, pastures, private wastewater effluents, agricultural feed-lots and poultry houses, active and abandoned mines, construction, and highway and road drainage. Stream discharge from these sources may accelerate eutrophication (*i.e.,* organic enrichment), decrease oxygen concentration, increase acidity and conductivity, and cause other changes in water chemistry that are detrimental to the survival of most mussel species and may impact host fishes (Goudreau *et al.* 1988, Dance 1981, Fuller 1974).

Sediment is material that is suspended in the water, and is being transported, or has been moved, as the result of erosion (USSCS 1988). Although sedimentation is a natural process, agricultural encroachment, channelization, impoundments, timber harvesting within riparian zones, heavy recreational use, urbanization, and other land use activities can accelerate erosion (Waters 1995, Myers *et al.* 1985, Chesters and Schierow 1985). The water quality impacts caused by sedimentation are numerous. Generally, it affects aquatic biota by altering the substratum and by altering the chemical and physical composition of the water (Ellis 1936, Myers *et al.* 1985, USSCS 1988). Sedimentation directly affects freshwater mussel survival by interfering with respiration and feeding. Due to their difficulty in escaping smothering conditions (Imlay 1972, Aldridge *et al.* 1987), a sudden or slow blanketing of stream bottom with sediment can suffocate freshwater mussels (Ellis 1936). Sediment particles may carry contaminants toxic to mussels (Naimo *et al.* 1992). Increased sediment levels may also reduce feeding efficiency (Ellis 1936), which can lead to decreased growth and survival (Bayne *et al.* 1981).

Channelization, sand and gravel mining, and dredging operations physically remove mussels from the water and may also bury or crush mussels (Watters 1995). Other effects of these activities extend upstream and downstream of the excavated area. Headcutting, the upstream progression of stream bed destabilization and accelerated bank erosion, can affect an area much larger than the dredging site (Hartfield 1993). In severe cases, this erosional process can extend for several miles upstream. As relatively immobile bottom-dwelling invertebrates, mussels are particularly vulnerable to channel degradation (Hartfield 1993). Accelerated erosion also releases sediment and pollutants, and in some instances, diminishes mussel diversity and habitat as documented in the Yellow and Kankakee Rivers in Indiana, the Big Vermillion River in Illinois, and the Ohio River (Fuller 1974).

Gravel mining has recently become a more serious threat for scaleshell mussels range-wide. In 1997, a court ruling changed the interpretation of the CWA as it applies to the regulation of gravel mining (Roell 1999). Previously, gravel mining was more strictly regulated because ''incidental fallback'' (the incidental soil movement from excavation, such as the soil that is disturbed when dirt is shoveled, or back-spill that comes off a bucket and falls into the same place from which it was removed) was considered fill in surface waters, thus triggering section 404 of the CWA and the permitting process of the Corps. Prior to the 1997 ruling, gravel mining operators were required to obtain a Corps section 404 permit and follow several conditions outlined on the permit. Except in very small tributaries, the Corps required all operators to establish a streamside and riparian buffer and prohibited removing gravel from flowing water (*i.e.,* no in-stream mining) or from below the water

table (Danny McKlendon, Corps, St. Louis District, pers. comm. 1998). These requirements avoided most adverse effects to mussels including headcutting, channel modification, and the physical crushing or removal of mussels. Furthermore, the Corps' permit process included consultation with the Service concerning the presence of federally listed species at each proposed mining site. However, the 1997 ruling eliminated the Corps authority to regulate most instream gravel mining activities, thereby eliminating the section 404 permit and the conditions that protected mussel beds. Therefore, the scaleshell mussel has lost much of its protection from gravel mining. Only activities resulting in discharge of fill material greater than incidental fallback (such as instream gravel stockpiling, stream crossings, and select removal methods) are regulated. However, many gravel mining operations may not fall under this category.

Impoundments negatively affect mussels both upstream and downstream by inducing scouring, changing water temperature regimes, and altering habitat, food, and fish host availability (Caryn Vaughn, *in litt.* 1997). Impoundments permanently flood stream channels and eliminate flowing water that is essential habitat for most unionids, including scaleshell mussels (Fuller 1974, Oesch 1995). Scouring is a major cause of mussel mortality below dams (Layzer *et al.* 1993). Most detrimental, however, is the disruption of reproductive processes. Impoundments interfere with movement of host fishes, alter fish host assemblages, and isolate mussel beds from each other and from host fishes (Stansbery 1973, Fuller 1974, Vaughn 1993, Williams *et al.* 1993). The result is diminished recruitment (Layzer *et al.* 1993). Dams are effective barriers to fish host movement and migration that unionids depend on for dispersal. Mussels living upstream from the dam can become reproductively isolated from those living downstream causing a decrease in genetic diversity. Even small, lowhead dams can hinder fish movement and isolate mussel beds from fish hosts and from each other. For example, Watters (1996) determined that the upstream distribution of two mussel species, the fragile papershell (*Leptodea fragilis*) and pink heelsplitter (*Potamilus alatus*) stopped at lowhead dams. These species, like the scaleshell mussel, are believed to use the freshwater drum as a sole host.

The same threats that caused the extirpation of historical populations of scaleshell mussel still exist and continue to threaten extant populations. This species appears to be especially susceptible to contamination and sedimentation. Historically, the species was widespread and occurred in diverse habitats. Today, scaleshell mussels no longer occur at disturbed sites that still support other endangered unionids (Szymanski 1998). This suggests that scaleshell mussels are especially sensitive to degraded water quality. Given the pervasiveness of the sources of pollution and sedimentation, it is apparent that these threats continue to be problematic for the remaining scaleshell mussel populations.

Upper Mississippi River Basin

The scaleshell mussel formerly occurred in eight rivers and tributaries within the Upper Mississippi Basin. However, this species has not been found in more than 50 years and is believed extirpated from this region (Kevin Cummings, *in litt.* 1994). We believe the same factors that have caused declines and extirpations of other mussel species including impoundments, pollution, sedimentation, and channelization and dredging activities, have caused the disappearance of scaleshell mussels from the Upper Mississippi River Basin.

Middle Mississippi River Basin

Similar to the Upper Mississippi River Basin, impoundments, pollution, sedimentation, and channelization and dredging activities are believed to have led to the extirpation of the scaleshell mussel from the entire Ohio River Basin. These same threats continue to adversely affect extant populations in the middle Mississippi River Basin. Scaleshell mussel habitat in the Meramec River Basin has been reduced in recent years. In 1979, Buchanan found living or dead scaleshell mussels in the lower 180 km (112 mi) of the Meramec River (Buchanan 1980). In 1997, living or dead scaleshell mussels were collected only in the lower 96 km (60 mi) of the river (Roberts and Bruenderman 2000). While portions of the lower reach continue to provide suitable habitat, mussel species diversity and abundance above mile 60 have declined noticeably in the last 20 years and 9 mussel beds are no longer present between river mile 21.5 and 145.7. Roberts and Bruenderman (2000) attributed this decline primarily to the loss of channel stability. Within the Meramec Basin, the Bourbeuse River has undergone the greatest change with respect to mussel populations. In particular, mussel populations have declined in the lower river. Whereas Buchanan (1980) found this section of the Bourbeuse River to have the greatest mussel diversity, this stretch was nearly devoid of mussels when resurveyed in 1997. Additionally, five mussel beds are no longer present between miles 0.4 and 137. Buchanan (*in litt.* 1997) and Roberts and Bruenderman (2000) attributed this decline to habitat loss from sedimentation, eutrophication, and substrate destabilization.

The Big River has the lowest species diversity and abundance in the Meramec River Basin. Buchanan (1980) attributed this to the effects of lead and barite mining. While most mining operations have ceased, 45 dams retaining mine waste and numerous waste piles remain in the Big River Basin. Most of those dams were improperly constructed or maintained. The Corps found that only one of the 45 dams was safe and 27 received the worst possible rating and could fail during a flood. The poor condition of the dams has led to large influxes of mine waste into the Big River from dam collapse (MDC 1997). For example, since 1978, a ruptured tailings dam has discharged 63,000 cubic meters (81,000 cubic yards) of mine tailings into the Big River covering 40 km (25 mi) of stream bottom and negatively impacting the lower 129 km (80 mi) of the river (Alan Buchanan, *in litt.* 1995), making it less suitable for mussels.

While no major impoundments exist in the Meramec River Basin, several old mill dams (low-head dams) affect the mainstem of the Big and Bourbeuse Rivers. Five dams are still in place along the lower 48 km (30 mi) of the Big River, and one dam exists in the lower Bourbeuse River. These structures are barriers to host fish movement during normal flows (MDC 1997) and thus, continue to depress reproductive rates of scaleshell and other mussels.

Gravel mining poses an imminent threat to scaleshell mussel populations in the Meramec River Basin due to the high, and increasing, level of interest in gravel mining in the basin (Roberts and Brunderman 2000). For example, between 1994 and 1998, the Corps issued permits for 230 sites. Additional sites were mined without a permit, but the number of these unauthorized operations is unknown. (Danny McKlendon, Corps, St. Louis District, *in litt.* 1998).

In 1994, several areas of the Gasconade River channel were highly unstable, possibly a result of riparian vegetation removal in conjunction with the 1993 flood. These areas had high cut mud banks with trees fallen into the river, unstable substrate, and contained very few mussels. Buchanan (1994) predicted that habitat degradation on this river would continue and

postulated that the mussel fauna would be further impacted with some species possibly disappearing. He noted that below river mile 6, only one stable gravel bar contained a diverse mussel fauna. High silt deposition from the Missouri River prohibits the formation of mussel habitat below this area.

The majority of the Osage River system has been impounded and is no longer suitable for freshwater mussels. The majority of remaining mussel habitat occurs below Bagnell dam in the lower 80 miles of the Osage River proper. This river reach is affected by the operation of Bagnell dam, which alters flow and temperature regimes, lowers dissolved oxygen levels, and causes channel scouring and accelerated bank erosion. Several instream gravel mining operations currently exist in the Osage River that physically remove mussels from the water and cause headcutting and siltation.

Lower Mississippi River Basin

Channelization, levee construction, diversion ditches, control structures, and floodways have drastically altered much of the St. Francis River from the mouth above Helena, Arkansas, to Wappapello Dam, Missouri (Ahlstedt and Jenkinson 1987, Bates and Dennis 1983). Bates and Dennis (1983) determined that of the 54 sites sampled, 15 were productive, 10 were marginal, and 29 had either no shells or dead specimens only. They identified 77 km (48 mi) that may still provide suitable mussel habitat, but did not collect scaleshell mussels. All the remaining river miles are unsuitable for mussels.

The White River between Beaver Reservoir and its headwaters, due to municipal pollution, gravel dredging, and dam construction, is no longer suitable for mussels (Gordon 1980). Navigational maintenance activities continue to destroy habitat from Newport to the confluence of the Mississippi River (Bates and Dennis 1983). This habitat destruction has relegated mussel species to a few refugial sites.

Species richness in the Spring River below river mile nine has declined markedly from past surveys, with the lower 5.0 km (3.0 mi) of river completely depleted of mussels and no longer supporting suitable habitat (Miller and Hartfield 1986, Gordon *et al.* 1984). Sand and gravel dredging; the destruction of stream banks, disturbance of mussel beds, and the deposition of wastes from livestock movements; siltation; and surface run-off of pesticide and fertilizer appear to be contributing factors in the degradation of this river reach (Gordon *et al.* 1984).

Within Frog Bayou, potential habitat is restricted to the area between Rudy and the confluence of the Arkansas River. Within this area, streambank modifications and in-stream gravel mining are degrading scaleshell mussel habitat. Two reservoirs, one near Maddux Spring and the other at Mountainburg, impact the river above Rudy. Below the confluence of the Arkansas River, Gordon (1980) did not find live mussels, likely due to dredging activities (Gordon 1980).

The proposed Tuskahoma Reservoir (located above Hugo Reservoir) is a potential threat to mussels in the Kiamichi River. Although the Corps has authorized construction, the lack of a local sponsor has rendered the project ''inactive'' (David Martinez, Service, Tulsa, pers. comm. 1997). If constructed, the adverse effects associated with reservoirs (including permanent flooding of the channel and disruption of reproduction) are likely to destroy the mussel fauna both above and below the proposed dam site.

Sewage pollution, gravel dredging, and reservoirs continue to impact the Little River. Pine Creek Reservoir impounds the mainstem of the river. Further downstream, Broken Bow Reservoir impounds a major tributary to the Little River, the Mountain Fork River. Below Pine Creek Lake, the mussel fauna is severely depleted but recovers with increasing distance from the impoundment (Caryn Vaughn, *in litt.* 1997). However, the discharge of reservoir water from Pine Creek and periodic discharge of pollution from Rolling Fork Creek seriously impact any remaining scaleshell mussels and prohibit any future recolonization (Clarke 1987).

Hydroelectric dams and artificial lakes have impacted the Ouachita River. The ''Old River'' (an oxbow system off the mainstem), is now essentially a series of muddy, stagnant pools, with water quality problems resulting from surrounding dumps (Clarke 1987).

In summary, many of the same threats that caused the extirpation of historical populations of scaleshell mussels still exist and continue to threaten extant populations. Nonpoint and point source pollution is currently affecting the Spring River in Arkansas (Gordon *et al.* 1984, Miller and Hartfield 1986) and the Little River in Oklahoma (Clarke 1987, Vaughn 1994). Loss of stable substrates and sedimentation is causing deleterious effects in the Meramec and Bourbeuse Rivers, Missouri (Sue Bruenderman, pers. comm. 1998); Gasconade River, Missouri (Buchanan 1994); Frog Bayou, Arkansas (Gordon 1980); and Spring River, Arkansas (Gordon *et al.* 1984). Unregulated sand and gravel mining are eliminating important pool habitat (for both scaleshell mussels and potential fish hosts) in the Meramec, Bourbeuse, Big, and Gasconade Rivers in Missouri (Bruenderman, MDC, pers. comm. 1998). Impoundments, channelization, and other dredging activities (*e.g.,* sand and gravel mining) are destroying mussel beds and impairing water quality in Frog Bayou, Arkansas (Gordon 1980); St. Francis River, Arkansas (Ahlstedt and Jenkinson 1987); White River, Arkansas (Bates and Dennis 1983); Spring River, Arkansas (Gordon *et al.* 1984); and Ouachita River, Arkansas (Clarke 1987). The proposed Kiamichi River Reservoir, if constructed, will have adverse impacts on any remaining populations in Oklahoma. Nearly all scaleshell mussel populations are now restricted to small stretches of rivers with little, if any, potential for expansion or recolonization to other areas. For example, sewage pollution, gravel dredging, and reservoir construction have degraded the Little River in Oklahoma to the extent that only a few small stretches are able to support mussels.

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

It is unlikely that commercial mussel collectors ever purposefully collected scaleshell mussels because of their small size and thin shell. It is probable, however, that over-harvesting activities that removed entire mussel beds impacted scaleshell mussel populations. For example, according to local fishermen, during a period of extended drought, mussel harvesters severely over-collected mussel beds in the Spring and Black Rivers and completely destroyed most beds (Gordon *et al.* 1984). Thus, scaleshell mussel populations may have been impacted by habitat destruction (*i.e.,* disturbance of stream bottom), trampling, and removal of individuals from the stream. Individuals dislodged from the stream bottom could be washed away into unsuitable habitat. Even for mussels returned to the stream, mortality can still occur (Williams *et al.* 1993). Today, intensive mussel collecting activity will have severe adverse affects on existing populations, because scaleshell mussels now occur in very small, isolated areas. The destruction of only a few individuals could be a contributing factor in the extirpation of some populations.

As scaleshell mussels become more uncommon, the interest of scientific and

shell collectors will increase. Scaleshell mussel occurrences are generally localized, easily accessible, and exposed during low flow periods, and, therefore, are also vulnerable to take for fish bait, curiosity, or vandalism. Up to five freshwater mussels per day, including scaleshell, may be legally collected in Missouri and used for fishing bait (Sue Bruenderman, pers. comm. 1998). However, the low density of scaleshell mussels minimizes the likelihood of a scaleshell being collected.

C. Disease or Predation

Although natural predation is usually not a factor for stable, healthy mussel populations, small mammal predation could pose a problem for scaleshell mussel populations (Gordon 1991). While the large size or thick shells of some species afford protection from small mammal predators, the small size and fragile shell of the scaleshell mussel makes it an easy and desirable prey species. Small mammals, such as muskrats and racoons, may be common predators of scaleshell mussels throughout their range, particularly during periods of low water. For example, fresh scaleshell mussel shells were found among other species at several active raccoon middens (feeding areas) during a freshwater mussel survey of the Meramec and Bourbeuse Rivers (Roberts and Bruenderman 2000). These mammals are so effective at finding and eating freshwater mussels that malacologists consider collecting dead shells from middens a good way to determine the presence of rare species. Extant scaleshell mussel populations in Arkansas and Oklahoma are small, isolated, and have very limited recolonization potential. Thus, the removal of even a small number of individuals could significantly affect these populations. Small populations are less resilient to these natural predators, and therefore, are much more threatened by them. Consequently, predation could exacerbate ongoing population declines of scaleshell mussels.

Bacteria and protozoans persist at unnaturally high concentrations in streams with high sediment load or in water bodies affected by point source pollution, such as sewage treatment plants (Goudreau *et al.* 1988). At such concentrations, mussel ova and glochidia are more subject to infection (Ellis 1929). Disease and parasites may have caused major die-offs of freshwater mussels in the late 1970s throughout the eastern United States (Neves 1986). For example, significant die-offs of freshwater mussels occurred in 1977 and 1978 in the Meramec and Bourbeuse Rivers. Large numbers of mussels of all species, including scaleshell, were lost. Buchanan (1986) presumed an epizootic or other disease caused the die-off since no environmental impact was reported or could be found.

D. The Inadequacy of Existing Regulatory Mechanisms

The passage of the CWA resulted in many positive consequences for freshwater ecosystems (including a decrease in lead and fecal coliform bacteria), and set the stage for the regulations and the water standards that exist today. Goals of the CWA include the protection and enhancement of fish, shellfish, and wildlife; providing conditions suitable for recreation in surface waters; and eliminating the discharge of pollutants into U.S. waters. However, despite the implementation of the CWA, degraded water quality still presents problems for sensitive aquatic organisms such as freshwater mussels. Specifically, nationwide stream and lake sampling has indicated continuing increases in nitrate, chloride, arsenic, and cadmium concentrations (Neves 1993). Nonpoint pollution sources appear to be the cause of increases in nitrogen. Many of the impacts discussed above occurred in the past as unintended consequences of human development. Improved understanding of these consequences has led to regulatory (*e.g.,* CWA) and voluntary measures (*e.g.,* best management practices for agriculture and silviculture) and improved land use practices that are generally compatible with the continued existence of the scaleshell mussel. Nonetheless, the scaleshell mussel is highly restricted in numbers and distribution and shows little evidence of recovering from historical habitat degradation and losses.

As discussed previously (see Factor A under ''Summary of Factors Affecting the Species'' and Issue 4), a 1997 court ruling reduced the Corps' authority to regulate instream gravel mining. The MDNR is currently responsible for regulating gravel mining in Missouri, but has limited regulatory authority, and several conditions that were previously required by the Corps are no longer in place. These guidelines avoided many adverse effects to mussels including headcutting, channel modification, and the physical removal of mussels. Further, city, county, and State operators using their own equipment and private operations are not required to obtain a MDNR permit for instream gravel mining. In Arkansas, instream gravel mining will still be controlled by the Arkansas Open-Cut Mining and Land Reclamation Code, which contains required conditions to reduce impacts (Roell 1999).

Additionally, since MDNR is not a Federal agency, section 7 of the Act, which required the Corps to consult with the Service regarding the presence of federally listed species at proposed gravel mining sites, is no longer applicable. Without the section 7 consultation process, mussel beds containing federally listed species could be adversely affected by gravel mining operations.

The Corps will still retain oversight authority and require a permit for gravel mining activities that deposit fill into streams under section 404 of the CWA. Additionally, a Corps permit would be required under section 10 of the Rivers and Harbors Act for navigable waterways including the lower 80 km (50 mi) of the Meramec River. However, many gravel mining operations do not fall under these two categories.

Although recognized by species experts as threatened in Arkansas, the scaleshell mussel is not afforded state protection. Missouri and Oklahoma list the scaleshell mussel as a species of conservation concern (Sue Bruenderman, *in litt.* 1998; Caryn Vaughn, pers. comm. 1995). However, these designations are primarily used for planning and communication purposes and do not afford any significant State protection from direct take and habitat destruction (David Martinez, pers. comm. 1997; Paul McKenzie, Service, Columbia, MO, pers. comm. 1997). Therefore, scaleshell mussels may be collected, harmed, or killed in Missouri and Oklahoma without a permit. Without additional regulations providing habitat protection, as well as protection from direct and indirect take, populations of scaleshell mussels will continue to decline and disappear.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

As a consequence of the above factors, the inherent biological traits of freshwater mussels increase their vulnerability to extinction (Neves 1993). For example, the larval stage (glochidium) of most mussels is dependent on a few or one specific host fish (Neves 1993). The scaleshell mussel is believed to use the freshwater drum as its sole host fish species. This trait greatly reduces the likelihood of contact between glochidia and suitable hosts. Watters (1995) postulated that the glochidia must acquire suitable hosts within 24 hours to survive. Therefore, a reduction or loss of host fish

populations will lead to reduced glochidial survival and a decline in reproductive success, which will inevitably adversely impact scaleshell mussel populations.

Once a larva successfully transforms on a host, it is further challenged with dropping off onto suitable habitat. Watters (1995) reported that estimated chances of successful glochidial transformation and excystment (detachment) range between 0.0001 percent (Jansen and Hanson 1991) and 0.000001 percent (Young and Williams 1984). As a result of fish host-specificity and the difficulty of locating suitable habitat, even under optimal conditions, freshwater mussel population growth occurs very slowly. Furthermore, the sedentary nature of mussels limits their dispersal capability. This trait, coupled with low recruitment success, translates into the need for decades of immigration and recruitment for re-establishment of self-sustaining populations.

The small number and low density of the remaining scaleshell mussel populations exacerbate the threats to its survival posed by the above factors. Although the scaleshell mussel was always locally rare though broadly distributed, the widespread loss of populations and the limited number of collections in recent years indicates that the current population densities are much lower (due to the previously identified threats) than historical levels. Despite any evolutionary adaptations for rarity, habitat loss and degradation increase a species' vulnerability to extinction (Noss and Cooperrider 1994). Numerous studies have shown that with decreasing habitat availability, the probability of extinction increases. Similarly, as the number of occupied sites decreases, and the distances between them increases, the likelihood of extinction increases (Vaughn 1993). This increased vulnerability is the result of chance events. Environmental variation, random or predictable, naturally causes fluctuations in populations. However, small and low density populations are more likely to fluctuate below the minimum viable population (*i.e.,* the minimum number of individuals needed in a population to persist). If population levels stay below this minimum size, an inevitable, and often irreversible, slide toward extinction will occur. Further, the shorter life span of the scaleshell mussel may render it less able to tolerate periods of poor recruitment or increased mortality than are longer-lived mussel species (Chris Barnhart, *in litt.* 1999).

Small populations are also more susceptible to inbreeding depression and genetic drift. Populations subjected to either of these problems usually have low genetic diversity, which reduces fertility, survivorship, and the ability to adapt to environmental changes. Also, chance variation in age and sex ratios can affect birth and deaths rates. Skewing of these ratios may lead to death rates exceeding the birth rates, and when this occurs in small populations there is a higher risk of extinction.

Similarly, the fertilization success of mussels may be related to population density, with a threshold density required for any reproductive success to occur (Downing *et al.* 1993). Small mussel populations may have individuals too scattered to reproduce effectively. Many of the remaining scaleshell mussel populations may be at or below this threshold density. These populations will be, if the aforementioned threats go unabated, forced below or forced to remain below the minimum threshold. As a result, reproduction is diminished or ceases, and the current decline to extinction will be accelerated.

Furthermore, species that occur in low numbers must rely on dispersal and immigration for long-term persistence. In order to retain genetic viability and guard against chance extinction, movement between populations must occur. Although the scaleshell mussel naturally occurs in patches within a river and necessarily possesses mechanisms to adapt to such a discontinuous distribution, anthropogenic (man-made) influences have fragmented and further lengthened the distance between patches. Empirical studies have shown that with increasing isolation, immigration and colonization rates decrease. Also, as previously explained, natural recolonization of mussels occurs at a very low rate (Vaughn 1993). Therefore, preservation of a population (including all partially isolated patches in a river) structure is imperative for long-term freshwater mussel survival. Unfortunately, many of the extant scaleshell mussel populations now occur as single, isolated sites. These highly isolated populations are very susceptible to chance events and local extirpation with no chance of recolonization.

Lastly, the recent invasion of the exotic zebra mussel (*Dreissena polymorpha*) poses a substantial threat to native unionids (Herbert *et al.* 1989). The introduction of *Dreissena* into North America probably resulted from an ocean-crossing vessel that discharged freshwater ballast from Europe containing free-swimming larvae of the zebra mussel (Griffiths *et al.* 1991). Since its introduction in 1985, this prolific species has spread throughout the Mississippi River and many of its tributaries including the Illinois and Ohio basins and the Arkansas and Tennessee rivers. Zebra mussels starve and suffocate native mussels by attaching to their shells in large numbers. The spread of this prolific species has caused severe declines of native freshwater mussel species in many areas (Tucker *et al.* 1993; Kent Kroonemeyer, Service *in litt.* 1994; Illinois Natural History Survey, *in litt.* 1995; Corps, *in litt.* 2000).

Given that recreational and commercial vessels greatly facilitate the spread of zebra mussels, and because of the proliferation and spread that has already occurred, invasion of the zebra mussel into portions of the middle and lower Mississippi Basin is likely (Alan Buchanan, pers. comm. 1995). If zebra mussels successfully colonize rivers occupied by scaleshell mussels, its continued survival will be further jeopardized. The zebra mussel has been found recently within the scaleshell mussels' extant range in the middle Mississippi Basin. In the summer of 1999, a live zebra mussel was collected in the Lower Meramec River at river mile 6.9 (Chris Barnhart, *in litt.* 1999). The Meramec Basin appears to support the largest remaining populations of scaleshell mussels. Zebra mussels are likely to successfully colonize the Meramec River, because it appears to be similar in most ways to other tributaries of the Mississippi River that already have established populations of zebra mussels. Another live zebra mussel was collected in 1999 from the Missouri River near Sioux City, Iowa (John LaRandeau, *in litt.* 1999). If zebra mussels have successfully colonized the Missouri River, it is likely that they will spread into the Gasconade River, which has perhaps the largest population of scaleshell mussels next to those in the Meramec Basin.

Conclusion

Significant habitat loss, range restriction, and population fragmentation and size reduction have rendered the scaleshell mussel vulnerable to extinction. The scaleshell mussel has disappeared from the entire upper and most of the middle Mississippi River drainages. Of the 55 known historical populations, 14 and possibly 20, remain. Although much of the decline occurred before 1950, population declines continue in most of the species' range, and numerous threats, including water quality degradation, loss of stable substrates, sedimentation, channelization, gravel mining, dredging, and impoundments,

are impacting the few remaining viable extant populations. The small number and low density of the remaining scaleshell mussel populations exacerbate the threats and adverse effects of chance events to scaleshell mussels. Only one of the remaining populations is believed to be stable.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the scaleshell mussel in determining this rule final. The present distribution and abundance of the scaleshell mussel are at risk given the potential for these impacts to continue. Therefore, based on this evaluation, it is appropriate that the scaleshell mussel be listed as an endangered species. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Endangered status is appropriate for the scaleshell mussel given the extent and magnitude of habitat loss, range restriction, and population fragmentation that has occurred, and the continued vulnerability of this species to such threats. These threats are ongoing, and there is clear evidence that some of them, such as sand and gravel mining in the core of the species' current range, have actually increased their adverse impacts on mussel habitat in the last several years.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation 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(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if she/he determines that the benefits of such exclusion outweigh the benefits of its inclusion, unless to do so would result in the extinction of the species. Our regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(i) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (ii) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided by the listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for the scaleshell mussel would be prudent.

Due to small population size, the scaleshell mussel is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for the scaleshell mussel and have not found specific evidence of taking, vandalism, collection, or trade of these species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, at this time 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 a critical habitat designation, then a prudent finding is warranted. In the case of scaleshell mussel, designation of critical habitat may provide some benefits.

In general, critical habitat identifies areas that may require special management considerations or protection, and its designation may provide protection to areas where significant threats to a species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide any other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action they carry out, authorize, or fund does not jeopardize the continued existence of a federally listed species or destroy or adversely modify designated critical habitat. A critical habitat designation for habitat currently occupied by a species would usually result in the same outcome under section 7 consultation as would occur if the critical habitat had not been designated, because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy for the species. However, there may be instances where section 7 consultation, and subsequent protection, would be triggered only if critical habitat is designated, such as areas where a species is not believed to currently exist, but where reestablishment is needed to conserve the species. In the case of the scaleshell mussel, the species' low numbers and highly fragmented distribution will likely require the establishment of additional populations beyond the 14 known extant populations. Critical habitat designation of areas most suitable for future establishment of scaleshell mussel populations would provide habitat protection by triggering section 7 consultations for Federal agency actions.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of

that species, regardless of whether the areas are currently used by the species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

We find that critical habitat designation is prudent for the scaleshell mussel due to the probable benefits to the species described above. We find that these benefits are not outweighed by potential increased threats from designating critical habitat.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing the scaleshell mussel without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. The legislative history of the 1982 Act amendments also emphasized this point: ''The Committee feels strongly, however, that, where biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat. * * * The committee expects the agencies to make the strongest attempt possible to determine critical habitat within the time period designated for listing, but stresses that the listing of species is not to be delayed in any instance past the time period allocated for such listing if the biological data is clear but the habitat designation process is not complete'' (H.R. Rep. No. 97–567 at 20 (1982)). We will prepare a critical habitat designation in the future as soon as there are resources available and other listing duties under the Act will allow.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) of the Act 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 must enter into consultation with us.

Federal activities that could occur and impact the scaleshell mussel, include, but are not limited to, issuance of permits for reservoir construction, stream alterations, waste-water facility development, water withdrawal projects, pesticide registration, agricultural assistance programs, mining, road and bridge construction, Federal loan programs, water allocation, and hydropower licensing or relicensing. In our experience, nearly all section 7 consultations result in protecting the species while still meeting the project's objectives.

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 in part, 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, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the potential effects of this final listing on future and ongoing activities within a species' range. We believe that the following activities are unlikely to result in a violation of section 9:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (*e.g.*, activities subject to sections 402, 404, and 405 of the CWA and discharges regulated under the National Pollutant Discharge Elimination System).

(2) Actions that may affect the scaleshell mussel and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent measures we have specified in accordance with section 7 of the Act.

(3) Development and construction activities designed and implemented pursuant to Federal, State, and local water quality regulations and implemented using approved best management practices.

(4) Existing recreational activities such as swimming, wading, canoeing, and fishing, that are in accordance with State and local regulations, provided if a scaleshell mussel is collected it is immediately released, unharmed.

Activities that we believe could potentially result in take of scaleshell mussels include but are not limited to:

(1) Illegal collection or capture of the species;

(2) Unlawful destruction or alteration of the species' occupied habitat (*e.g.*, unpermitted instream dredging, channelization, or discharge of fill material);

(3) Violation of any discharge or water withdrawal permit within the species' occupied range; and

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting scaleshell mussels.

We will review other activities not identified above on a case-by-case basis to determine whether they are likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 to the Field Supervisor of the Service's Columbia, Missouri Field office (see **ADDRESSES**). You may request copies of the regulations regarding listed wildlife from, and address questions about prohibitions and permits to, the U.S. Fish and Wildlife Service, Ecological Services Division, Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111 (Phone 612/713–5350; Fax 612/713–5292).

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094. 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 control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES**).

Authors

The primary authors of this final rule are Mr. Andy Roberts (see **FOR FURTHER INFORMATION CONTACT**) and Ms. Jennifer Szymanski (U.S. Fish and Wildlife Service, Whipple Federal Building, 1 Federal Drive, Fort Snelling, MN 55111–4056).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Section 17.11(h) is amended by adding the following, in alphabetical order, under Clams 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						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Mussel, scaleshell ...	*Leptodea leptodon* ..	U.S.A. (AL, AR, IA, IL, IN, KY, MN, MO, OH, OK, SD, TN, WI).	NA	E	714	NA	NA
*	*	*	*	*	*		*

Dated: September 28, 2001.

Marshall P. Jones, Jr.

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–24804 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 66, No. 195
Tuesday, October 9, 2001

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. 95–095–2]

RIN 0579–AA80

Plant Pest Regulations; Update of Current Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart. These proposed changes would clarify the factors that would be considered when assessing the plant pest risks associated with certain organisms, facilitate the importation and interstate movement of regulated organisms, and address gaps in the current regulations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by December 10, 2001.

ADDRESSES: Please send your comment and three copies to: Docket No. 95–095–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 95–095–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Flanders, Risk Assessment Branch Chief, or Ms. Deborah Knott, Permits Branch Chief, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; phone 301–734–5930 (Dr. Flanders) or 301–734–5055 (Ms. Knott).

SUPPLEMENTARY INFORMATION:

Background

Under the Plant Protection Act (Title IV of Pub. L. 106–224, referred to below as the Act), the Secretary of Agriculture has broad authority to carry out operations or measures to detect, control, eradicate, suppress, prevent, or retard the spread of plant pests. Section 411(a) of the Act provides that ''no person shall import, enter, export, or move in interstate commerce any plant pest, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with such regulations as the Secretary may issue to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.'' The Act gives the United States Department of Agriculture (USDA) the flexibility to respond appropriately to a wide range of needs and circumstances to protect American agriculture against plant pests. The Act defines a *plant pest* as ''[A]ny living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: (A) A protozoan. (B) A nonhuman animal. (C) A parasitic plant. (D) A bacterium. (E) A fungus. (F) A virus or viroid. (G) An infectious agent or other pathogen. (H) Any article similar to or allied with any of the articles specified in the preceding subparagraphs.''

In addition, § 412(a) of the Act provides that Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of, among other things, any biological control organism if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States. The Act defines a biological control organism as ''any enemy, antagonist, or competitor used to control a plant pest or noxious weed.''

The purpose of the regulations in ''Subpart—Movement of Plant Pests'' (7 CFR 330.200 through 330.212) is to prevent the dissemination of plant pests into the United States, or interstate, by regulating the importation and interstate movement of plant pests. These regulations were issued by the Animal and Plant Health Inspection Service (APHIS) under the authority provided by, among other statutes, the Department of Agriculture Organic Act of 1944, as amended (7 U.S.C. 147a), and the Federal Plant Pest Act, as amended (7 U.S.C. 150aa through 150jj), both of which were superseded and repealed by the Plant Protection Act. The provisions of the Plant Protection Act that have a direct bearing on the proposed regulations in this document were derived from existing laws, including the Department of Agriculture Organic Act and the Federal Plant Pest Act, with little or no modification. Thus, the provisions of this proposed rule do not differ significantly from what we would have proposed under the authority of those applicable provisions of law that were repealed by the Plant Protection Act.

Advance Notice of Proposed Rulemaking

On September 27, 1996 (61 FR 50767–50770, Docket No. 95–095–1), we published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) to solicit public comment on several issues pertaining to our current regulations regarding the importation and interstate movement of plant pests. Specifically, we sought public comment on the criteria used to determine whether an organism is a plant pest; what types of direct and indirect injury or damage to plants and plant products should be regulated; how to facilitate the interstate movement and use of biological control organisms; and how to best evaluate the safety of proposed releases into the environment of organisms with plant pest

characteristics. In the ANPR, we stated that we would use the information we gathered as we considered the need for regulatory changes and weighed alternative methods of addressing plant pest risk as it pertains to the importation, interstate movement, and release into the environment of plant pests or potential plant pest organisms.

We solicited comments concerning the ANPR for 90 days ending December 26, 1996. We received 52 comments by that date, including 3 comments received at a public hearing held on November 7, 1996. They were from university researchers and students, Federal researchers, insect zoo owners and employees, insect dealers, State agricultural agencies, a crop science society, biological control practitioners, and associations representing biological control producers and researchers, phytopathologists, zoos, seed companies, organic farmers and suppliers, and repositories of biological specimens.

The discussion contained in the ANPR and the questions it posed were, for the most part, well received by the majority of commenters. We considered the suggestions and criticisms offered in the comments during the drafting of this proposed rule. One aspect of the ANPR that was not well received was the suggestion that voluntary standards be considered for facilitating the interstate movement and release into the environment of organisms used in the biological control of plant pests. None of the commenters who addressed this subject recommended that we pursue this idea, most stating that such standards would be unenforceable and ill-advised.

Many of the comments we received were from individuals or groups who are involved in biological control research or practice, so their comments were focused on the need for, and content of, regulations regarding the introduction of biological control organisms. We believe that it is important to make it clear that APHIS' regulation of biological control occurs in the larger context of the Agency's statutory authority, which requires us to focus on preventing the introduction and dissemination of plant pests. This means that the plant pest risk presented by an organism, rather than its intended use as a biological control agent, must be APHIS' primary consideration.

This does not mean, however, that our proposed regulations would have no bearing on the study or practice of biological control. Indeed, most biological control endeavors begin with the importation of nonindigenous species that may exhibit some potential as biological control agents, and those importations frequently consist of field-collected organisms of unknown or unconfirmed taxonomy, which precludes an adequate pre-import pest risk assessment. In addition, those organisms may be accompanied by plant material, foreign soil, or other organisms, all of which may pose a plant pest risk. Given these factors, the initial handling of organisms with potential biological control applications would not differ substantively from the handling of organisms imported for other purposes. Further, this proposed rule contains provisions regarding the release into the environment of agents for the biological control of weeds. This document represents our effort to address issues of concern to the biological control community in the context of our clear authority to take measures to prevent the introduction and dissemination of plant pests. The proposed regulations are discussed below.

Definitions

In addition to our proposed revision of ''Subpart— Movement of Plant Pests,'' we would also revise § 330.100, ''Definitions,'' of ''Subpart— General Provisions,'' to incorporate the applicable new definitions provided by the Plant Protection Act and to update or eliminate some of the definitions currently provided in that section. The revised section is set out in its entirety in the rule portion of this document.

From the Plant Protection Act, we would add definitions for the terms *article, biological control organism, enter (entry), export (exportation), import (importation), noxious weed, plant, plant product*, and *State*; we would also replace the current definitions of *interstate, means of conveyance, move (moved and movement), permit, plant pest*, and *United States* with the definitions provided for those terms in the Plant Protection Act. In addition, the revised section would include a definition of *APHIS*, as the Agency's acronym is used in our proposed revisions to ''Subpart—Movement of Plant Pests.''

The definitions currently provided in § 330.100 for the terms *administrative instructions, Department, earth, garbage, owner, person, regulated garbage, shelf-stable, soil*, and *through the United States* would remain the same. We would also retain, with minor, nonsubstantive editorial changes, that section's definitions of the terms *Administrator, continental United States, Customs, Deputy Administrator, inspector*, and *Plant Protection and Quarantine Programs*. The definitions provided in § 330.100 for *Plant Quarantine Act* and *the Federal Plant Pest Act* would be removed, as those acts were repealed by the Plant Protection Act, and we would remove the definition provided for the term *territories or possessions* because territories or possessions are included within the Plant Protection Act's definition of the term *State*.

Titles of the Part and Subpart

The title of part 330, ''Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage,'' reflects the titles of its four subparts. The subpart that is the subject of this proposed rule is titled ''Subpart—Movement of Plant Pests'' (§§ 330.200 through 330.212). As explained below in our discussion of proposed § 330.200 and elsewhere, the scope of the proposed regulations would not be limited to the movement of plant pests, so we are proposing to change the title of the subpart to ''Subpart—Movement and Release of Organisms Under the Plant Protection Act'' in order to more accurately reflect the content of the proposed regulations. This proposed change in the subpart's title would be reflected in the title of part 330, which we would change to ''Federal Plant Pest Regulations: General; Organisms; Soil, Stone, and Quarry Products; Garbage.''

What Organisms Are Regulated Under This Subpart? (§ 330.200)

The proposed regulations would begin by identifying the categories of organisms that would be subject to the regulations in ''Subpart—Movement and Release of Organisms Under the Plant Protection Act.'' As noted in the previous paragraph, the scope of the proposed regulations would not be limited to organisms commonly regarded as plant pests, but would include biological control agents when certain risk factors were present. We would introduce the term ''regulated organism'' in order to describe the variety of both harmful and beneficial organisms that would be subject to the regulations.

As used in the proposed regulations, the term ''regulated organism'' would describe an organism that: (1) Meets the statutory definition of plant pest (i.e., it can directly or indirectly injure or cause disease or damage in plants, plant parts, or plant products) and (2) will be imported into the United States, moved interstate, or released into the environment. In addition, we would classify an organism that will be imported into the United States as a regulated organism if that organism was not adequately identified or if we had

reason to believe that the importation of the organism presents a plant pest risk due to the inclusion of plant pests, plant material, or soil in the container in which the organism is shipped. The risk criteria we would use to determine whether an organism should be designated as a regulated organism are discussed below. For the sake of clarity, we wish to emphasize that the proposed regulations would not cover genetically modified organisms, which are covered by our regulations in 7 CFR part 340.

It should be noted that the designation of any particular organism as a regulated organism would not result in an outright, open-ended prohibition on its importation or interstate movement. In almost every case, we believe that it would be possible to arrange adequate safeguards that would allow a regulated organism to be imported or moved interstate. Similarly, the designation of biological control agents of weeds as regulated organisms would not mean that we considered those organisms to present the same kinds of plant pest risks as, for example, a destructive fruit fly or pathogen. Rather, our proposed use of the term ''regulated organism,'' and the restrictions that such a designation would entail, is intended to provide us with a means of identifying and dealing with organisms that, at least initially, appear to require some degree of regulatory oversight in order to prevent the dissemination of plant pests in the United States and damage to this country's environment and ecosystems. It is our intention in promulgating these proposed regulations to achieve those goals within the scope of our existing statutory authority.

Under proposed § 330.200, regulated organisms would be divided into three categories: (1) Plant pests, (2) biological control organisms for the control of noxious weeds, and (3) imported biological control organisms for the control of plant pests and other imported organisms.

The first category of regulated organisms, plant pests, would be addressed in paragraph (a) of proposed § 330.200. That paragraph would provide that the importation, interstate movement, and, under certain limited circumstances, release into the environment of any plant pest would be subject to the restrictions of proposed §§ 330.201, 330.202, and 330.203(a), which are explained later in this document. (It should be noted that not all plant pests would be eligible for release into the environment under the proposed regulations. An explanation of the circumstances under which a plant pest would be eligible for environmental release can be found later in the document in the discussion of proposed § 330.203.)

As an organism must be capable of directly or indirectly injuring, causing damage to, or causing disease in a plant or plant product to be considered a plant pest, proposed § 330.200(a)(1) and (a)(2) would list the factors that we would consider when assessing the plant pest status of an organism.

Under the criteria of proposed paragraph (a)(1), an organism would be determined to directly injure or cause disease or damage in plants, plant parts, or plant products when the organism:

- Reduces the yields, vigor, or viability of living plants by feeding on, infecting, parasitizing, or contaminating plants or plant parts or by vectoring agents of plant diseases; or
- Reduces the quality or marketability of plant products such as stored grain, stored fruit, or lumber by feeding on, infecting, or contaminating the plant products.

In establishing these proposed criteria, we have attempted to incorporate a degree of flexibility that would allow us to take into account the fact that some organisms only incidentally feed on, develop on, or contaminate plants, plant parts, or plant products without causing an appreciable degree of damage. These proposed criteria would place an emphasis on organisms that present an identifiable risk, *i.e.* organisms that are capable of quantifiable reductions in the yields, vigor, or viability of living plants or the quality or marketability of plant products.

Proposed paragraph (a)(2) would contain the criteria that would be considered in determining whether an organism presented a risk of indirectly injuring or causing disease or damage in plants, plant parts, or plant products. Under this paragraph, we would consider the risk of indirect injury, disease, or damage to be present when an organism adversely affects another organism that was beneficial to plants, and those adverse effects cause losses in yields of crops or forage plants or a reduction in the viability or vigor of ornamental or native plants. As with the proposed criteria regarding direct effects, these criteria would give us the flexibility to take into account the fact that some organisms only incidently attack or otherwise harm beneficial organisms and thus may present little actual risk.

Because the organisms that can be considered to provide the most benefit to plants are those organisms that either control plant pests or pollinate plants, proposed § 330.200(b) indicates the two types of organisms with indirect plant pest effects that would be of primary concern are organisms that are:

- Pathogens, predators, or parasites (except autoparasitoids) of important natural enemies of plant pests or weeds; or
- Pathogens, predators, or parasites of important or commercially available pollinators such as honeybees, bumble bees, and alkali bees.

We have included the modifiers ''important'' and ''commercially available'' with regard to the natural enemies and pollinators that might be affected by a regulated organism to avoid lending undue weight to a regulated organism's effects on another organism that might play only a minor or occasional role in the pollination of plants or the suppression of plant pests or weeds. Our determination as to the ''importance'' of a natural enemy or a pollinator would be based on our review of available information in the scientific literature regarding the role of those organisms in suppressing plant pest or weed populations or in the pollination of crops and native plants. Our determination as to whether pollinators are ''commercially available'' would take into account factors such as the inclusion of particular species in catalogs or their use by commercial pollination services. We acknowledge that these working definitions of ''important'' and ''commercially available'' could be further refined to take into account additional factors that would increase their usefulness and clarity; therefore, we encourage the submission of any specific comments regarding these terms.

The second category of regulated organisms, biological control organisms for the control of noxious weeds, would be addressed in paragraph (b) of proposed § 330.200. Under proposed § 330.200(b), the importation, interstate movement, and release into the environment of any biological control organism for the control of noxious weeds would be subject to the restrictions of proposed §§ 330.201, 330.202(a) and (b), and 330.203(b). Like plant pests with the direct effects on plants described above, biological control agents of weeds are capable of reducing the vigor or viability of living plants; however, those direct effects are actually the desired outcome when the plant in question is a noxious weed. Therefore, the regulations would provide that biological control agents of weeds may be eligible for release into the environment under the regulations.

The third category of regulated organisms, imported biological control organisms for the control of plant pests

and other imported organisms, would be addressed in paragraph (c) of proposed § 330.200. Under proposed § 330.200(c)(1), an organism that was proposed for importation into the United States could be determined to present a risk of disseminating a plant pest when it was:

- A field-collected organism that, in natural conditions, is associated with plant pests and there is reason to believe that the plant pests could be shipped with the field-collected organisms; or
- A laboratory-reared organism that is provided with plant pests as host material during rearing or shipment; or
- An organism that will be shipped with plant material or soil; or
- An organism that has not been positively identified.

In the first three criteria listed above, the plant pest risk is based on the risk that the shipment of organisms is contaminated by plant pests, either on the organism itself or in the material included in the shipment. We believe that our proposed use of these three criteria in the regulations is consistent with the approach APHIS takes to the importation of other articles, such as fruits and vegetables. While an orange, for example, is not a plant pest, the circumstances surrounding its production or shipment (e.g., the presence of plant pests in the growing area) could lead APHIS to conclude that certain regulatory measures would be necessary to prevent that orange from introducing plant pests into the United States. We would use the proposed criteria in the same way to ensure that the importation of organisms from another country did not result in the introduction of plant pests into the United States. The final criterion listed above would be included due to the fact that we would be unable to make any sort of a determination regarding an organism's plant pest status in the absence of a positive identification of the organism.

After the organism had been imported into the United States, paragraph (c)(2) of proposed § 330.200 would provide for the organism to be moved interstate without any further restriction under the regulations if, while being held under the conditions assigned to its importation, the organism was positively identified (if such identification had not been made prior to importation), was determined to not be a plant pest (i.e., once identified, the organism was found to not meet any of the criteria of proposed § 300.200(a) or (b)), and was separated from any associated plant pests, plant material, soil, and other media. Satisfying these three requirements would address the contamination and identity risk factors listed in proposed § 330.200(c)(1), thus making the subsequent movement of the organism possible without the risk of plant pest dissemination.

It should be noted that although the Environmental Protection Agency (EPA) has exempted certain biological control agents from the requirements of its regulations issued under the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), other biological control agents (eukaryotic microorganisms, procaryotic microorganisms, and viruses) are still regulated by EPA as ''substances'' under FIFRA. Such substances, unless otherwise exempt, would therefore need to be registered under FIFRA prior to their sale or distribution. Moreover, where residues of any biological control agents remain in or on food or feed, a tolerance or exemption from the requirement of a tolerance would be necessary under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) before such food could legally be moved in interstate commerce. Therefore, while the provisions of proposed § 330.200(c)(2) may allow some regulated organisms to be moved without further restriction under APHIS' regulations after satisfying certain requirements, those organisms may still be subject to EPA's requirements under FIFRA and FFDCA.

Movement of Regulated Organisms

As described in the following sections, the regulations would provide for three ways to move a regulated organism:

- With a permit;
- Through post-movement notification if a compliance agreement is in place; and
- Without a permit (and without need of notification) if the regulated organism is on the list in proposed § 330.202(c)(1) of negligible-risk, indigenous plant pest species that could be moved interstate within the continental United States if moved from populations located within the continental United States.

Each of these three options is explained in greater detail below. In preparing this proposed rule, we also considered the possibility of including a fourth movement option that would be tailored specifically to low-risk organisms, i.e., those regulated organisms whose movement might not require the level of oversight and information processing that permitting and post-movement notification entail, but that for various reasons—most notably limited geographic distribution—would not qualify for inclusion on the ''no permit required'' list.

While we believe that it might be possible to address the movement of these low-risk organisms through a pre-movement notification process that would not require the use of a compliance agreement, we identified two potential complicating factors with such an approach that led us to not include pre-movement notification in this proposed rule.

First, it appears that it would be necessary to assemble a list of organisms eligible for movement through pre-movement notification, and we anticipate that it would be a time-consuming process to obtain consensus among the interested parties (e.g., public and private scientists, State and Federal regulators, etc.) as to the content of such a list. Further, the list would have to take into account the current distribution of each organism and identify the areas into which the organism could or could not be moved under pre-movement notification; this too would take some time to accomplish.

The second consideration is determining how much information should be required of the person making the pre-movement notification. For a pre-movement notification process to offer benefits to its users, it would be necessary for us to pare down the number of data elements to be addressed in the notification (as compared to the questions contained in a permit application) without diminishing the ability of a reviewer to adequately consider the issues raised by the proposed movement. We believe that the resolution of the issues surrounding the list discussed in the previous paragraph would go far toward allowing us to construct a practical and useful pre-movement notification process.

While these two factors led us to not pursue the idea of pre-movement notification in this proposed rule, we have not abandoned that idea or, more generally, the idea of streamlining the process for moving low-risk organisms. With that in mind, we encourage anyone with an interest in these issues to provide comments and suggestions regarding pre-movement notification or any other approaches to simplifying the process for moving low-risk regulated organisms.

Requirements for the Importation of Regulated Organisms (§ 330.201)

Proposed § 330.201 would explain the options available to persons who wished to import a regulated organism into the United States. An importation

could be accomplished through notification or under permit when APHIS determines that the importation could be accomplished in a manner that would prevent the dissemination of plant pests. All imported organisms would have to be labeled in accordance with § 330.211, which is discussed below.

The introductory text of proposed § 330.201 would also address the importation of preserved or dried biological specimens of plant pests. Such specimens could be imported without restriction under the proposed regulations, but would be subject to inspection upon arrival in the United States to confirm the nature of the material and its freedom from risk of plant pest dissemination. These proposed provisions are the same as those found in the final sentence of § 330.200 in the existing regulations, with one exception: In order to address the potential that some dried specimens of fungi that are plant pests could be the source of viable spores, we would specify that a specimen would have to be nonviable. Thus, any viable specimens of fungi that are plant pests would be subject to the restrictions of the proposed regulations.

Paragraph (a) of proposed § 330.201 would explain that if a person has entered into a compliance agreement with APHIS and the State where the regulated organisms will be received, the importation of regulated organisms could be carried out under the notification provisions of proposed § 330.204. The rationale for our proposed use of compliance agreements and notification, as well as the procedures that would apply to each, are explained later in this document in the discussion of proposed § 330.204.

Paragraph (b) of proposed § 330.201 would explain that persons who do not wish to enter into a compliance agreement may apply for a permit for the importation of a regulated organism in accordance with proposed § 330.205. APHIS would use the information provided in a permit application to identify the plant pest risks associated with the regulated organism and its importation, and to assign any additional conditions that APHIS determined were necessary to mitigate any identified risks. Explanations of the permit application and permit conditions can be found later in this document in the discussions of §§ 330.205 and 330.208, respectively.

Requirements for the Interstate Movement of Regulated Organisms (§ 330.202)

Proposed § 330.202 would explain the options available to persons who wished to move a regulated organism from one State into or through another State. An interstate movement could be accomplished through notification or under permit or, under certain limited circumstances, without a permit, when APHIS determines that the interstate movement could be accomplished in a manner that would prevent the dissemination of plant pests within the United States.

Paragraph (a) of proposed § 330.202 would explain that if a person has entered into a compliance agreement with APHIS and the State where the regulated organisms will be received, the interstate movement of regulated organisms could be carried out under the notification provisions of proposed § 330.204. As noted in the previous section regarding importation, the rationale for our proposed use of compliance agreements and notification, as well as the procedures that would apply to each, are explained later in this document in the discussion of proposed § 330.204.

Paragraph (b) of proposed § 330.202 would explain that persons who do not wish to enter into a compliance agreement may apply for a permit for the interstate movement of a regulated organism in accordance with proposed § 330.205. As would be the case with applications for a permit to import regulated organisms, APHIS would use the information provided in an application for an interstate movement permit to identify the plant pest risks associated with the regulated organism and its movement and assign any additional conditions that APHIS determined were necessary to mitigate any identified risks. Again, explanations of the permit application and permit conditions can be found later in this document in the discussions of §§ 330.205 and 330.208, respectively.

Paragraph (c)(1) of proposed § 330.202 would contain a list of indigenous plant pest species that could be moved interstate within the continental United States without a permit if they were moved from populations located within the continental United States. In assembling the list, we identified organisms for inclusion based on their wide distribution and low plant pest risk; we do, however, welcome any comments on the adequacy of these criteria, whether we accurately applied the criteria in our selection of organisms, and whether there are additional considerations that should be taken into account. The organisms contained in the list are indigenous bacteria, insects, and viruses that are distributed throughout the continental United States and that are known to commonly accompany plants or plant products moved in interstate commerce. The proposed list of organisms is set out in the regulatory text at the end of this document under § 330.202, ''Requirements for the interstate movement of regulated organisms.'' Given the wide distribution of these organisms, we believe that their interstate movement within the continental United States is not likely to result in additional plant pest risks. The proposed list, which is provided for under § 411(c) of the Plant Protection Act, is offered as a means of simplifying the movement of these ubiquitous organisms; we do not consider the list to be comprehensive and fully acknowledge that there may be additional organisms that could be appropriately included on the list. Therefore, we welcome any comments on the composition of the list and any suggestions for additions, deletions, or modifications to its contents. In that vein, we have included provisions in proposed paragraph (c)(2) of § 330.202 for a person to petition APHIS for the addition of species to, or removal of species from, the list of organisms that could be moved within the continental United States without a permit. The petitioner would have to send APHIS detailed information regarding the organism's distribution and its biological, economic, and environmental significance. If, after reviewing the petition, we determined that it would be appropriate to allow the suggested organism to be moved within the continental United States without a permit, we would publish a proposed rule in the **Federal Register** to amend the list. Any such proposed rule would be supported by analyses documenting our review and consideration of the plant pest risks and potential environmental effects associated with the organism proposed for inclusion on the list.

Just as § 411(c) of the Plant Protection Act provides for the exceptions to the permit requirements for plant pests discussed in the previous paragraph, § 412(g)(1) of that act provides that ''[i]n the case of biological control organisms, the Secretary may publish, by regulation, a list of organisms whose movement in interstate commerce is not prohibited or restricted. Any listing may take into account distinctions between organisms such as indigenous,

nonindigenous, newly introduced, or commercially raised.'' APHIS, with the cooperation of the other USDA agencies represented on the Department's Biological Control Coordinating Council (BCCC), is considering what options might be available to further streamline or even eliminate the regulatory requirements that would apply to the movement and environmental release of certain biological control agents. We intend to consult with the other members of the BCCC regarding the criteria that might be used to identify the specific biological control agents that could be considered for expedited approval or exemption from regulatory restrictions; however, we would also like to take this opportunity to solicit suggestions from interested persons regarding the criteria that should be considered in assembling a list of biological control organisms whose movement in interstate commerce is not prohibited or restricted. A suggested starting point for this list is the identification of biological control organisms that have a documented history of release in the United States and no known negative effects on nontarget organisms and the environment. We recognize, though, that additional considerations will likely need to be taken into account in assembling the list, so we encourage the submission of comments and suggestions on this subject.

Requirements for the Release Into the Environment of Regulated Organisms (§ 330.203)

Although the Federal Plant Pest Act specifically addressed only the importation and interstate movement of plant pests, and not environmental release, the Plant Protection Act (§ 403) includes ''to release into the environment'' in its definition of ''move and related terms.''

Paragraph (a) of proposed § 330.203 would address the environmental release of plant pests. In most cases, the factors that would lead to an organism being considered a plant pest also recommend against that organism being intentionally released into the environment. However, proposed § 330.203(a) would recognize that there are limited circumstances under which a plant pest might be released into the environment. Specifically, proposed § 330.203(a)(1) would provide that any of the plant pests listed in proposed § 330.202(c)(1)—*i.e.,* those ubiquitous, low-risk organisms that could be moved interstate without a permit under that proposed paragraph—may be released into the environment within the continental United States without a permit if the organism was collected from a population located within the continental United States. As we stated with regard to the interstate movement of those listed organisms, we believe that the wide distribution of these organisms throughout the continental United States makes it unlikely that their environmental release will result in any appreciable additional plant pest risks. Again, we encourage the submission of comments regarding the criteria used in assembling the list and the composition of the list itself. The provisions of proposed § 330.203(a)(1) regarding the release of plant pests without a permit would apply only to those organisms listed in proposed § 330.202(c)(1).

We also recognize that there are circumstances under which the release of other plant pests might be a necessary element of a testing or research protocol. On example of such a situation would be the release of plant pests into a test plot as challenge organisms for a resistant plant variety under development. Therefore, proposed § 330.203(a)(2) would provide that a plant pest not listed in proposed § 330.202(c)(1) may be released into the environment only for research or testing purposes and only if the release is authorized by an APHIS permit and is conducted in accordance with any safeguards assigned as a condition of the permit.

Paragraph (b)(1) of proposed § 330.203 would begin by stating that an agent for the biological control of weeds could be released into the environment in the United States only if the release is authorized by an APHIS permit. The introductory text of proposed § 330.203(b)(1) would also provide that the issuance of a permit would be based on our determination that the host range of the biological control agent is limited to the target weed or an acceptably narrow range of closely related species and upon our determination that the benefits that could be expected to accrue from the release were not outweighed by any significant negative environmental or ecological consequences resulting from the release. Those conclusions would be based on the reviews described below in the discussion of proposed § 330.203(b)(2). The process leading up to the issuance of a permit would ensure that APHIS, in consultation with other Federal and State officials and the applicant, had the opportunity to review the plant pest, environmental, and ecological considerations associated with the proposed release.

Paragraph (b)(1)(i) of proposed § 330.203 would address applications for a permit to release a biological control agent of weeds that is not indigenous to the United States and that has not previously been released under an APHIS permit. Because the release of such organisms would not have previously been reviewed and approved by APHIS, the applicant would have to address all the data elements contained in proposed §§ 330.205 and 330.206, which are explained later in this document.

Paragraph (b)(1)(ii) of proposed § 330.203 would address permits for the release into the environment of regulated organisms that are native to the United States or that have been introduced (i.e., released into an ecosystem where it did not exist previously) into the United States and have become established (i.e., have formed self-perpetuating populations in the ecosystem into which they were introduced). APHIS' National Environmental Policy Act (NEPA) implementing procedures in 7 CFR part 372 provide for a categorical exclusion from the requirement for the preparation of an environmental assessment or environmental impact statement for the permitting of the release into a State's environment of pure cultures of organisms that are either native or established introductions. Therefore, proposed § 330.203(b)(1)(ii) would provide that an applicant for a release permit would not have to address the data elements in proposed § 330.206(h), ''Potential environmental impacts,'' if the candidate agent was native to, or established in, the State in which it would be released, and would further provide that the environmental assessment required by proposed § 330.203(b)(2)(iv) would not have to be prepared. In addition, it may be that the native or established status of the organism would preclude the need for the applicant to address other specific elements contained in proposed § 330.206 and would allow us to shorten or waive the remaining reviews required under proposed § 330.203(b)(2). Proposed § 330.203(b)(1)(ii) would, therefore, recommend that an applicant for a permit for the environmental release of pure cultures of regulated organisms that are either native or established introductions should consult with APHIS prior to preparing a permit application. This consultation would give APHIS and the applicant an opportunity to review the issues surrounding the proposed release and identify those aspects of the permitting process that could be omitted.

Paragraph (b)(2) of proposed § 330.203 would explain the reviews that would have to be conducted before APHIS

would issue a permit for the release into the environment of an agent for the biological control of weeds.

First, APHIS would request that the interagency Technical Advisory Group for Biological Control Agents of Weeds (TAG) review the proposed release. TAG is an independent, voluntary committee that was first formed in 1957 to provide advice to researchers. In its current role, TAG members review petitions for biological control of weeds and provide an exchange of views, information, and advice to researchers and those in APHIS responsible for issuing permits for importation, testing, and field release of biological control agents of weeds. TAG's membership currently includes Federal representatives from five USDA agencies (APHIS, the Agricultural Research Service, the Forest Service, the Natural Resources Conservation Service, and the Cooperative State Research, Education, and Extension Service), five agencies of the U.S. Department of the Interior (the Bureau of Land Management, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Geological Survey), the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers, and State officials representing the National Plant Board and the Weed Science Society of America. The TAG review considers the safety of the agent being considered, the potential risks that might be involved in its release, and the long-term ecological consequences of a successful release.

Second, APHIS would review the plant pest risk issues raised by the proposed release. TAG's conclusions regarding the host range of the candidate agent would figure prominently in our determination of whether or not the organism posed a risk of appreciably injuring or causing disease or damage in plants other than the target weed.

Third, APHIS would consult with the U.S. Fish and Wildlife Service to consider the potential effects of the candidate biological control agent on threatened and endangered species.

Finally, APHIS would prepare an environmental assessment of the proposed release as required by NEPA. The environmental assessment would allow us to reach a finding of no significant impact or would lead us to conclude that it was necessary to prepare an environmental impact statement or to deny the permit.

In paragraph (b)(3) of proposed § 330.203, we would encourage prospective permit applicants to contact the Fish and Wildlife Service at as early a stage as possible i.e., upon identification of the target weed in order to identify possible Endangered Species Act issues that might need to be considered with regard to any program for the control of the target weed. Similarly, we would encourage prospective applicants to contact APHIS for early consultation on complying with NEPA. Engaging in such early consultation prior to applying for a permit would help the applicant and the relevant agencies become familiar with the environmental and endangered species issues surrounding a planned weed control program and would help to avoid the delays that could occur in the event that unexpected issues arose during the permit application review process.

Compliance Agreements and Notification for Importation and Interstate Movement (§ 330.204)

Proposed § 330.204 would address the purpose of, and procedure for, entering into a compliance agreement, along with the notification process that may be used for the importation and interstate movement of regulated organisms by persons who are operating under a compliance agreement. An applicant could expect to receive a permit for importation or interstate movement anywhere from 15 to 60 days after submitting an application. Under the proposed notification system, a person or facility operating under a compliance agreement would simply have to notify APHIS within 3 days after receiving a shipment of regulated organisms. By providing a mechanism that would allow individuals or facilities to receive advance approval for the importation or interstate movement of specified types of regulated organisms, we anticipate that the proposed notification process would greatly facilitate the movement of regulated organisms. Persons who only occasionally have a need to request a permit for the importation or interstate movement of regulated organisms may find that the permitting process would continue to meet their needs. However, for those individuals or facilities that regularly receive organisms from foreign sources or other States, the time savings that could be realized by entering into a compliance agreement and using the notification process could be substantial.

Paragraph (a)(1) of proposed § 330.204 would explain the considerations discussed in the previous paragraph, i.e., that a person or facility that routinely receives regulated organisms under permit may wish to enter into a compliance agreement in order to facilitate the importation or interstate movement of those organisms. The paragraph would explain that compliance agreements would be signed by the applicant, APHIS, and the State into which the organisms would be moved, and that entering into a compliance agreement would allow the organisms to be moved under the notification process described in paragraph (b) of proposed § 330.204 rather than under permit.

Paragraph (a)(2) of proposed § 330.204 would explain that a compliance agreement could be arranged by contacting a local office of APHIS Plant Protection and Quarantine (PPQ) or by contacting PPQ's central offices in Riverdale, MD. The terms of the compliance agreement would be prepared with the participation of all parties involved, and would be based on the plant pest risks presented by the specific types of regulated organisms that the applicant would be receiving, the intended use of those organisms, and any safeguarding issues such as the degree of physical and operational security needed to prevent the escape or dissemination of the regulated organisms. The compliance agreement would also spell out the specific requirements for the notification of APHIS when a shipment of regulated organisms was received, the disposition of host material and other media included in the shipment, the handling of regulated organisms while in the facility, and any recordkeeping requirements. Those elements are normally addressed through the assigning of permit conditions under the normal permit issuance process, but no similar opportunity for assigning conditions is practical under the notification process, so it would be necessary to address them in the compliance agreement.

Paragraph (a)(3) of proposed § 330.204 would provide that a person could terminate a compliance agreement at any time by informing APHIS, in writing, of their desire to do so. That paragraph would also provide that APHIS could cancel a compliance agreement if an inspector found that a person had failed to comply with the terms of the compliance agreement or with the regulations. A cancellation could be issued by APHIS either orally or in writing, with an oral cancellation being confirmed in writing as promptly as circumstances allowed. The written cancellation or confirmation would document the reasons for the cancellation. These cancellation provisions would be included to inform the person of the procedure for terminating a compliance agreement and to allow APHIS to terminate the agreement when it is determined that its

provisions, which would have been assigned to prevent the dissemination of plant pests, were not being observed.

Paragraph (b) of proposed § 330.204 would explain the notification process. Paragraph (b)(1) would reiterate who is eligible to use the notification process, i.e., persons who have entered into a compliance agreement with APHIS and their State, and paragraph (b)(2) would set out the requirements for notification. Specifically, APHIS would have to be notified within 3 business days after the regulated organisms were received in the facility, either by mail, fax, or electronic mail; APHIS would acknowledge the notification within 3 business days of its receipt. The notification to APHIS would have to include:

- The recipient's name, organization, and compliance agreement number.
- The date the regulated organisms were received.
- The scientific name(s) of the regulated organisms.
- The life stage(s) of the regulated organisms.
- The total number of regulated organisms received.
- The origin of the regulated organisms.

This information, when combined with the elements recorded in the compliance agreement, would provide APHIS with the same types of data concerning the regulated organisms and their movement as are provided through the standard permitting process provided for under the existing regulations and this proposed rule. While we believe that the amount of information that would be required is appropriate for the purposes of the proposed notification system, we welcome any comments regarding the number and scope of the proposed data elements, as well as any suggestions for alternative ways of implementing the notification process.

Applying for a Permit (§ 330.205)

Proposed § 330.205 would set out the information that would have to be provided by a person seeking a permit for the importation, interstate movement, or release into the environment of a regulated organism. The section would begin by stating that permit applicants must reside in the United States, as we believe that a permittee must be in a position to directly supervise the handling and use of any regulated organisms for which a permit was issued, and would state that the applicant must supply the information called for in paragraphs (a) through (w) of the section. The information that would have to be provided is the same as currently required by PPQ Form 526, which is the form that is used as a permit application under the existing regulations. These requirements are set out in the regulatory text at the end of this document under § 330.205, ''Applying for a permit.'' The information requested on the PPQ Form 526 pertains to the regulated organism for which a permit is being sought, its origin and destination, its intended use, the facility in which it would be held, and the port or ports of entry through which the regulated organism would be imported into the United States. A footnote to the introductory text of proposed § 330.205 provides the address to which the completed application must be sent and provides information as to how a person may obtain a PPQ Form 526.

Additional Application Data for Permits for the Environmental Release of Biological Control Agents of Weeds (§ 330.206)

Proposed § 330.206 would list the additional information (i.e., in addition to the information listed in proposed § 330.205) that would have to be addressed by an applicant seeking a permit for the release into the environment of an agent for the biological control of weeds. This additional information would be necessary for APHIS to fully evaluate the plant pest risk considerations associated with the proposed release and would aid in the development of the documentation needed to address the environmental and endangered species considerations discussed in proposed § 330.203(b)(2). Because, as noted in that section, the interagency Technical Advisory Group for Biological Control Agents of Weeds (TAG) would review the proposed release and its supporting documentation before APHIS would issue its final approval for the release, the information that would have to be provided under proposed § 330.206 is the same as the information called for in the TAG's ''A Suggested Format for Field Release Petitions.'' Although the TAG's information requirements for release petitions are rather lengthy, we believe that reproducing those requirements in the regulations would in the end save applicants time by precluding the need to prepare two sets of documentation, i.e., one set to accompany their permit applications submitted under the proposed regulations and one set to satisfy the needs of the TAG reviewers. The information requested in the TAG petition includes both questions related to the target weed (identity, distribution, impacts, etc.) and questions regarding the candidate biological control agent (identity, distribution, biology, host specificity, etc.) This two-fold approach is consistent with the approach recommended by the Food and Agriculture Organization (FAO) of the United Nations (UN) in its publication ''Code of Conduct for the Import and Release of Exotic Biological Control Agents'' (Secretariat of the International Plant Protection Convention, FAO, UN, Publication No. 3, Rome, 1996). In addition, the TAG information requirements contain elements that will allow APHIS to consider the potential environmental effects of the proposed release and prepare the environmental assessment documentation required by NEPA. The consideration of potential environmental effects is also consistent with the approach recommended in the FAO code of conduct. The information requirements for release petitions are set out in the regulatory text at the end of this document under § 330.206, ''Additional application data for permits for the environmental release of biological control agents of weeds.''

APHIS Review of Permit Applications; Denial or Cancellation of Permits (§ 330.207)

Paragraph (a) of proposed § 330.207 would address the inspection of the premises where a regulated organism would be held. These proposed provisions are essentially the same as the existing regulations in § 330.202(b), the difference being that proposed § 330.207(a) would include a description of the three general areas that would be considered when APHIS inspected a facility. The current regulations provide that APHIS may inspect the facility where the regulated organisms would be received and handled to determine whether the facility will be adequate to prevent plant pest dissemination; those provisions would also be part of proposed § 330.207(a). Because different regulated organisms will present differing degrees of risk, depending on factors such as their escape potential, biology, and the availability of a suitable habitat in the area surrounding the facility, we believe that it would be counterproductive to attempt to prepare a detailed list of prescriptive requirements for facilities i.e., a ''one size fits all'' design standard in the context of the proposed regulations. Rather, we have prepared a brief set of performance standards that we would consider to the degree to which they were appropriate to the plant pest risks presented by the particular regulated organism for which the applicant was seeking a permit. (We would, however, include a footnote

regarding the availability of guidelines that describe suggested physical and operational characteristics for facilities.) The performance standards that would be included in § 330.207(a) are:

• *Does the facility have entryways, windows, and other structures, including water, air, and waste handling systems, to contain the regulated organisms and prevent the entry of other organisms and unauthorized visitors?* This standard would focus on whether the physical structure and features of the facility were sufficient to contain the regulated organism and prevent other organisms or unauthorized persons from gaining access to the regulated organisms, which could increase the risk of plant pest dissemination.

• *Does the facility have operational and procedural safeguards in place to prevent the escape of the regulated organisms and to prevent the entry of other organisms and unauthorized visitors?* This standard is similar to the first, although in this case the focus would be on the non-physical aspects that contribute to the biological security of the facility, i.e., the procedural and operational safeguards that are in place.

• *Does the facility have a means of inactivating or sterilizing regulated organisms and any host material, containers, or other material?* As explained below in the discussion of proposed § 330.208(a), the standard conditions that apply to all permits require the destruction or sterilization of the container in which the regulated organisms were shipped and any accompanying material following the receipt of the organisms, as well as the destruction of the regulated organisms themselves upon completion of their intended use or the expiration of the permit. This standard would ensure that the facility had the means to fulfill those standard permit conditions.

Paragraph (b) of proposed § 330.207 would address the denial of permit applications. The paragraph would provide that APHIS will deny an application for a permit to move or release a regulated organism when we determine that the movement or release would involve a danger of the dissemination of a plant pest. These proposed provisions are the same as those contained in § 330.204(a) of the current regulations, which state that the danger of plant pest dissemination could be deemed to exist under any one of the following circumstances:

• Existing safeguards against plant pest dissemination (e.g., the biosecurity offered by the facility in which the organisms would be held) are inadequate and no adequate safeguards can be arranged.

• The destructive potential of the regulated organism to plants, plant parts, or plant products, should it escape despite the proposed safeguards, outweighs the probable benefits that could be derived from the proposed movement and use of the regulated organism. It is likely that a permit would be denied on this basis in only a few extraordinary cases, such as when a particularly destructive pest was proposed for movement into an area that was ideally suited to sustaining populations of that pest.

• When the applicant, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and has failed to demonstrate the ability or intent to observe them in the future. We must have at least a reasonable expectation that the permittee can and will observe the conditions of the permit; otherwise, the safeguards offered by those conditions would be rendered ineffective.

• The proposed movement of the regulated organism is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS. It is likely that this basis for the denial of a permit would not be invoked in the absence of circumstances related to either of the first two bullets above, i.e., those regarding existing safeguards and the destructive potential of the organism.

Paragraph (c) of proposed § 330.207 would address the cancellation of permits that have already been issued. The paragraph would provide that APHIS could cancel a permit if, following its issuance, we received information of circumstances that would have led us to deny the application for that permit, i.e., those circumstances described in the previous paragraph. The paragraph would also provide that APHIS could cancel a permit if the permittee failed to maintain the safeguards or other conditions specified in the permit or in any applicable regulation. These provisions for the cancellation of permits, which are the same as those found in § 330.204(b) of the current regulations, are necessary to mitigate the risk of plant pest dissemination when APHIS determines that our issuance of the permit was based on inaccurate or invalid information or that the permittee is failing to observe the conditions that have been deemed necessary to prevent the dissemination of plant pests.

Permit Conditions (§ 330.208)

Proposed § 330.208 would explain the standard conditions that would apply to all permits and provide for the inclusion of special permit conditions when circumstances warranted. This section would also address permits for the movement of regulated organisms through the United States (i.e., transit permits) and the length of time for which permits may be valid.

Specifically, paragraph (a) of proposed § 330.208 sets forth the standard conditions that would apply to all permits that are issued, and would provide that the permit may specify a particular port of entry for the regulated organism. These conditions, which are the same as those that now apply to permits issued under the current regulations, would be included in the regulations as a safeguarding measure to prevent the dissemination of plant pests into the United States or interstate. The standard conditions that would apply to all permits for importation and interstate movement call for:

• The sterilization or destruction of the shipping container and all packing material, media, substrate, and soil after the regulated organisms have been removed from the shipping container. This measure would ensure that the plant pest risks posed by the container and any other associated material is mitigated.

• The regulated organisms to be kept within the laboratory or other designated holding area of the receiving facility, with prior approval from APHIS being required for their removal. This would ensure that the regulated organisms remain in the facility that was approved to receive them or, if necessary, in a facility with comparable security. This measure is necessary because the security offered by the receiving facility would have been one of the factors on which APHIS based its decision to issue a permit.

• Allowing authorized APHIS and State regulatory officials to inspect, without prior notice and during reasonable hours, the conditions under which the regulated organisms are kept. Such inspections by APHIS or its State cooperators may be necessary to ensure that the regulated organisms are being kept under the conditions deemed necessary to mitigate the risk of plant pest dissemination.

• All regulated organisms kept under the permit to be destroyed at the completion of the intended use, and not later than the expiration date of the permit, unless an extension is granted by APHIS before the expiration of the permit. This measure would ensure that any plant pest risk posed by the regulated organisms is eliminated upon the completion of the research project or other activity in which they were being used.

• APHIS to be informed immediately, but no later that 24 hours, after the escape of a regulated organism being detected. This measure reflects basic biosecurity considerations and would ensure that APHIS had the opportunity to take appropriate measures in a timely manner in response to the unintentional release or escape of the regulated organisms.

• Records to be maintained that identify the organisms being held in the facility under the permit, the person from whom they were received, the date the regulated organisms were received at the facility, and the disposition of the organisms. The records would have to be maintained for a period of 1 year following the final disposition of the organisms. During normal business hours, an APHIS inspector would have to be allowed to inspect and copy those records. This recordkeeping measure would be necessary to ensure that the facility operator and, if necessary, APHIS, could track and account for the regulated organisms moved into the facility from another State or country.

Paragraph (b) of proposed § 330.208 would provide that supplemental conditions may be included on the permit. The supplemental conditions, which would be specific to the biology of the organism, the types of activities involved with the movement, or the specific needs of a facility, would be included if APHIS determined that such additional conditions were necessary to mitigate the risk of plant pest dissemination.

Paragraph (c) of proposed § 330.208 would state that permits for the movement of organisms through the United States (i.e., permits for organisms that would transit the United States while moving from one foreign country to another foreign country) will include shipping instructions as to routing, labeling, and similar requirements. Those instructions, which would address any pest risk considerations associated with such a movement, would be included on the permit as supplemental conditions.

Paragraph (d) of proposed § 330.208 would state that the length of a permit's validity will be indicated on the permit, with 10 years being the maximum length of time for which a permit could be valid. We would consider the information supplied by the applicant—especially the information supplied regarding the intended use of the organisms—in order to determine the appropriate length of time for which a permit would be valid. Having the flexibility to assign differing lengths of validity to permits would allow us to take into account the differing needs of various permit applicants and their projects.

Appealing the Denial or Cancellation of Permits and Compliance Agreements (§ 330.209)

Proposed § 330.209 would describe the process to be followed when appealing the denial or cancellation of permits and compliance agreements. The appeal process described in proposed § 330.209 is the same as the appeal process that is provided elsewhere in APHIS' regulations for other programs. The current regulations in § 330.204(c) provide only that a person may submit a written request for reconsideration and provide additional information to support the original application; proposed § 330.209 would provide for an expanded appeals process.

Under proposed § 330.209, a person whose permit application was denied or whose permit or compliance agreement was canceled would be promptly informed, in writing, of the reasons for the denial or cancellation. The person would then be able to appeal the denial or cancellation by writing to the Administrator of APHIS. In the written appeal, the person would have the opportunity to provide all of the facts and reasons that he or she was relying upon to show that the permit application was wrongfully denied or the permit or compliance agreement was wrongfully canceled. The Administrator would respond to the appeal as promptly as circumstances allowed, either granting or denying the appeal, and would provide an explanation, in writing, of the reasons for his or her decision. If there was a conflict as to any fact that had a material bearing on the appeal, the person appealing the denial or withdrawal would be entitled to request a hearing to resolve the conflict. During that hearing, the person would have the opportunity to present information supporting the issuance or reinstatement of his or her permit or the reinstatement of his or her compliance agreement. The rules of practice for the hearing, which would be held before a hearing officer, would be adopted by the Administrator.

Packaging of Regulated Organisms (§ 330.210)

The packaging provisions that are found in §§ 330.210 and 330.210a of the current regulations would be located in § 330.210 of the revised subpart. Like the current regulations, proposed § 330.210 would require that the regulated organisms be packed in a container or combination of containers that will prevent the escape of the organism, and that the outer container be clearly marked to indicate its contents. Proposed § 330.210 would also restate the provisions of current §§ 330.210 and 330.210a regarding the use of approved packing materials and the need to obtain advance APHIS approval for the inclusion of host material, soil, etc., in a package of regulated organisms. This advance approval continues to be necessary to ensure that APHIS has an opportunity to consider any risks that might be presented by the inclusion of such material in a package of regulated organisms.

Labeling of Regulated Organisms (§ 330.211)

The labeling provisions that are found in § 330.211 of the current regulations would be located in § 330.211 of the revised subpart. The provisions of proposed § 330.211 would be the same as the existing regulations with one exception, i.e., we would no longer issue labels for the interstate movement of organisms. The purpose of placing the APHIS-issued labels on packages is to clearly indicate that APHIS has issued a permit or otherwise approved the movement of the organisms into the United States, thus preventing delays in the clearance of the organisms by APHIS or U.S. Customs Service inspectors. Because packages of organisms being shipped interstate are not subject to the same APHIS and Customs Service inspection as packages arriving in the United States from outside the country, we do not believe that it is necessary to require their labeling.

Exportation of Organisms From the United States (§ 330.212)

Proposed § 330.212 would contain information regarding the exportation of organisms from the United States. Although the current regulations in § 330.201(b) require a permit for the interstate movement of plant pests for export, we do not believe that it is necessary to include that requirement in the revised regulations. When we have issued such permits under the current regulations, the only condition of the permit has been that the organisms must be securely packaged in order to prevent their escape during movement to the port of export. We do not believe that a permit is necessary if it simply requires secure packaging; that information could be conveyed in the regulations, so we are proposing to include it in § 330.212. Specifically, § 330.212 would require that anyone shipping regulated organisms to places outside the United States must ensure that the organisms are packaged in

accordance with § 330.210, ''Packaging and labeling of regulated organisms.''

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would revise the regulations regarding the movement of plant pests by adding risk-based criteria for determining the plant pest status of organisms, establishing a notification process that could be used as an alternative to the current permitting system, providing for the environmental release of organisms for the biological control of weeds, and updating the text of the subpart. These proposed changes are intended to clarify the factors that would be considered when assessing the plant pest risks associated with certain organisms, facilitate the importation and interstate movement of regulated organisms, and address gaps in the current regulations.

This proposed rule would be beneficial from an efficiency standpoint, primarily because it would allow individuals and entities to expedite the movement of regulated organisms. Under the proposed notification process, persons would be allowed—once they entered into a compliance agreement—to move regulated organisms without prior approval from APHIS. Currently, those persons can move regulated organisms of a different species only after applying for and obtaining a permit from APHIS, a process that generally takes about 30 days. An expedited process for moving regulated organisms could prove especially beneficial to those in the scientific and research communities, whose work could be aided or accelerated by the elimination of the time spent waiting for the issuance of a permit. Furthermore, as discussed below, the switch from the current permitting system to the proposed notification process could be accomplished with little or no additional burden on any of the affected parties, i.e., the individuals and entities who move regulated organisms, APHIS, and State agricultural agencies.

For the average affected entity, i.e., a research facility that applies for 20 permits and receives 100 shipments per year, the proposed notification process would pose about the same burden as the current permitting process. We estimate that it would take the average entity about 17 hours per year to perform the administrative tasks needed to comply with the proposed notification process, assuming one compliance agreement covers all 100 shipments. The 17 hours is comprised of the time spent preparing the compliance agreement itself, as well as the time spent notifying APHIS of each shipment and the time spent preparing labels for each shipment. By comparison, we estimate that it would take the same entity about 18 hours per year to comply with the current permitting process. The 18 hours is comprised of the time spent preparing the 20 permit applications (PPQ Form 526), as well as the time spent preparing an annual summary report of shipments received. (Under the current permitting system, APHIS, not the regulated entity, prepares the shipping labels.) The inspection and documentation requirements would be the same under the current process and the proposed notification process. Persons who move regulated organisms are not charged a fee for obtaining a permit, and they would not be charged a fee for entering into a compliance agreement.

Currently, there are about 50 facilities in the United States that import regulated organisms or move regulated organisms interstate. Of that total, we estimate that about 35 facilities, or 70 percent, would choose to switch to the proposed notification process. The number of organisms moved by the remaining 15 facilities does not appear to be sufficiently high to warrant their interest in the proposed notification system. We estimate about 35 compliance agreements, 3,500 shipment notifications, and 700 fewer permit applications per year if the proposed rule is adopted. Permit applications would decline from 1,000 per year to 300 per year.

We do not believe that an entity's decision to switch from the current permitting system to the proposed notification process would have a significant impact on APHIS and the State agricultural agencies. For the average entity with one compliance agreement covering 100 shipments, we estimate that it would take APHIS and the affected State agency about 18 hours and 4 hours, respectively, per year to perform the administrative tasks needed to complete the compliance agreement and to process the subsequent notifications of individual shipments. By comparison, we estimate that it would take APHIS and the State agency about 18 hours and 3 hours, respectively, per year to perform their tasks under the current permitting process.

This proposed rule would add provisions for the issuance of permits for the release into the environment of biological control agents of weeds. We do not expect that the addition of this permit category would have much of an impact, as the interagency Technical Advisory Group has reviewed environmental release petitions for several years. The proposed provisions would simply serve to standardize the process in that regard.

Also, this proposed rule would revise the regulations by adding risk-based criteria for determining the plant pest status of organisms. This revision should have no cost or workload impact, since it merely serves to formalize what is already being done in practice.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their proposed regulatory changes on small entities (e.g., businesses, organizations, and governmental jurisdictions). The entities most likely to be affected by this proposed rule are research facilities that import and move regulated organisms interstate. These entities would likely benefit from the proposed notification system, as it would allow them to expedite the movement of regulated organisms. By using the proposed notification process, affected facilities would be able to move regulated organisms generally about 30 days sooner than they would under the current permitting process. Furthermore, the switch from the current permitting system to the proposed notification process could be accomplished with no additional burden on the affected facilities.

However, this proposed rule is not expected to affect a substantial number of entities, large or small. We estimate that only about 35 research facilities would choose to switch to the proposed notification process. The economic impact of the proposal is unknown, primarily because the impact of the expedited movement process on affected facilities is difficult to quantify in dollar terms.

The decision by research facilities to use the proposed notification process should not have a significant impact on APHIS and the State agencies, either in terms of increasing their current costs or adding to their current workload. APHIS and the State agencies could not be considered ''small entities.''

Under the U.S. Small Business Administration's (SBA) standards, firms primarily engaged in commercial physical and biological research (SIC 8731) are considered to be small if they have 500 or fewer employees. Even

though employment data is not available for each of the individuals and other entities that may be affected by this proposed rule, it is reasonable to assume that most are small by SBA standards. SBA data for 1993 shows that of the 3,783 U.S. firms in SIC 8731, 92 percent had fewer than 100 employees.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

We have determined that an environmental assessment is not necessary for these proposed regulations. The proposed regulations are procedural in nature and would not irrevocably commit the Agency to any decision concerning the movement or environmental release of any organisms. When considering an application for a permit to release an organism into the environment under the proposed regulations, an environmental assessment or environmental impact statement would be prepared as part of APHIS' decisionmaking process.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95–095–2. Please send a copy of your comments to: (1) Docket No. 95–095–2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under our current regulations, any person who wishes to import, move interstate, or release into the environment an organism subject to APHIS' jurisdiction under the Plant Protection Act must apply for, and be issued, a permit authorizing such a movement or release. In this document, we are proposing to amend our regulations to allow those persons the alternative of entering into compliance agreements with APHIS and the State into which regulated organisms would be moved in order to be eligible to use a notification procedure in lieu of a permit to more easily effect the movement of regulated organisms. We are also proposing to provide specific provisions for the issuance of permits for the release into the environment of agents for the biological control of weeds.

These proposed amendments would require the use of several information collection procedures, including permit applications, compliance agreements, notification, and environmental release petitions. We are asking OMB to approve our use of these information collections in connection with our efforts to ensure that the risks associated with the importation, interstate movement, and release into the environment of regulated organisms could be adequately reviewed and addressed.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.33769 hours per response.

Respondents: Persons wishing to import regulated organisms into the United States, move regulated organisms interstate, or release agents for the biological control of weeds into the environment.

Estimated annual number of respondents: 2,500.

Estimated annual number of responses per respondent: 2.478.

Estimated annual number of responses: 6,195.

Estimated total annual burden on respondents: 2,092 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained by calling Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 330 as follows:

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for part 330 would continue to read as follows:

Authority: 7 U.S.C. 450, 2260, 7711, 7712, 7714, 7718, 7731, 7734, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

2. The title of part 330 would be amended by removing the words ''PLANT PESTS;'' and adding the word ''ORGANISMS;'' in their place.

3. In Subpart—General Provisions, § 330.100 would be revised to read as follows:

§ 330.100 Definitions.

The following definitions apply for the purposes of this part:

Administrative instructions. Published documents relating to the enforcement of the regulations in this part, issued under authority of such regulations by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any employee of the U.S. Department of Agriculture delegated to act in his or her stead.

APHIS. The Animal and Plant Health Inspection Service, U.S. Department of Agriculture.

Article. Any material or tangible object that could harbor plant pests or noxious weeds.

Biological control organism. Any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

Continental United States. The contiguous 48 States, Alaska, and the District of Columbia.

Customs. The U.S. Customs Service of the U.S. Treasury Department, or, with reference to Guam, the Customs office of the Government of Guam.

Department. The U.S. Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Plant Protection and Quarantine Programs or any employee of the Plant Protection and Quarantine Programs delegated to act in his or her stead.

Earth. The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

Enter (entry). To move into, or the act of movement into, the commerce of the United States.

Export (exportation). To move from, or the act of movement from, the United States to any place outside the United States.

Garbage. That material designated as ''garbage'' in § 330.400(b).

Import (importation). To move into, or the act of movement into, the territorial limits of the United States.

Inspector. A properly identified employee of the U.S. Department of Agriculture or other person authorized by the Department to enforce the provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Interstate. From one State into or through any other State; or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Means of conveyance. Any personal property used for or intended for use for the movement of any other personal property.

Move (moved and movement). To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of those activities.

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.

Owner. The owner, or his agent (including a carrier), having responsible custody of a plant pest, means of conveyance, product or article subject to the regulations in this part.

Permit. A written or oral authorization, including by electronic methods, by the Administrator to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, nonhuman animal, parasitic plant, bacterium, fungus, virus or viroid, infectious agent or other pathogen, or any article similar to or allied with any of those articles. (For the purposes of the regulations in §§ 330.200 through 330.212 of this part, ''plant pest'' does not include any organism that has been genetically engineered as defined in § 340.1 of this chapter.)

Plant product. Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant; or any manufactured or processed plant or plant part.

Plant Protection Act. Title IV of Public Law 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772, which was enacted June 20, 2000.

Plant Protection and Quarantine Programs. The Plant Protection and Quarantine Programs of the Animal and Plant Inspection Health Service.

Regulated garbage. That material designated as ''regulated garbage'' in § 330.400(c) and § 330.400(d).

Shelf-stable. The condition achieved in a product, by application of heat, alone or in combination with other ingredients and/or other treatments, of being rendered free of microorganisms capable of growing in the product at nonrefrigerated conditions (over 50° F. or 10° C.).

Soil. The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Through the United States. From and to places outside the United States.

United States. All of the States.

4. Subpart—Movement of Plant Pests, §§ 330.200 through 330.212, including the title of the subpart, would be revised to read as follows:

Subpart Movement and Release of Organisms Under the Plant Protection Act

Sec.
330.200 What organisms are regulated under this subpart?
330.201 Requirements for the importation of regulated organisms.
330.202 Requirements for the interstate movement of regulated organisms.
330.203 Requirements for the release into the environment of regulated organisms.
330.204 Compliance agreements and notification for importation and interstate movement.
330.205 Applying for a permit.
330.206 Additional application data for permits for the environmental release of biological control organisms for the control of noxious weeds.
330.207 APHIS review of permit applications; denial or cancellation of permits.
330.208 Permit conditions.
330.209 Appealing the denial or cancellation of permits and compliance agreements.
330.210 Packaging of regulated organisms.
330.211 Labeling of regulated organisms.
330.212 Exportation of organisms from the United States.

§ 330.200 What organisms are regulated under this subpart?

(a) *Plant pests.* The importation, interstate movement, and release into the environment of any plant pest will be subject to the restrictions of §§ 330.201, 330.202, and 330.203(a). The following factors will be considered when assessing the plant pest status of an organism:

(1) *Direct effects.* An organism directly injures or causes disease or damage in plants, plant parts, or plant products when it:

(i) Reduces the yields, vigor, or viability of living plants by feeding on, infecting, parasitizing, or contaminating plants or plant parts or by vectoring agents of plant diseases; or

(ii) Reduces the quality or marketability of plant products such as stored grain, stored fruit, or lumber by

feeding on, infecting, or contaminating the plant products.

(2) *Indirect effects.* An organism indirectly injures or causes disease or damage in plants, plant parts, or plant products when the organism causes losses in yields of crops or forage plants or reduces the viability or vigor of ornamental or native plants by adversely affecting organisms that are beneficial to plants. Of primary concern are organisms that are:

(i) Pathogens, predators, or parasites (except autoparasitoids) of important natural enemies of plant pests or weeds; or

(ii) Pathogens, predators, or parasites of important or commercially available pollinators such as honeybees, bumble bees, and alkali bees.

(b) *Biological control organisms for the control of noxious weeds.* The importation, interstate movement, and release into the environment of any biological control organism for the control of noxious weeds will be subject to the restrictions of §§ 330.201, 330.203(b), and 330.204.

(c) *Imported biological control organisms for the control of plant pests; other imported organisms.* (1) The importation of any organism, including any biological control organism for the control of plant pests, that meets any of the following criteria will be subject to the restrictions of § 330.201:

(i) It is a field-collected organism that, in natural conditions, is associated with plant pests and there is reason to believe that the plant pests could be shipped with the field-collected organisms; or

(ii) It is a laboratory-reared organism that is provided with plant pests as host material during rearing or shipment; or

(iii) The organism will be shipped with plant material or soil; or

(iv) The organism has not been positively identified.

(2) If an organism that meets any of the criteria of paragraph (c)(1) of this section is imported in accordance with this subpart, the organism may be moved interstate without any further restriction under this subpart if it is positively identified, determined not to be a plant pest, and is separated from any associated plant pests, plant material, soil, and other media.

§ 330.201 Requirements for the importation of regulated organisms.

You may import an organism regulated under this subpart into the United States if APHIS determines that the importation can be accomplished in a manner that will prevent the dissemination of plant pests that are new to or not widely distributed in the United States. An importation may be accomplished through notification (see paragraph (a) of this section) or under permit (see paragraph (b) of this section). All imported regulated organisms must be labeled in accordance with § 330.211. Nonviable biological specimens of plant pests, in preservative or dried, may be imported without further restriction under this subpart, but will be subject to inspection upon arrival in the United States to confirm the nature of the material and its freedom from risk of plant pest dissemination.

(a) *Through notification.* If you have entered into a compliance agreement with APHIS and the State where the regulated organisms will be received, you may import regulated organisms without a permit, provided that you notify APHIS upon receipt of the regulated organisms. The provisions of this subpart regarding compliance agreements and the requirements for notification are found in § 330.204.

(b) *Under permit.* If you wish to import regulated organisms without entering into a compliance agreement with APHIS and your State, you may apply for a permit to import a regulated organism. APHIS uses the information you provide in a permit application to identify the plant pest risks associated with the regulated organism and its importation. A permit issued for the importation of a regulated organisms may include requirements that APHIS determines are necessary to mitigate the identified risks. Instructions for applying for a permit are found in § 330.205.

§ 330.202 Requirements for the interstate movement of regulated organisms.

You may move an organism regulated under this subpart from one State into or through another State if APHIS determines that the interstate movement can be accomplished in a manner that will prevent the dissemination of plant pests that are new to or not widely distributed in the United States. An interstate movement may be accomplished through notification or under permit or, under certain limited circumstances, without a permit:

(a) *Through notification.* If you have entered into a compliance agreement with APHIS and the State where the regulated organisms will be received, you may move regulated organisms interstate without a permit, provided that you notify APHIS upon receipt of the regulated organisms. The provisions of this subpart regarding compliance agreements and the requirements for notification are found in § 330.204.

(b) *Under permit.* If you wish to move regulated organisms interstate without entering into a compliance agreement with APHIS and your State, you may apply for a permit for the interstate movement of a regulated organism. APHIS uses the information you provide in a permit application to identify the plant pest risks associated with the regulated organism and its interstate movement. A permit issued for the interstate movement of a regulated organism may include requirements that APHIS determines are necessary to mitigate the identified risks. Instructions for applying for a permit are found in § 330.205.

(c) *No permit necessary.* (1) Certain indigenous plant pest species are distributed throughout the continental United States and are known to commonly accompany plants or plant products moved in interstate commerce. Given the wide distribution of these organisms, we have determined that their interstate movement within the continental United States is not likely to result in additional plant pest risks. Therefore, the following organisms may be moved within the continental United States without a permit if they are moved from populations located within the continental United States:

Bacteria

Agrobacterium radiobacter
Agrobacterium tumefaciens
Bacillus subtilis
Bradyrhizobium spp.
Erwinia amylovora
Erwinia carotovora subsp. *atroseptica*
Erwinia carotovora subsp. *betavasculorum*
Erwinia carotovora subsp. *carotovora*
Erwinia chrysanthemi
Pseudomonas syringae pv. *glycinea*
Pseudomonas syringae pv. *morsprunorum*
Pseudomonas syringae pv. *phaseolicola*
Pseudomonas syringae pv. *syringae*
Pseudomonas syringae pv. *tomato*
Rhizobium spp.
Xanthomonas campestris pv. *glycines*
Xanthomonas campestris pv. *phaseoli*
Xanthomonas campestris pv. *vesicatoria*

Insects

Acanthoscelides obtectus
Acheta domesticus
Actias luna
Antheraea polyphemus
Blatella germanica
Blatella vaga
Bombyx mori
Brachystola magna
Callosobruchus maculatus
Citheronia regalis
Eacles imperialis
Ephestia kuhniella
Gromphadorhina portentosa

Hyalophora cecropia
Hyalophora euryalus
Hyles lineata
Manduca sexta
Manduca quinquemaculata
Microcentrum retinerve
Microcentrum rhombifolium
Periplaneta americana
Sitophilus granarius
Sitophilus oryzae
Sitotroga cerealella
Tenebrio molitor
Tenebrio obscurus
Trialeurodes vaporariorum
Trilobium castaneum
Trilobium confusum
Vanessa atalanta
Vanessa cardui
Vanessa virginiensis
Zoophobas morio

Viruses

Tobacco Mosaic Virus

(2) You may petition APHIS to add species to, or remove species from, the list of organisms that may be moved within the continental United States without a permit. The petition must include detailed information as to the organism's distribution and its biological, economic, and environmental significance and must be submitted to Permits and Risk Assessment, PPQ, Vanessa virginiensis APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236.

§ 330.203 Requirements for the release into the environment of regulated organisms.

(a) Environmental release of plant pests. The release into the environment of plant pests is prohibited except under the following circumstances:

(1) A plant pest that is listed in § 330.202(c)(1) may be released into the environment within the continental United States without a permit if the organism was collected from a population located within the continental United States.

(2) A plant pest that is not listed in § 330.202(c)(1) may be released into the environment in the United States only for research or testing purposes and only if the release is authorized by an APHIS permit and is conducted in accordance with any safeguards assigned as a condition of the permit. Instructions for applying for a permit are found in § 330.205.

(b) *Environmental release of organisms for the biological control of weeds.* (1) A biological control organism for the control of noxious weeds may be released into the environment in the United States only if the release is authorized by an APHIS permit. APHIS will issue a permit based on its determination that the host range of the biological control organism is limited to the target weed or an acceptably narrow range of closely related species, and upon our determination that the benefits that could be expected to accrue from the release were not outweighed by any significant negative environmental or ecological consequences resulting from the release.

(i) *Unprecedented releases of nonindigenous organisms for the biological control of weeds.* If the organism you wish to release into the environment for the biological control of a weed is a nonindigenous organism that has not previously been released under an APHIS permit, you must address all the data elements contained in §§ 330.205 and 330.206.

(ii) *Releases of organisms that are native to the United States or that are established introductions.* APHIS' National Environmental Policy Act Implementing Procedures in part 372 of this chapter provide for a categorical exclusion from the requirement for the preparation of an environmental assessment for the permitting of the release into a State's environment of pure cultures of organisms that are either native or established introductions. Therefore, if you are applying for a permit to release an agent for the biological control of weeds and that agent is native to, or established in, the State into which it will be released, it will not be necessary for you to address the data elements contained in § 330.206(h), ''Potential environmental impacts,'' and the review required under paragraph (b)(2)(iv) of this section will be waived. In addition, the native or established status of the organism may preclude the need for you to address other specific elements contained in § 330.206 and the reviews required under paragraph (b)(2)(i) through (b)(2)(iii) of this section may be abbreviated or waived. Therefore, we recommend that you consult with APHIS prior to preparing an application for a permit for the environmental release of biological control agents of weeds that are either native or established introductions.

(2) *Levels of review.* A petition for a permit to release an agent for the biological control of weeds will be reviewed at four levels before a permit may be issued:

(i) APHIS will request that the interagency Technical Advisory Group for Biological Control Agents of Weeds (TAG) review the proposed release. TAG review will consider the safety of the agent, the potential risks that might be involved in its release, and the long-term ecological consequences of a successful release.

(ii) APHIS will review the plant pest risk issues raised by the proposed release.

(iii) APHIS will consult with the U.S. Fish and Wildlife Service in order to consider the potential effects of the agent on threatened and endangered species.

(iv) APHIS will prepare an environmental assessment of the proposed release, if required.

(3) *Early consultation.* With regard to the reviews described in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section, we encourage you to contact the U.S. Fish and Wildlife Service as early a stage as possible—i.e., upon identification of the target weed—in order to identify possible Endangered Species Act issues that might need to be considered with regard to any program for the control of the target weed. Similarly, we encourage you to contact APHIS for early guidance on complying with the National Environmental Policy Act. Engaging in such early consultation prior to applying for a permit will help you and the relevant agencies become familiar with the environmental and endangered species issues surrounding a planned weed control program and may help to avoid the delays that could occur should unexpected issues arise during the review of your permit application.

§ 330.204 Compliance agreements and notification for importation and interstate movement.

(a) *Compliance agreements.* (1) If you routinely receive regulated organisms under permit, you may wish to enter into a compliance agreement in order to facilitate the importation or interstate movement of those organisms. Entering into a compliance agreement, which will be signed by you, APHIS, and the State into which the regulated organisms are moved, will allow the organisms to be moved under the notification process described in paragraph (b) of this section rather than under permit.

(2) *Arranging a compliance agreement.* You may request a compliance agreement by contacting a local office of APHIS Plant Protection and Quarantine (which are listed in local telephone directories) or by contacting Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236. The terms of the compliance agreement, which will be prepared with the participation of all parties involved,

will be based on the plant pest risks presented by the specific types of regulated organisms you wish to receive in your facility and the intended use of those organisms, and will address safeguarding issues such as the degree of physical and operational security needed to prevent the escape or dissemination of the regulated organisms. The compliance agreement will also include provisions for the notification of APHIS when you receive a shipment of regulated organisms, the disposition of host material and other media included in the shipment, the handling of regulated organisms while in your facility, and recordkeeping.

(3) *Cancellation of a compliance agreement.* You may terminate your compliance agreement at any time by informing APHIS, in writing, of your desire to do so. APHIS may cancel your compliance agreement if an inspector finds that you have failed to comply with the terms of the compliance agreement or the regulations in this subpart. You may be notified of the cancellation either orally or in writing. An oral cancellation will be confirmed in writing as promptly as circumstances allow. The written cancellation or confirmation will document the reasons for the cancellation.

(b) *Notification for the importation and interstate movement of regulated organisms.*

(1) *Eligibility.* You may use the notification process described in this paragraph for the importation and interstate movement of regulated organisms only if you are operating under a valid compliance agreement with APHIS and your State as provided for under paragraph (a) of this section.

(2) *Notification process.* (i) You must notify APHIS within 3 business days after your receipt of a regulated organism. You must provide the notification to APHIS through one of the following means:

(A) By mail to Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or

(B) By facsimile at (301) 734–8700; or

(C) By electronic mail to Notification@aphis.usda.gov.

(ii) In your notification, your must provide the following information:

(A) Your name, organization, and compliance agreement number.

(B) The date you received the regulated organisms.

(C) The scientific name(s) of the regulated organisms.

(D) The life stage(s) of the regulated organisms.

(E) Total number of regulated organisms received.

(F) Origin of the regulated organisms.

(iii) APHIS will acknowledge your notification within 3 business days of its receipt.

§ 330.205 Applying for a permit.

To apply for a permit, you must be a U.S. resident and you must supply, either on a completed PPQ Form 526 or in some other written form, the following information: [1]

(a) *Applicant information.* Your name, title, organization, address, telephone number, facsimile number, and electronic mail address (provide all that are applicable).

(b) *Application type.* New permit, permit renewal, or amendment to existing permit (if a renewal or amendment, provide the current permit number).

(c) *Type of movement.* Importation, interstate movement, or environmental release. (See § 330.206 for additional information that is required if your application is for a permit for the environmental release of a biological control organism for the control of noxious weeds.)

(d) *Scientific name of organism.* Genus, species, and author (if known).

(e) *Type of organism.* Invertebrate animal, parasitic plant, plant pathogen, entomopathogen, other (specify).

(f) *Taxonomic classification.* Fungi—class. Insects, nematodes, and plants—family.

Mites—order and family. Mollusks—order. Viruses—general group (e.g., geminivirus, baculovirus, potyvirus, etc.). Bacteria—not applicable.

(g) *Life stage(s).* Invertebrate animals—eggs, juvenile, larvae, nymphs, pupae, adults. Fungi—spores, mycelia, fruiting bodies. Plants—seeds, whole plants, plant parts (specify parts, e.g., leaves, stems, fruits, etc.). Bacteria and viruses—not applicable.

(h) Number of shipments.

(i) Number of specimens or cultures per shipment.

(j) Is the organism established in the United States?

(k) Is the organism established in the destination State?

(l) Major hosts(s) of the organism.

(m) Media or species of host material accompanying the organism.

(n) *Source of organism (include any that apply, and list country or State of origin).* Supplier (provide supplier's name and address and catalog number of organism), wild collected, reared under controlled conditions, or culture or seed collection.

(o) *Method of shipment.* Air mail, air freight, express delivery (list company name), baggage, auto.

(p) Port(s) of entry.

(q) Approximate date(s) of initial import or movement.

(r) *Destination.* Provide the address of the location where the organism will be received and maintained.

(s) If you are applying for a permit for release into the environment, provide the name, address, telephone number, and affiliation of the species determiner.

(t) Proposed date and method of environmental release or final disposal.

(u) *Intended use (include any that apply).* Release into the environment, inoculation or propagation on plants, educational display, laboratory use, culture collection, greenhouse or growth chamber use, other (describe).

(v) Has your facility been inspected by APHIS or by your State? If yes, list date(s) of approval. Is your facility approved for the species of organism for which you are seeking a permit?

(w) Provide your signature and the date of your signature under the following certification: ''I certify that all statements and entries I have made on this document are true and accurate to the best of my knowledge and belief. I understand that any intentional false statement or misrepresentation made on this document is a violation of law and punishable by a fine of not more than $10,000, or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001).''

§ 330.206 Additional application data for permits for the environmental release of biological control organisms for the control of noxious weeds.

As stated in § 330.203(b), when applying for a permit for the release into the environment of a biological control organism (agent) for the control of a noxious weed, you must submit a petition that will be reviewed by the interagency Technical Advisory Group for Biological Control Agents of Weeds (TAG). The information requested in this section is designed to gather information concerning the safety of the agent being considered, the potential risks that might be involved in its release, and the long-term ecological consequences of a successful release. It is recognized that for some situations, you will provide more information, while for others not all points will be addressed. (See § 330.203(b)(3) for guidance regarding early consultation.)

(a) *Cover page.* Prepare a cover page for the petition with the following information. This information provides TAG with a contact point for questions and with references for tracking.

[1] Mail your completed application to Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236. A PPQ Form 526 may be obtained by writing to the same address, or by calling toll-free (877) 770–5990, or by faxing your request to (301) 734–8700.

(1) Date of petition and mailing.

(2) Name of petitioner with affiliation and a contact point within North America including an address, telephone number, fax, and e-mail address.

(3) Nature of the petition: Proposed field release of a [identity of biological control agent] of a [identity of target weed(s)]. Include species, genus, family, order, author, and geographical origin.

(4) Where have the studies been conducted?

(5) If at least part of the study has been conducted in a U.S. quarantine facility, then list the location of the quarantine facility. Also list the quarantine facilities the candidate agents intend to pass through for initial releases. Note that different quarantines are required for insects and pathogens.

(6) Identify the State(s) for the initial release.

(7) Who will conduct the release and monitoring in the United States?

(b) *Petition introduction.* (1) *Nature of the problem.* Give a brief summary (one to two paragraphs) of the problem caused by the weed. Topics to consider including in the summary are as follows:

(i) History of introduction and/or spread of the target weed.

(ii) The weed's present distribution in North America.

(iii) Sectors affected and magnitude of program (e.g., agricultural, natural, rangeland).

(iv) Pending issues about the taxonomy of the candidate agents or the target weeds, or about the agents, or about the location of the release.

(2) *Proposed action.* Provide a statement of proposed action. For example, to introduce a [biological control agent] from [a foreign area] for field release in [a specific area] to control [target weed] in [State(s)].

(3) *Target weed information.* (i) *Taxonomy.* (A) Full classification, synonymy, and common name including species, genus, family, and order.

(B) Who identified the target weed including names, organizations, and locations.

(C) Problems in identification or taxonomy of the group.

(D) Origin and location of herbariums containing voucher specimens, and the date of depository. (The voucher specimens referred to here are the ones used as representative of the population that occurs in the area where the researcher has conducted the studies.)

(ii) *Description.* Provide a general description of the target weed, complete enough that a person encountering it in the field could identify it.

(iii) *Distribution of the target weed.* Describe the distribution of the target weed using maps, as appropriate. Include the following information:

(A) Native range (map).

(B) Areas of introduction throughout the world (map), pattern of movement, and apparent limits.

(C) North American distribution (map).

(D) Range areas of the present distribution and the potential spread in North America (a map is useful).

(E) Genetic variability.

(F) Habitats or ecosystems where this weed is found in North America.

(iv) *Taxonomically related plants.* Identify economically and environmentally important plants that are closely related to the target weed. These are crops, ornamentals, and native plants including threatened and endangered species and those with cultural or aesthetic value. If possible, identify how closely these plants relate to the target weed.

(v) *Distribution of taxonomically related plants.* Describe the distribution and habitats in North America of the closely related plants identified in paragraph (b)(3)(iv) of this section.

(vi) *Life history.* Explain the life history and general biology of the target weed. Discuss the factors that are believed to contribute to the plant's weediness.

(vii) *Impacts.* Indicate any and all impacts. Use the following list as a guide; not all areas listed below are applicable to all petitions:

(A) Beneficial uses (honey bees, forage, ground cover, fruit, etc.).

(B) Social and recreational uses (value as ornamentals).

(C) Impact on threatened and endangered species.

(D) Economic losses, including direct control costs.

(E) Health (poisonous, allergenic, etc.).

(F) Regulatory (noxious weed, restricts trade, etc.).

(G) Effects on native plant and animal populations.

(H) Impact of weed control on nontarget plants.

(I) Effects on ecosystem functions and ecological relationships.

(J) Other impacts (e.g., aesthetic).

(viii) *Alternative management options.* Describe alternative options for managing the target weed.

(A) Historical options (what has been done before and effectiveness).

(B) Current options (biological, chemical, cultural, etc., and effectiveness).

(C) Potential options (new herbicides or biological control agents used or released in other countries).

(c) *Biological control agent information.* (1) *Taxonomy.* (i) Full classification (species, genus, family, and order), synonymy, and common name. (For pathogens, include strain, race, type.)

(ii) Reason for choosing the agent and a general description of the agent including helpful morphology and general characteristics that could be used to identify it in the field.

(iii) The taxonomist who identified the agent, including names and organizations with locations.

(iv) For pathogens, description of the methods used to identify life stages.

(v) Problems in identification or taxonomy of the genus.

(vi) Origin and locations of voucher specimens for insects (or type cultures for pathogens) including date of depository, and how they are preserved.

(2) *Geographic range.* (i) Origin (maps and literature citations describing the native range of the agent).

(ii) If the agent is being used in other countries, give countries of introduction and present range and effects.

(iii) Expected attainable range in North America (based on climatic, environmental, and vegetative parameters).

(3) *Known host range (specificity).* (i) Literature records indicating what other plants have been attacked.

(ii) Field collections and observations, including maps and data.

(iii) Literature on the host range (specificity) of organisms closely related to the agent, no matter where the organism occurs.

(4) *Life history.* (i) Biology, i.e., diapause, life cycle, dispersal capability, etc. from literature, field observations, and laboratory studies.

(ii) Known mortality factors.

(iii) Extent of damage or control of the target weed.

(iv) Extent of damage or control of nontarget plants.

(5) *Population of the agent studied.* (i) Geographical source, including maps and site description, if available. Be as accurate as possible so that the same population could be located, if needed.

(ii) How pest-free populations of the agents were obtained and maintained in quarantine, if applicable.

(iii) Site of field and lab studies (the location if in a foreign country, if available), or the location of U.S. quarantine facility used.

(6) *Experimental methodology and analysis.* A test plant list shows the species of host plants on which the agent was tested to determine its potential feeding range. List the test plants and provide the rationale for selecting them. Include considerations

given to threatened and endangered plant species and economically important plants. A suggested format for test plant lists may be obtained by writing to Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236 or by calling (301) 734–8896.

(i) *Design of tests:*

(A) Part or stage of plants tested.

(B) Source of population of plant (and weed) used in test.

(C) Number of replicates.

(D) Number of individual agents, target weeds, and test plants in each replicate. May be synonymous with number of replicates depending on test design (i.e., in no-choice tests, the number of individual plants of a species is the number of replicates).

(E) Describe how results were measured, recorded, and evaluated.

(F) If the weed has been targeted previously, compare this design with previous test designs including plant species tested.

(ii) *Positive controls.* Were adequate positive controls used in all tests? For example, the target weed should be challenged with the agent during each testing procedure (except in no-choice testing for insects).

(iii) *Reason for decisions.* Explain why you selected the test procedures and how they are appropriate for the biology of the agent being tested.

(d) *Summary of results.* Provide a summary about the safety of this organism as a biological control agent and any risk associated with its release. Include literature, results of host specificity testing, and field observations. Present results in a manner that supports your conclusion (tables, graphs, narratives).

(e) *Protocol for releasing the agent.* (1) Method to ensure pure cultures and correct identification of the agent to be released, including:

(i) For insects: species, genus, family, and order (for pathogens: strain, race, type);

(ii) Names and organizations with locations of identifier;

(iii) Description of identification methods;

(iv) Problems in identification; and

(v) Date and place of depository containing voucher specimens.

(2) General release protocol to ensure the absence of natural enemies and cryptic or sibling species.

(3) Specific location of rearing or culturing facility.

(4) Intended sites for initial release, timing of release, release methods to be used. For insects, number to be released, if known. For pathogens, method of preparing inoculum and inoculum concentration.

(f) *Post-release monitoring.* Provide an explanation of the post-release monitoring plan. Include the following information:

(1) When the anticipated initial release of the agents will occur.

(2) Groups to best perform monitoring.

(3) Monitoring techniques to determine if the agents become established.

(4) Monitoring techniques to determine the spread and impact on target and nontarget plants.

(g) *Benefits and risks.* Offer your perspective about weighing the probable benefits of releasing the agent against the unknowns and possible negative impacts.

(h) *Potential environmental impacts.* Discuss the potential ecological, economic, social, biological, health regulatory, and environmental impact. Present as clear a picture as possible of the long-term ecological consequences that could possibly result from the successful establishment of this agent in the North American environment. This information should go beyond the risk associated with attack on a few closely related species of plants, as indicated in the host testing results. This discussion should look at the overall potential impact of populations of this insect building up on the weed in a large variety of different habitats. This information will be critical in preparing an environmental assessment, which will be the next step in the approval process if the TAG recommends that this agent should be released in North America. (**Note:** The elements contained in this paragraph do not need to be addressed for the proposed release into a State's environment of pure cultures of organisms that are either native or established introductions. See § 330.203(b)(1)(ii).) Impacts to be considered include:

(1) *Human impacts.* Include positive and negative impacts to humans. For example, health, recreational, aesthetics, nuisance, poisonous, allergens. Discuss ways to overcome negative effects.

(2) *Potential economic impacts.* Provide the potential gains and losses regarding the ecological, social, aesthetic, and biological impacts.

(3) *Plant impacts.* Describe the direct and indirect impacts (positive and negative) of the organism on the local plant populations. Cover the intended effects on the target weed and on nontargets, including potential impacts on agricultural, horticultural, and threatened and endangered plants.

(4) *Non-plant impacts.* Describe the indirect effects (positive and negative) on organisms (other than plants) that depend directly or indirectly on the target weed or affected nontarget plants based on test results.

(5) *Proposed methods for mitigation.* Identify proposed methods (management and other alternatives) to mitigate potentially undesired effects.

(6) *Abiotic and edaphic effects.* Identify the potential abiotic and edaphic effect, i.e., water, soil, air.

(7) *Outcome of no action.* Provide a statement of the outcome if no release was made.

(i) *Petitioner's conclusion.* Offer your conclusions on the potential risks and benefits regarding the consequences of the release of this agent and its successful establishment in the North American environment throughout the range of its target weed and susceptible nontarget hosts. Summarize all the results of your study of this agent, its host testing, and your evaluation of the potential environmental impact. Include a quantitative risk assessment, if available.

§ 330.207 APHIS review of permit applications; denial or cancellation of permits.

(a) *Inspection of premises.* APHIS may inspect the facility where you are proposing to receive and handle regulated organisms to determine whether the facility will be adequate to prevent plant pest dissemination. When inspecting your facility, we will consider the following areas to the degree to which they are appropriate to the plant pest risks presented by the particular regulated organism for which you are seeking a permit:[2]

(1) Does the facility have entryways, windows, and other structures, including water, air, and waste handling systems, to contain the regulated organisms and prevent the entry of other organisms and unauthorized visitors?

(2) Does the facility have operational and procedural safeguards in place to prevent the escape of the regulated organisms and prevent the entry of other organisms and unauthorized visitors?

(3) Does the facility have a means of inactivating or sterilizing regulated organisms and any host material, containers, or other material?

(b) *Denial of permits.* APHIS will deny an application for a permit to move or release an organism regulated under this subpart when, in its opinion, such movement would involve a danger

[2] Guidelines describing suggested physical and operational characteristics for facilities may be obtained by writing to Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, or by calling (301) 734–8896, or by faxing your request to (301) 734–8700.

of dissemination of a plant pest. Danger of plant pest dissemination may be deemed to exist when:

(1) Existing safeguards against plant pest dissemination are inadequate and no adequate safeguards can be arranged; or

(2) The destructive potential of the regulated organism to plants, plant parts, or plant products, should it escape despite the proposed safeguards, outweighs the probable benefits that could be derived from the proposed movement and use of the regulated organism; or

(3) When you, as a previous permittee, failed to maintain the safeguards or otherwise observe the conditions prescribed in a previous permit and have failed to demonstrate your ability or intent to observe them in the future; or

(4) The proposed movement of the regulated organism is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS.

(c) *Cancellation of permits.* APHIS may cancel any outstanding permit whenever:

(1) We receive information subsequent to the issuance of the permit of circumstances that would constitute cause for the denial of an application for permit under paragraph (b) of this section; or

(2) You, as the permittee, fail to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations.

§ 330.208 Permit conditions.

(a) If your permit application is approved, APHIS will issue a permit that will include any requirements that are, in the opinion of APHIS, necessary to prevent the dissemination of plant pests into the United States or interstate. The permit may specify a particular port of entry through which the regulated organism must enter the United States. The following standard conditions will apply to all permits for importation and interstate movement:

(1) After receiving the regulated organisms and removing them from their shipping container, you must immediately sterilize or destroy the shipping container and all packing material, media, substrate, and soil;

(2) You must keep the regulated organisms within the laboratory or other designated holding area at your facility and may not remove them without prior approval from APHIS;

(3) You must allow authorized APHIS and State regulatory officials to inspect, without prior notice and during reasonable hours, the conditions under which the regulated organisms are kept;

(4) You must destroy all regulated organisms kept under the permit at the completion of the intended use, and not later than the expiration date of the permit, unless an extension is granted by APHIS before the expiration of the permit;

(5) In the event of an escape of the regulated organisms, you must inform APHIS immediately, but no later than 24 hours after detecting the escape; and

(6) During the time that the regulated organisms are held in your facility, you must maintain records that identify the organisms, the person from whom you received them, the date the regulated organisms were received at your facility, and the disposition of the organisms. You must maintain those records for a period of 1 year following the final disposition of the regulated organisms. During normal business hours, you must allow an APHIS inspector to inspect and copy those records.

(b) Supplemental conditions may be included on the permit specific to the biology of the organism, the types of activities involved with the movement, or the specific needs of a facility.

(c) Permits authorizing movement of organisms through the United States (i.e., transit movement) will include shipping instructions as to routing, labeling, and similar requirements. Those instructions will be included on the permit as supplemental conditions.

(d) The length of a permit's validity will be indicated on the permit. Permits may be valid for a maximum duration of 10 years.

§ 330.209 Appealing the denial or cancellation of permits and compliance agreements.

If your permit application has been denied or your permit or compliance agreement has been canceled, APHIS will promptly inform you, in writing, of the reasons for the denial or cancellation. You may appeal the decision by writing to the Administrator and providing all of the facts and reasons upon which you are relying to show that your permit application was wrongfully denied or your permit or compliance agreement was wrongfully canceled. The Administrator will grant or deny the appeal as promptly as circumstances allow and will state, in writing, the reasons for the decision. If there is a conflict as to any material fact, you may request a hearing to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

§ 330.210 Packaging of regulated organisms.

(a) When moving a regulated organism, you must pack the organism in a container or combination of containers that will prevent the escape of the organism, and the outer container must be clearly marked to indicate its contents.

(b) Only approved packing materials may be used in a shipment of regulated organisms.

(1) The following materials are approved as packing materials: Absorbent cotton or processed cotton padding free of cottonseed; cellulose materials; excelsior; felt; ground peat (peat moss); paper or paper products; phenolic resin foam; sawdust; sponge rubber; thread waste, twine, or cord; and vermiculite.

(2) Other materials, such as host material for the organism, soil, or other types of packing material, may be included in a container only with the advance approval of APHIS.

§ 330.211 Labeling of regulated organisms.

If you are importing a regulated organism through the mail or through commercial express delivery, you must attach a special mailing label, which APHIS will provide with your permit or compliance agreement, to the container. The mailing label will indicate that the shipment of regulated organisms has been authorized by APHIS. If regulated organisms arrive in the mail without a mailing label, an APHIS inspector may refuse to allow the organisms to enter the United States.

§ 330.212 Exportation of organisms from the United States.

If you are shipping regulated organisms to destinations outside the United States, the organisms must be packaged in accordance with § 330.210 to prevent their escape during movement.

Done in Washington, DC, this 1st day of October 2001.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 01–25229 Filed 10–5–01; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–36–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes. That action would have required the replacement of the flap position indicator with an improved flap position indicator. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that indicate that currently there are adequate annunciation provisions and crew procedures to safely detect and accommodate slat drive failures. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, 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) 703–6069; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 17, 1998 (63 FR 33019). The proposed rule would have required the replacement of the flap position indicator with an improved flap position indicator. That action was prompted by a report indicating that an airplane landed at an excessive sink rate and sustained substantial structural damage when the leading edge slats failed to extend for landing and the flightcrew failed to increase airspeed in response, due to inadequate annunciation of the slat failure. The proposed actions were intended to prevent such inadequate annunciation, which could result in the flightcrew being unaware when the leading edge slats fail to extend properly; such failure could result in reduced stall margins, and consequent reduced controllability of the airplane.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the FAA has received numerous comments from operators claiming that there are adequate annunciation provisions and crew procedures currently in place. The manufacturer and operators have identified three separate locations that show the position of the slats on Model L–1011 series airplanes:

1. A slat monitor panel at the flight engineer's station displays the position of each of the fourteen individual slat panels by illuminating when each slat reaches the fully extended position, as determined by proximity sensors in each slat's drive mechanism. This slat monitor panel also displays the angular position of both the right and left slat drive trains on a dial-type indicator.

2. A green ''LE EXT'' annunciation on the flap/slat position indicator on the center instrument panel illuminates when the slats reach the fully extended, 30-degree deflection.

3. Two slat drive fault indicators indicate that the slat drive has been inhibited.

Most but not all slat drive failure modes are detected and actively annunciated by the slat drive fault indicators. Any failure that inhibits the slat travel prior to full extension is clearly indicated on the slat monitor panel and flap/slat position indicator by the ''no indication of slat extension'' indicator. Current crew procedures call for the flight engineer to check and confirm slat extension prior to landing. To require the production and installation of approximately 180 shipsets of modified indicators (to accommodate the worldwide fleet), which have not been manufactured in more than 15 years, does not is not necessary in light of the additional indications already in place. While the modified indicators do improve slat drive position awareness by actively annunciating the lack of slat extension, currently there are adequate annunciation provisions and crew procedures to safely detect and accommodate slat drive failures.

FAA's Conclusions

Upon further consideration, the FAA has determined that mandating the installation of modified indicators is not necessary or justifiable because current annunciation provisions and crew procedures are adequate to address the identified unsafe condition. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 98–NM–36–AD, published in the **Federal Register** on June 17, 1998 (63 FR 33019), is withdrawn.

Issued in Renton, Washington, on October 2, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–25185 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[AR–13–1–7526b; FRL–7072–3]

Clean Air Act Full Approval of Operating Permits Program and Approval and Promulgation of Implementation Plans; State of Arkansas; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes full approval of the Operating Permit Program of the State of Arkansas and to also approve this rule as it pertains to the State Implementation Plan. In the final rules section of this **Federal Register**, EPA is approving the State's submission as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no relevant adverse comments. An explanation for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed action. The EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Comments on this proposed action must be received in writing on or before November 8, 2001.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, Air Permits Section (6PD–R), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

EPA, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Arkansas Department of Environmental Quality, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Daron Page, EPA, Region 6, at (214) 665–7222.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the final rules section of this **Federal Register**.

Dated: September 20, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–24901 Filed 10–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WV–T5–2001–02b; FRL–7074–1]

Clean Air Act Approval of Operating Permit Program Revisions; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the operating permit program of the State of West Virginia. West Virginia's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of West Virginia's operating permit program on November 15, 1995. West Virginia has revised its operating permit program since receiving interim approval and this action proposes to approve those revisions. In the Final Rules section of this **Federal Register**, EPA is approving the State's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 8, 2001.

ADDRESSES: Written comments should be mailed to Ms. Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 814–2196, or by e-mail at campbell.dave@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–24712 Filed 10–5–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2209, MM Docket No. 01–246, RM–10230]

Radio Broadcasting Services; Asherton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 284A at Asherton, Texas, as that community's first local FM service. The coordinates for Channel 284A at Asherton are 28–22–58 and 99–45–00. There is a site restriction 6.8 kilometers (4.2 miles) south of the community. Since Asherton is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at Asherton.

DATES: Comments must be filed on or before November 13, 2001, and reply comments on or before November 27, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jeraldine Anderson, 1702 Cypress Drive, Irving, Texas 75061.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–246, adopted September 12, 2001 and released September 21, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Asherton, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–25113 Filed 10–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2206, MM Docket No. 01–248, RM–10241]

Radio Broadcasting Services; Dos Palos and Chualar, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KNTO, Inc. requesting the reallotment of Channel 240A from Dos Palos, California to Chualar, California, and modification of the authorization for Station KNTO(FM) to specify operation on Channel 240A at Chualar. The coordinates for Channel 240A at Chualar are 36–34–54 and 121–26–34. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 240A at Chualar, California.

DATES: Comments must be filed on or before November 13, 2001, and reply comments on or before November 27, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should the petitioner's counsel's, as follows: Dan J. Alpert, The Law Office of Dan J. Alpert, 2120 N. 21st Road, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–248, adopted September 12, 2001, and released September 21, 2001. The full text of this Commission decision is available for inspection and copying during regular business hours Reference Information Center, Portals II, 445 12 Street, SW., Room Cy–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com. Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Dos Palos, Channel 240A and by adding Chualar, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–25114 Filed 10–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2208; MM Docket No. 01–247; RM–10232]

Radio Broadcasting Services; Big Wells, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 271A at Big Wells, Texas, as that community's first local FM service. The coordinates for Channel 271A at Big Wells are 28–34–05 and 99–32–52. There is a site restriction 2.1 kilometers (1.3 miles) east of the community. Since Big Wells is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at Big Wells.

DATES: Comments must be filed on or before November 13, 2001, and reply comments on or before November 27, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–247, adopted September 12, 2001 and released September 21, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202–

863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Big Wells, Channel 271A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–25115 Filed 10–5–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 234, and 236

[Docket No. FRA–2001–10160]

RIN 2130–AA94

Standards for Development and Use of Processor-Based Signal and Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: By notice of proposed rulemaking (NPRM) published on August 10, 2001 (66 FR 42352) FRA proposed new regulations governing the development and use of processor-based signal and train control systems. In that notice, FRA established a deadline for the submission of written comments of October 9, 2001. Due to the need to ensure that all interested parties have a sufficient amount of time to fully develop their comments and because several requests for additional time to submit written comments have been received by FRA, this document announces an extension of the deadline for the submission of written comments.

DATES: Written comments must be received by November 8, 2001. Comments received after that date will be considered to the extent possible without incurring additional expenses or delay.

ADDRESSES: Comments should be sent to the Docket Clerk, Docket Management System, U.S. Department of Transportation Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard.

The docket management system is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov.*

You may submit comments electronically by accessing the Docket Management System web site at *http://dms.dot.gov* and following the instructions for submitting a document electronically.

FOR FURTHER INFORMATION CONTACT: William H. Goodman, Staff Director, Railroad Signal Program, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6325); Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6302); Cynthia B. Walters, Office of Chief Counsel, FRA 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6064); or David T. Matsuda, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6046).

SUPPLEMENTARY INFORMATION: Recently, a few interested parties notified FRA of the need for additional time in which to prepare their written comments. Due to the novelty of this rulemaking, FRA does not wish to inhibit the ability of any party to fully develop its comments and seeks to provide sufficient time for all interested parties to gather necessary information. Therefore, as FRA is inclined to extend the period for the submission of written comments for certain interested parties, FRA is compelled to provide the same extension to all commenters. Consequently, FRA believes it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to November 8, 2001. It should be noted that FRA does not expect anyone to seek any further extension of the comment period in this proceeding and will consider comments submitted after November 8, 2001, only to the extent possible without causing additional expense or delay.

The proposed rulemaking is based upon a recommendation from the Railroad Safety Advisory Committee (RSAC). A meeting of the Positive Train Control Working Group from this committee is planned for December 4–6, 2001, in San Antonio, TX. For further information, please see the RSAC web site at *http://rsac.fra.dot.gov/.*

Issued in Washington, DC on October 2, 2001.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 01–25224 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 12-Month Finding for a Petition To List the Bonneville Cutthroat Trout as Threatened Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Bonneville cutthroat trout (*Oncorhynchus clarki utah*) as threatened throughout its range pursuant to the Endangered Species Act of 1973, as amended. After review of the best available scientific and commercial information, we find that listing the Bonneville cutthroat trout (BCT) is not warranted at this time.

DATES: The finding announced in this document was made on September 28, 2001.

ADDRESSES: Data, information, comments, or questions regarding this notice should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The complete administrative file for this finding is available for inspection during normal business hours, by appointment, at the above address. The status review document for the Bonneville cutthroat trout also may be obtained at that address, or at our Internet web site at <www.r6fws.gov/cutthroat>.

FOR FURTHER INFORMATION CONTACT: Yvette Converse at the above address or telephone (801) 524–5001, extension 135, or e-mail Yvette_Converse@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt of the petition, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. If there is substantial information, the Act requires that we review the status of the species and publish another finding, the 12-month finding, indicating whether the petitioned action is—(a) not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

In the mid-to late 1970s, professional fisheries organizations became concerned by reports from the professional and academic communities that few genetically ''pure'' populations of BCT remained in existence (Tanner 1936; Cope 1955; Sigler and Miller 1963, Holden et al. 1974, Behnke 1976, Hickman 1978). These reports prompted fish conservation groups to investigate the status of BCT. After receiving a petition from the Desert Fishes Council and American Fisheries Society to list BCT in 1979, we conducted a status review of the subspecies (U.S. Fish and Wildlife Service 1984). We determined at that time that listing the BCT was ''warranted but precluded'' by other higher priority activities (January 20, 1984; 49 FR 2485).

In 1992, we were again petitioned by the Desert Fishes Council and the Utah Wilderness Alliance to list BCT as threatened. We classified this as a ''second petition'' because it provided no new information, and listing the subspecies had already been determined to be ''warranted but precluded.''

On February 26, 1998, we received a petition, dated February 5, 1998, from the Biodiversity Legal Foundation requesting that BCT be listed as threatened in those United States river and lake ecosystems where it presently exists, and to designate its occupied habitat as critical habitat within a reasonable period of time following the listing.

The petitioners assert that the remaining genetically pure stocks of BCT occur almost exclusively in small, isolated streams in mountainous areas, and that it is common for today's BCT stocks to have some degree of hybridization with introduced, nonnative trout.

The petitioners further assert that the BCT should be listed as threatened because the subspecies' present distribution and abundance are substantially reduced from historic conditions; remaining stocks are small, widely separated, and continue to decline in abundance; and the threats to the survival of BCT are pervasive and ongoing. The petitioners allege that threats to BCT include habitat destruction from logging and associated road building; adverse effects on habitat resulting from livestock grazing, mining, urban development, agricultural practices, and the operation of dams; historic and ongoing stocking of nonnative fish species that compete with or prey upon BCT; and excessive harvest by anglers.

The petitioners also are of the opinion that programs to protect and restore BCT are inadequate or nonexistent, and that stocks of this fish continue to be threatened by a wide variety of ongoing and proposed activities.

Status Review

On December 8, 1998, we published a 90-day finding for the BCT petition in the **Federal Register** (63 FR 67640). We found that the petition presented substantial information indicating that listing this subspecies may be warranted. At that time we initiated a review of the species' status within its historic range.

The comment period for submission of additional information originally expired on January 7, 1999. However, this comment period was reopened on January 13, 1999 (64 FR 2167), and extended to February 12, 1999. Numerous comments were received, evaluated, and incorporated, where appropriate, into this review. As this status review was being compiled, information was updated and reviewed to ensure that the review reflects the most accurate information available.

Geographic Range of Bonneville Cutthroat Trout

Since the desiccation of ancient Lake Bonneville nearly 10,000 years ago, the climate in the Bonneville Basin has remained relatively arid. Suitable conditions for cutthroat trout, such as adequate stream flow and water temperatures, range from higher elevations (approximately 8,000 to 11,000 feet above mean sea level) in small mountain streams and lakes within coniferous and deciduous forests and meadows to lower elevation (approximately 3,000 to 5,000 feet above mean sea level) alluvial desert river systems with sage-steppe grasslands and herbaceous riparian communities. For purposes of this status investigation, suitable BCT habitat within the subspecies' range is logically broken into five natural geographically and hydrologically distinct areas, henceforth referred to as Geographic Units (GU). The GUs are described in detail in the status review document available from Utah Ecological Services Field Office (see **ADDRESSES**). These GUs are generally categorized as—

(a) Bear Lake—includes Bear Lake and several small streams draining into Bear Lake within Idaho and Utah;

(b) Bear River—includes the upper Bear River draining the northwestern portion of the Uinta Mountains, the Smith's Fork and Thomas Fork watershed, the Cub River watershed, the Logan and Little Bear Rivers watershed, and others;

(c) Northern Bonneville—includes the Weber, Ogden, and Jordan Rivers (Great Salt Lake) watershed and the Provo and Spanish Fork Rivers (Utah Lake) watersheds;

(d) Western Bonneville—includes small streams draining both the east and west slopes of the Deep Creek Mountain range on the border of Utah and Nevada as well as Wheeler Peak (Great Basin National Park) and Mt. Mariah Wilderness Area (Humboldt-Toiyabe National Forest) draining from the east slopes of the Snake Mountain range of southeastern Nevada, and Snake and Steptoe valleys; and

(e) Southern Bonneville—includes Mt. Dutton and the Tusher Mountains and other drainages of the Sevier and Beaver River and northwestern portions

of the Virgin River draining from the Pine Valley Mountains north of St. George, Utah.

Threats

Although some threats to BCT still occur, information reviewed in this status report indicates that the overall level of threats to the long-term persistence of BCT has decreased during the past 50 years. The majority of activities that caused the severe decline in BCT throughout its range appear to have occurred from 1850 to 1950. These activities included water development, commercial fish harvest, timber harvest, livestock grazing, urban development, and introduction of nonnative salmonids. Although most of these activities occur to some extent in different regions of the Bonneville Basin, there is no longer the same level of devastating impacts on BCT and its habitat that resulted in the wide-spread habitat destruction and BCT population decline of the late 1800s and early 1900s.

Habitat

Habitat degradation from multiple sources is a considerable threat to BCT populations in some areas. Livestock grazing has been specifically identified as one primary reason for habitat degradation. Improper livestock grazing has led to moderate to severe localized impacts on stream habitat and riparian areas. Indirectly, excessive fine sediment, resulting from poor upland watershed condition, affects water quality and instream habitat. More direct damage includes decreased bank stability and loss or destruction of riparian area.

Road building can be a problem exacerbating sedimentation, bank instability, and loss of riparian area. Habitat damage from historic timber harvest has affected the long-term channel stability, substrate, and morphology in some streams, particularly in the mountainous areas where large timber stands were historically harvested for railroad and development.

Water development (diversions and dams) has irreversibly changed individual stream processes and hydrologic conditions in some drainages. Instream water diversion structures that dewater stream reaches, dams that impound water, and culverts that act as barriers to fish movement fragment or reduce available habitat and stream miles occupied for BCT. Throughout the deserts of the Bonneville Basin, humans compete with native wildlife for water. The overall impact of water development projects on BCT is nearly impossible to determine, but has no doubt been a large factor in the decline of native fish populations.

Although some streams receive extensive recreational traffic (including hikers, anglers, camping, horseback riding, and ATVs) which can result in instream and riparian damage or indirect effects to water quality and hydrology where the activity is not adequately controlled, impacts from these activities tend to be localized and do not affect overall watershed conditions.

Although some higher-profile areas are governed by extensive land-use regulation administered by the Federal land management agencies, cumulative habitat impacts from different land-use activities remain a concern for BCT populations in high-traffic areas.

Overutilization

Regulations in place to control fish harvest, fish stocking, and land-use incorporate an emphasis on the long-term persistence of BCT. Although considered a significant reason for the initial decline of BCT, fish harvest is no longer considered a threat to the long-term persistence of BCT.

Disease

Whirling disease is caused by *Myxobolus cerebralis,* a metazoan parasite that penetrates head and spinal cartilage of young-of-year salmonids. Once into the cartilage, the parasite multiplies quickly, affecting equilibrium of the fish. This can cause the fish to swim erratically or to have difficulty feeding or avoiding predators. Whirling disease was introduced into North America in the late 1950s and has damaged primarily wild rainbow trout (RBT) populations where the parasite becomes established. Although other salmonids also may be infected, the extent of disease manifested in other salmonids has not been fully assessed.

The life cycle of the parasite involves a robust spore that withstands freezing and desiccation. In addition, the spore persists for years or even decades and, therefore, is very difficult to eradicate from water systems. When ingested by a tiny common aquatic worm, *Tubifex tubifex,* the parasite transforms into its more fragile state that must infect young fish within several days or it will die (Whirling Disease Foundation 2000).

Within the range of BCT, whirling disease has been confirmed in several major water systems. However, to date there have been no documented population declines of BCT attributable to whirling disease. At this point, it is unclear if such a decline will happen. Based on results of studies summarized in the 6th Annual Whirling Disease Symposium and based on conversations with State fisheries managers and fish health experts in the Bonneville Basin, the following are some general notes pertaining to whirling disease in cutthroat trout (Granath 2000).

Spatial and temporal factors may play a role in the extent of damage to cutthroat populations from whirling disease. Timing of reproduction may influence extent of infection, if cutthroat larvae are hatched before or after the peak concentrations of the parasite. It has been further hypothesized that fluvial cutthroat trout may migrate to headwater reaches of streams to spawn, where hatched larvae may be either outside the range of contaminated reaches or amidst habitat conditions where the tubifex worms and spores may not or are less likely to accumulate in damaging or lethal concentrations. However, studies are preliminary and little can be predicted about the long-term impacts of whirling disease on cutthroat populations. One study suggests that cutthroat trout simply may develop less severe physiological disease compared to RBT.

Overall, recent research on whirling disease has uncovered substantial information now being used in management and control of the spread of this disease. Federal, State, and private sport-fishing interests have invested great effort and funds in finding a way to eradicate, control, or cure whirling disease. Although not necessarily intended for the conservation of native cutthroat trout, ongoing research undoubtedly benefits these native populations as managers seek to sustain and protect wild nonnative fisheries. In addition to research, fisheries health programs are focused on frequent and comprehensive testing of natural water systems and hatchery facilities to ensure early detection of the parasite. Strict regulations on fish culture, transport, and angling have been implemented. Also, public education programs on whirling disease and preventing its spread are widespread throughout angling communities.

Inadequate Regulatory Mechanisms

Stocking of RBT and other nonnative salmonids continues to be a potential threat. Although recent surveys and research indicate hybridization between BCT and other nonnative salmonids is not as prevalent as previously thought, the threat of hybridization remains in drainages where RBT are stocked in close proximity to pure BCT populations or where stocking of these

species prevents reintroduction or colonization of BCT. Although most States are focusing on the issue and some State stocking protocols have been changed to prevent stocking of nonnative salmonids into BCT streams, the success of proposed and implemented changes to reduce the threats from hybridization, competition, and predation of nonnative salmonids on BCT has yet to be seen.

Many BCT populations are located on lands publicly owned and managed by the U.S. Forest Service (USFS), National Park Service (NPS), and Bureau of Land Management (BLM). Although some acute problems occur on lands managed by these agencies, public ownership provides some protection from development and guarantees public review of major activities which may adversely affect wildlife through compliance with the National Environmental Protection Act. In addition, some private citizens and local groups are getting involved in BCT conservation efforts in coordination with State and Federal agencies.

Numerous Federal and State regulatory mechanisms exist that, if properly administered and implemented, protect the long-term persistence of BCT and its habitat. However, this is dependent on the ability of those agencies to devote adequate resources toward fulfilling their responsibilities to environmental protection. Where regulations are not adequately enforced, BCT can be adversely impacted.

According to information collected for this review, the level of adequate Federal and State regulation varies among areas and among agencies, but generally has improved over the past 30 years. Although some problem areas still exist, the commitment from these agencies for the protection of environmental resources including BCT is greater than it has ever been. In addition, there is more collaboration between local communities, local governing entities, and State and Federal agencies, which allows more amicable resolution of land-use conflicts and better funding and commitment to conservation activities of BCT.

Other Natural or Manmade Factors Affecting its Continued Existence

In order to respond to the petitioners' concern regarding the threat of genetic introgression between BCT and other trout species, we investigated the standards used by the various management agencies to determine pure BCT stocks suitable for reclamation and conservation programs.

In the early 1900s, confusion regarding the physical description of pure BCT arose because of the extinction of BCT from the type locality in Utah Lake in the 1930s and subsequent confusing accounts. Early taxonomic distinctions were based solely on physical descriptions (Tanner and Hayes 1933; Behnke 1992). Reports of extinction from some well known locations and knowledge of widespread stocking of RBT and Yellowstone cutthroat trout (YCT) led some experts to speculate that BCT was extinct in its pure form (Tanner 1936; Cope 1955; Sigler and Miller 1963; Holden et al 1974). Such speculation became widely accepted because there were no accurate and accepted criteria to define pure BCT.

In assessing levels of hybridization among species or subspecies, known ''pure'' or unhybridized samples must be available. In the case of BCT, some of the earliest speculation and reports on purity were based on inter-drainage or inter-basin phenotypic differences before genetic technology was developed. However, this kind of information can be misleading where phenotypic differences do not reflect genetic differences or speciation. It was not until the 1960s and 1970s, when a few BCT populations were found in extremely isolated or pristine conditions where introductions of nonnative species had not occurred, which wildlife managers were certain they had identified pure BCT, that managers began to develop a standard for BCT purity (Behnke 1988; Hickman 1978). In the 1970s, criteria were developed by which purity could be assessed (Hickman 1978). Soon after, genetic technology was applied to the question of purity (Wydoski et al. 1976, Martin et al. 1985, Williams and Shiozawa 1989).

Two main issues developed related to purity of BCT. The first was how to discern purity. The second was what level of purity warrants protection. Criteria and protocols to address these two separate but related issues continued to evolve over the past three decades as technological advances and new information became available on what constitutes pure BCT (Wydoski et al. 1976, Martin et al. 1985, Williams and Shiozawa 1989, Shiozawa et al. 1993, Toline et al. 1999). With shifts in understanding of the importance of local genetic adaptions, it became important to identify a critical level or range of hybridization or a conservation criterion by which important populations could be identified and protected (Toline and Lentsch 1998, UDWR 2000). With such a criterion, managers hoped to ensure that important BCT genetic information was not dismissed or eradicated because of low levels of hybridization or speculative data.

In addition to genetic information, stocking records and biogeographic knowledge has been and continues to be used to assess the likelihood that a particular population is hybridized. It was originally suspected that where RBT or other cutthroat subspecies such as YCT were stocked, BCT were hybridized (Behnke and Zarn 1976, Sigler and Miller 1963; Holden et al 1974). However, with the development of recent techniques for genetic analysis, it has become apparent that many BCT populations have coexisted with RBT with extremely low or no levels of hybridization. In fact, recent genetic technology has proven invaluable in identifying pure populations previously suspected of hybridization (UDWR unpublished reports).

Overall, managers have used all of these techniques as well as other information to make the best judgement as to the purity of a given population and its distribution within a given system. In an effort to ensure a standard assessment of purity in how BCT is managed, the State wildlife agencies in Utah, Wyoming, Idaho, and Nevada have worked together to describe protocols and criteria for evaluating purity and managing BCT for conservation (UDWR 2000). This effort represents a combination of management strategies and input from academic and species experts to ensure that the process is based on the best available information and sound biology.

For the purposes of this status review, fish populations that State, Tribal, and Federal agency fisheries managers have designated as BCT, even though the precise genetic composition of each BCT population may not be completely described, are assumed to represent this subspecies unless specific physical, genetic, or behavioral information indicates otherwise.

Conservation Actions

The States of Utah, Wyoming, Idaho, and Nevada, USFS, BLM, NPS, Tribal governments, Trout Unlimited, and other involved parties reported numerous ongoing projects that are completed or being completed for the protection and restoration of BCT and their habitats. In addition, each State wildlife agency has in place conservation plans, conservation agreements, or other such interagency cooperative efforts to ensure the long-term persistence of BCT. A range-wide Conservation Agreement was recently

finalized and includes all four State wildlife agencies as well as the Service, the USFS, BLM, Utah Reclamation Mitigation and Conservation Commission, and the NPS, with support from Trout Unlimited and other organizations. This agreement will improve coordination and effectiveness of conservation actions across State boundaries.

Specific conservation actions are planned, discussed, and described at semi-annual inter-agency meetings of BCT experts (agency and academic). Originally convened to review actions described under the Utah conservation agreement for BCT, these meetings have expanded to include Wyoming, Idaho, and Nevada State agencies as well as Federal agencies. Aquatic managers and BCT experts review upcoming plans for conservation actions and describe actions implemented in the past field season. In addition, native cutthroat trout management is discussed and the group provides a forum for developing standards on different issues such as assessing purity, chemical treatments for restoration, brood source development, inter- and intra-basin transfers, and stocking protocols.

These meetings are attended by all four State wildlife management agencies as well as the main Federal land management agencies, Trout Unlimited, local academic experts, and private citizens active in BCT conservation. Funds are allocated from different sources including State sportfishing monies, Federal Aid in Sportfishing monies, and USFS, Great Basin National Park, and other Federal land management agency funds, and are administered cooperatively among involved agencies. Coordination among agencies and groups and increased funding has led to substantial success in implementing conservation efforts in every GU. Specific conservation actions implemented within drainages and GUs are described in the Status Review for the species.

Overall, collaboration between local communities, local governing entities, and State and Federal agencies has increased substantially in comparison to past decades. This coordination allows more amicable resolution to land-use conflicts and better funding and commitment to conservation activities for BCT.

Finding

We have compiled and analyzed the most recent and best scientific and commercial data available on BCT to complete the status review. This information included published and unpublished reports, manuscripts, books and data, comments, memorandums, letters, phone communications, e-mail correspondence, and information gathered at meetings. In addition, persons who are considered species experts on BCT were provided the opportunity to comment on the data used in this report to ensure they were the most accurate and updated data available and that they were interpreted accurately.

Based on this analysis, the overall status of BCT has improved in every GU since the 1970s when researchers began to investigate the status of BCT for the purpose of its long-term conservation. Currently, BCT occupy a total of 1,372 kilometers (852 miles) of stream habitat and 28,352 hectares (70,059 acres) of lake habitat, with a total of 291 populations. It is possible additional BCT populations may be discovered in streams which have not been recently surveyed or explored. This potential is greatest in the Bear River and Northern GUs, which contain extensive natural water systems that remain uninvestigated. Viable, self-sustaining BCT populations occur within all five GUs. Almost every major drainage within the five GUs supports pure BCT populations, either remnant or reintroduced.

Although the numbers of extant BCT stocks are likely much lower than the historical number, they have increased by an order of magnitude or more in the past three decades. Based on information from early accounts of pioneer settlement and early descriptions of land-use and wildlife management, a noted decline in BCT populations occurred between 1850 and 1950. This decline was due to devastating impacts from land-use activities such as extensive water development, overharvest of fish through commercial industry, nonnative salmonid introductions, tie-hacking of timber, and improper livestock grazing. Although many of those threats have not been entirely eliminated, the devastating disregard for land and wildlife no longer occurs to the extent that it did between 1850 and 1950. In addition, most BCT populations are located on lands publicly owned and managed by the USFS, NPS, and BLM. Public ownership provides some element of protection from development and guarantees public review of major activities which may adversely affect wildlife through compliance with the National Environmental Policy Act and agency regulations.

The improved status of BCT in the past 30 years can be attributed to increased sampling effort, improved technology for identification of pure populations, population expansion efforts (transplants and brood source development) that have resulted in establishment of additional BCT populations, and improved habitat and flow conditions in some streams. Because current management plans are operational and describe BCT conservation activities for future decades, it is likely that additional BCT populations will be identified, additional reintroduced BCT populations will become established, and stream habitat and flow conditions will continue to be improved. Thus, the status of BCT will likely continue to improve as surveys are completed and conservation activities are completed.

Based on this analysis, as detailed in the status review document, the trajectory of BCT status within its native range is toward additional populations, reduced threats, and improved habitat conditions. Although some populations may be more impacted than others by future development, land-use, and stocking, there is currently no indication that BCT is in danger of extinction or likely to become so in the foreseeable future throughout all of its range or in any of the five GUs.

Therefore, listing of the BCT as a threatened or endangered species under the Act is not warranted at this time.

References Cited

A complete list of references cited in this notice is available from the Utah Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary author of this document is Yvette Converse (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 28, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–24805 Filed 10–5–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 092601A]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings/public hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) Advisory Panels will meet on October 22 and 23, 2001; the Standing Committees will meet on October 23, 2001; and the Council will hold its 111th meeting October 23 through 26, 2001, in Honolulu, HI.

At the full Council meeting, public hearings will be held prior to the Council taking final actions on framework regulatory amendments under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) concerning the protection of sea turtles and under the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region establishing a 250–nm precious coral refuge area in the Northwestern Hawaiian Islands (NWHI). Public hearings will also be conducted on proposals to establish an American Samoa limited entry program, to exempt longline basket gear from seabird mitigation measures governing fishing gear requirements, and to remove the annual landing requirements for permit renewal in the NWHI bottomfish fishery.

DATES: The meetings and the hearings will be held during October 2001. See **SUPPLEMENTARY INFORMATION** for specific dates, and times for the meetings and the hearings.

ADDRESSES: The meetings and the hearings will be held at the Hawaii Convention Center, 1801 Kalakaua Ave, Honolulu, HI 96815; telephone: 808–943–3500.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Locations

Advisory Panels

The Commercial, Recreational, Subsistence/Indigenous, and Ecosystem and Habitat sub-panels will meet jointly on Monday, October 22, 2001, from 8:30 a.m. to 12 noon. Sub-panels will meet individually on Monday afternoon, October 22 and Tuesday, October 23, 2001, until 3 p.m. Sub-panels will reconvene jointly from 3:15 p.m. to 5 p.m. to finalize recommendations. Public comment periods will be provided throughout the meetings. The order in which agenda items are addressed may change. The Advisory Panel (AP) will meet as late as necessary to complete scheduled business.

The agenda for the AP meetings will include the items listed below:

1. Welcome and introductions
2. Status of AP recommendations
3. Action items
a. Pelagic framework measure for turtles
b. Pelagic amendment for American Samoa limited entry program
c. Pelagic framework measure for basket gear
d. Precious coral framework measure for NWHI 250 nm Refuge
e. Bottomfish amendment for NWHI management
f. Community demonstration projects
4. Saltonstall-Kennedy Funding
5. NMFS research plans for the western Pacific region
6. Break-out sub-panel sessions discuss issues and develop recommendations
7. Joint panel meeting
a. Jurisdictional Issues
i. American Samoa Treaty/Deed of Cessation
ii. Commonwealth of the Northern Mariana Islands (CNMI) Covenant
iii. Guam Organic Act
iv. Kanaka Maoli (Hawaiian) sovereignty
8. Joint panel session to review and finalize recommendations to the Council

Public Hearings

Public hearings will be held at 11:30 a.m. on Thursday, October 25, 2001, for final action implementing measures of the March 2001 biological opinion (BO) on the western Pacific pelagic fisheries; at 4:30 p.m. on Thursday, October 25, 2001, for initial action on NWHI bottomfish removal of annual landing requirements; and at 10 a.m. on Friday, October 26, 2001, for final action on a precious corals regulatory adjustment to establish a NWHI refuge area.

Committee Meetings

The following Standing Committees of the Council will meet on October 23, 2001. Enforcement/Vessel Monitoring System (VMS) from 8 a.m. to 10 a.m.; Fishery Rights of Indigenous People from 9 a.m. to 10 a.m.; International Fisheries/Pelagics from 10 a.m. to 12 noon; Precious Corals from 1:30 p.m. to 3 p.m.; Crustaceans from 1:30 p.m. to 3 p.m.; Bottomfish from 3 p.m. to 4:30 p.m; Ecosystem and Habitat from 3 p.m. to 4:30 p.m.; and Executive/Budget and Program from 4:30 p.m. to 6 p.m.

In addition, the Council will hear recommendations from its APs, plan teams, scientific and statistical committee, and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

The agenda during the full Council meeting will include the items listed here:

1. Introductions
2. Approval of agenda
3. Approval of 110th meeting minutes
4. Island reports
A. American Samoa
B. Guam
C. Hawaii
D. CNMI
5. Federal fishery agency and organization reports
A. Department of Commerce (DOC)
(1) NMFS
(a) Southwest Region, Pacific Islands Area Office
(b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
(2) NOAA General Counsel, Southwest Region
B. Department of the Interior (DOI)/U.S. Fish and Wildlife Service (USFWS)
C. U.S. State Department (DOS)
6. Pelagics
A. Pacific Fishery Management Council Highly Migratory Species Fishery Management Plan
B. Fish and Western Fish Boat Owners Association correspondence
C. 2nd quarter 2001 Hawaii and American Samoa longline reports
D. American Samoa
(1) Longline fishery expansion in 2001 and management needs (limited entry program)
(2) Pilot observer program
E. Guest Speaker: Tim Park—Federated States of Micronesia Observer Program
F. SAFE/Annual Report
(1) Highly migratory species stock assessments
G. Recreational fisheries reporting
H. Status of litigation
I. Sea Turtle conservation and management
(1) Workshop
(2) Research (progress since May 2001)
a. Field studies

b. Population assessments (leatherbacks & other turtle species)
c. Population modeling
(3) FMP regulatory amendment implementing measures in March 2001 BO on western Pacific pelagic fisheries
(4) Endangered Species Act section 6 grants program for turtle recovery
J. Seabird conservation and management
(1) USFWS short-tail albatross handling guidelines
(2) 2nd International Fishers Forum
(3) Underwater setting chute deployment in Hawaii longline fishery
(4) Adjustment of seabird mitigation regulations to account for longline basket gear
J. Supplemental pelagic environmental impact statement (EIS)for squid, seabirds, international management, purse seine tuna treaty
K. Marine Mammal Protection Act List of Fisheries
a. 2001 List of Fisheries
b. NMFS Marine mammal research plan
L. Impacts of closure of Suisan fish auction in Hilo
M. Report on the 2001 Protected Species Workshops
N. International Meetings (14th Standing Committee on Tuna and Billfish, 3rd Recreational Fisheries Symposium)
O. Public hearing
The Council will take final action on a framework regulatory amendment under the pelagic fishery management plan to implement management measures governing the protection of sea turtles. These measures, which are also contained in the preferred alternative of the NMFS Final Environmental Impact Statement (March 30, 2001), are in a March 29, 2001, BO issued by NMFS on the operation of the western Pacific pelagic fisheries managed by the Council. The Council's action will consider proposed rulemaking for a ban on swordfish-style longline fishing north of the equator, a requirement for all fishing vessels fishing for pelagic management unit species to carry line clippers and wire or bolt cutters used to remove fishing line or hooks from sea turtles, and other turtle mitigation measures promulgated as emergency interim regulations, published in the **Federal Register** on June 12, 2001, at 66 FR 31561 for the Hawaii-based longline fishery.
7. Enforcement
A. U.S. Coast Guard activities
B. NMFS activities
C. Commonwealth, Territories, and State activities
D. Status of violations
8. VMS
A. NMFS VMS report
B. USCG expanded use of VMS information
C. NWHI Reserve VMS pilot study
9. NMFS Observer Program
10. Monk Seals
A. Status of revised recovery plan, delisting criteria and recovery team
B. Report on NWHI shark activities
(1) Great white shark
(2) Culling
C. Marine Mammal Research Program Quarterly Report
1. Bottomfish fisheries
A. NWHI Framework Action: removal of landing requirements
B. Marine protected area closure effects on calculating spawning potential ratio, catch per unit of effort, etc.
C. Status of Biological Opinion
D. Status of Bottomfish Observer Program and data collection
E. Status of Digital Video Observer Pilot Project
F. Public hearing
The Council will consider an amendment to its Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region that would remove the annual landing requirements or permit renewal and prohibitions on the lease and charter of permits from the NWHI Ho'omalu and Mau zone management regimes. The Council expects that these removals will best address the key objectives to maintain opportunities for small scale fisheries, maintain availability of high-quality fresh bottomfish, and balance harvest capacity with harvestable fishery stocks. The basic approach is to structure the permit system so that evidence of participation is used for new entry and the total number of permits are maintained at target levels.
12. Crustaceans Fisheries
A. NMFS tagging research and modeling workshop
B. 1999 Annual Report (SAFE)
C. Public comment
13. Precious Corals
A. Review of Precious Corals framework regulatory adjustment
B. Public hearing on framework regulatory amendment
The Council proposes to restructure the management regime for the exploratory area to be based on current knowledge of the resource and industry practices. This will permit increased landings as well as reduce pressure on the known beds. The proposed measure would remove the 1,000-kg annual quota, and incorporate site-specific restrictions to allow sustainable harvest based on the size of the resource in a given area. The Council is also recommending the establishment of a 250-nm precious coral refuge area in the NWHI. Compliance would be monitored through mandatory video taping of harvesting activities.
14. Ecosystems and Habitat
A. NMFS report on status of Coral Reef Ecosystem Fishery Management Plan
B. State of Hawaii NWHI management plan and Memorandum of Understanding
C. Essential fish habitat (EFH) requirements
D. EFH consultations for Federal actions
E. FWS Tern Island seawall environmental assessment
F. Proposed invasive species mitigation measures (e.g., rats)
G. Council Marine Protected Area policy development
15. Fishery rights of indigenous people
A. Marine conservation plans
B. Community development program: Designation of American Samoa as a fishing community
C. Community demonstration projects program
(1) Council program
(2) Grant application process
D. Island workshops to discuss religious, cultural, and subsistence turtle takes
E. Native observer program for Western Pacific fisheries
16. Program Planning
A. Program planning initiatives
B. NMFS Research Plan for Western Pacific Region
C. Education initiatives
D. Report on the Regulatory Flexibility Act, Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and National Environmental Policy Act workshop
E. Status of Congressional legislation
F. Digital video monitoring policy
G. DOI/DOS/DOC Fisheries Policies Working Group
17. Administrative matters
A. Financial reports
B. Administrative reports
C. Upcoming meetings and workshops, including the 2002 Council meetings
18. Election of officers

Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after

publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: October 3, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–25299 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 195

Tuesday, October 9, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou Forest Plan Revision; Caribou-Targhee National Forest

AGENCY: Forest Service, USDA.

ACTION: Extension of the comment period on the Draft Environmental Impact Statement.

SUMMARY: On April 24, 2001 the Notice of Availability of the Draft EIS for the Caribou Forest Plan Revision was published in the **Federal Register**. Many interested parties have requested that the comment period be extended so they can provide more substantive, researched comments. The Regional Forester has agreed to extend the comment period on the Draft EIS for an additional 61 days.

DATES: Comments on the Draft EIS will be accepted through November 1, 2001.

ADDRESSES: Send correspondence to Forest Planner, Caribou Forest Plan Revision, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, Idaho 83491.

FOR FURTHER INFORMATION CONTACT: Cheryl Probert, Forest Planner or Jerry Reese, Forest Supervisor, Caribou-Targhee National Forest, Telephone: (208) 557–5760.

Dated: September 19, 2001.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 01–25190 Filed 10–5–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing an opportunity for the public to comment on its intention to request an extension for a currently approved information collection, ''Guidelines for Preparation of Research Proposal.'' These guidelines provide instructions for submitting grant proposals requesting funds from GIPSA for research to develop procedures and equipment that may be used to measure grain quality.

DATES: Comments on this notice must be received by December 10, 2001 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Steven N. Tanner, Director, Technical Services Division, USDA, GIPSA, FGIS Technical Center, 10383 N. Ambassador Drive, Kansas City, MO 64153–1394; telephone (816–891–0401).

SUPPLEMENTARY INFORMATION: Under Section 4a of the United States Grain Standards Act (USGSA; 7 U.S.C. 71 *et seq.*), GIPSA is responsible for establishing grain standards which accurately describe the quality of grain being traded and for applying these standards uniformly in a nationwide inspection system. Section 16e of the USGSA authorizes the agency to conduct a continuing research program for the purpose of developing methods to improve accuracy and uniformity in grading grain. To carry out this authority, GIPSA maintains an external research program under which research scientists are invited to submit research grant proposals that include the objectives of the proposed work; application of the proposed work to the grain inspection system; the procedures, equipment, personnel, etc., that will be used to reach the project objectives; the cost of the project; a schedule for completion; qualifications of the investigator and the grantee organization; and a listing of all other sources of financial support for the project. GIPSA utilizes the Guidelines for Preparation of Research Proposals to assist grant applicants with preparation of grant proposals.

Title: Guidelines for Preparation of Research Proposal.

OMB Number: 0580–0014.

Expiration Date of Approval: December 31, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: The Grain Inspection, Packers and Stockyards Administration is interested in supporting research to develop procedures and equipment that may be used to measure grain quality. The Guidelines for Preparation of Research Proposal provides instructions for submitting grant proposals requesting funds from GIPSA for this purpose.

Estimate of Burden: Public reporting for this collection of information is estimated to average 20 hours per response.

Respondents: Organizations who employ scientists and engineers who do research and development on procedures and equipment that may be used to provide measurement of grain quality.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 80 hours.

Copies of this information collection can be obtained from Cathy McDuffie, the Agency Support Services Specialist, at (301) 734–5190.

Comments

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 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 through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or forms of information technology. Comments may be sent to: Tess Butler, Compliance Division, GIPSA, USDA, STOP 3604, Washington, D.C. 20250–3604; fax 202 690–2755; e-mail: comments@gipsa.usda.gov.

Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

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

Dated: October 2, 2001.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–25230 Filed 10–5–01; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition; Correction

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed addition to Procurement List.

SUMMARY: In the document appearing on page 42198, FR Doc. 01–20104, in the issue of August 10, 2001, in the second column the Committee published a notice of proposed addition to the Procurement List of, among other things, Janitorial/Grounds Maintenance, At the Following Locations: Sonoita Border Patrol Station, 3225 Highway 82, Sonoita, Arizona; Tucson Station (Silverbell), 3200 N. Silverbell Road, Tucson, Arizona; Tucson Sector HQ, 2010 W. Ajo Way, Tucson, Arizona; Willcox Border Patrol Station, 200 W Downen, Willcox, Arizona; Douglas Border Patrol Station, 1051 Lawrence Avenue, Douglas, Arizona; Ajo Border Patrol Station, 850 N. Tucson/Ajo Highway, Ajo, Arizona; Tucson Sector HQ (Building 9), 2010 W. Ajo Way, Tucson, Arizona. This notice is amended to include Tucson Air Operation, 2000 E. Airport Drive (Hanger), Tucson, Arizona, which was omitted from original notice, and to correct some of the names of the locations listed in that notice.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 8, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions. If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Janitorial/Grounds Maintenance, at the Following Locations

Sonoita Border Patrol Station, 3225 Highway 82, Sonoita, Arizona
Tucson Sector Training/Special Operations (Silverbell), 3200 N. Silverbell Road, Tucson, Arizona
Tucson Sector Headquarters, 2010 W. Ajo Way, Tucson, Arizona
Willcox Border Patrol Station, 200 W Downen, Willcox, Arizona
Douglas Border Patrol Station, 1051 Lawrence Avenue, Douglas, Arizona
Ajo Border Patrol Station, 850 N. Tucson/Ajo Highway, Ajo, Arizona
Tucson Sector HQ (Building 9), 2010 W. Ajo Way, Tucson, Arizona
Tucson Air Operations, 2000 E. Airport Drive (Hanger), Tucson, Arizona
NPA: J.P. Industries, Inc., Tucson, Arizona
Government Agency: DOJ/Immigration and Naturalization Service

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–25275 Filed 10–5–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 8, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each commodity or service will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Glove, Surgeon

6515–00–NIB–0121
6515–00–NIB–0122
6515–00–NIB–0123
6515–00–NIB–0124
6515–00–NIB–0125
6515–00–NIB–0126
6515–00–NIB–0127
6515–00–NIB–0128
6515–00–NIB–0129
6515–00–NIB–0130
6515–00–NIB–0131
6515–00–NIB–0132
6515–00–NIB–0133
6515–00–NIB–0134
6515–00–NIB–0135
6515–00–NIB–0136
6515–00–NIB–0137
6515–00–NIB–0138
6515–00–NIB–0139
6515–00–NIB–0140
6515–00–NIB–0141
6515–00–NIB–0142
6515–00–NIB–0143
6515–00–NIB–0144
6515–00–NIB–0145
6515–00–NIB–0146
6515–00–NIB–0147
6515–00–NIB–0148
6515–00–NIB–0149
6515–00–NIB–0150
6515–00–NIB–0151
6515–00–NIB–0152
6515–00–NIB–0153
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6515–00–NIB–0168
6515–00–NIB–0169
6515–00–NIB–0170
6515–00–NIB–0171
6515–00–NIB–0172
6515–00–NIB–0173
6515–00–NIB–0174
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6515–00–NIB–0185
6515–00–NIB–0186
6515–00–NIB–0187
6515–00–NIB–0188
6515–00–NIB–0189
6515–00–NIB–0190
6515–00–NIB–0191
6515–00–NIB–0192
6515–00–NIB–0193
6515–00–NIB–0194
6515–00–NIB–0195
6515–00–NIB–0196
6515–00–NIB–0197
6515–00–NIB–0198
6515–00–NIB–0199
6515–00–NIB–0200
6515–00–NIB–0201
6515–00–NIB–0202
6515–00–NIB–0203
6515–00–NIB–0204
6515–00–NIB–0205
6515–00–NIB–0206
6515–00–NIB–0207
6515–00–NIB–0208
6515–00–NIB–0209
6515–00–NIB–0210
6515–00–NIB–0211
6515–00–NIB–0212
6515–00–NIB–0213
6515–00–NIB–0214
6515–00–NIB–0215
6515–00–NIB–0216
6515–00–NIB–0217
6515–00–NIB–0218
6515–00–NIB–0219
6515–00–NIB–0220
6515–00–NIB–0221
6515–00–NIB–0222
6515–00–NIB–0223

NPA: Bosma Industries for the Blind, Inc. Indianapolis, Indiana

Government Agency: Department of Veterans Affairs/National Acquisition Center

Service

Central Facility Management

Veterans Affairs Headquarters Building, Washington, DC

NPA: Service Disabled Veterans Business Association Washington, District of Columbia

Government Agency: Department of Veterans Affairs

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–25276 Filed 10–5–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2001 Panel of the Survey of Income and Program Participation, Wave 4 Topical Modules.

Form Number(s): SIPP/CAPI Automated Instrument, SIPP 21405(L) Director's Letter, SIPP 21003 Reminder Card.

Agency Approval Number: 0607–0875.

Type of Request: Revision of a currently approved Collection.

Burden: 121,478 hours.

Number of Respondents: 78,750.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 4 Topical Module interview for the 2001 Panel of the Survey of Income and Program Participation (SIPP). We also request approval for a few replacement questions in the reinterview instrument. The core SIPP instrument, and reinterview instrument were cleared previously. The reinterview instrument will be used for quality control purposes. We are also seeking continued clearance for the SIPP Methods Panel instrument field testing to be conducted in October and November 2001 and July and August 2002. The test targets SIPP Wave 1 items and sections that require thorough and rigorous testing in order to improve the quality of core data. The experiment is conducted under the direction of the Methods Panel Team, which is committed to delivering an improved and less burdensome instrument for use in the 2004 SIPP Panel.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of 3 to 4 years. The 2001 SIPP Panel is scheduled for three years and will include nine waves beginning February 1, 2001.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as ''topical modules.'' The topical modules for the 2001 Panel Wave 4 are Annual Income and Retirement Accounts, Taxes, Work Schedule, and Childcare. Wave 4 interviews will be conducted from February through May 2002.

Data provided by the SIPP are being used by economic policymakers, the

Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–25219 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Multi-Purpose Application

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 10, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230, or via email at mclayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy. This revision includes the burden associated with 3rd party disclosures, certifications and notification requirements imposed on the public.

II. Method of Collection

Submitted on form BXA–748P.

III. Data

OMB Number: 0694–0088.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 8,117.

Estimated Time Per Response: 40–45 minutes per response.

Estimated Total Annual Burden Hours: 7,510.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–25132 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Short Supply Regulations, Petroleum Products

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 10, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230, or via internet at mclayton@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA

ICB Liaison, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection requires the submission of documents to support export license applications, or the retention of documents for shipments made under applicable License Exceptions of petroleum products derived from a naval petroleum reserve.

II. Method of Collection

Submission with BXA form BXA–748P and record retention.

III. Data

OMB Number: 0694–0026.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 15 to 60 minutes per response.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–25133 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export Controls of High Performance Computers

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 10, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *mclayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

These recordkeeping and reporting requirements are clear statements of normal business records for high performance computers (HPC) that are expected to be maintained by end-users in destinations where there is a potential for diversion to unauthorized endusers. The records must be available for inspection by U.S. officials to maintain surveillance of HPC usage and implementation of appropriate safeguards.

II. Method of Collection

Reports and recordkeeping.

III. Data

OMB Number: 0694–0073.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 33.

Estimated Time Per Response: 12 minutes to 2 hours per response.

Estimated Total Annual Burden Hours: 14 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–25134 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Closed Meeting

The Materials Technical Advisory Committee will meet on October 23, 2001, at 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions which affect the level of export controls applicable to materials and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 7, 2000, pursuant to Section 10(d) of the Federal

Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: October 2, 2001.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 01–25163 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, Goss Graphic Systems, Inc., and MAN Roland Druckmaschinen AG, the Department of Commerce is conducting an administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany. This review covers MAN Roland Druckmaschinen AG, a manufacturer/exporter of the subject merchandise to the United States. The period of review is September 1, 1999, through August 31, 2000.

We preliminarily determine that sales have not been made below normal value for MAN Roland Druckmaschinen AG. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on entries of the subject merchandise by MAN Roland Druckmaschinen AG covered by this review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136, or 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The period of review (POR) is September 1, 1999 through August 31, 2000.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2000).

Background

On July 23, 1996, the Department published in the **Federal Register**, 61 FR 38166, the final affirmative antidumping duty determination on large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Germany. We published an antidumping duty order on September 4, 1996 (61 FR 46623).

On September 20, 2000, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period September 1, 1999, through August 31, 2000 (65 FR 56868). The Department received requests for an administrative review of MAN Roland Druckmaschinen AG and its U.S. affiliate MAN Roland Inc. (collectively MAN Roland).

On September 29, 2000, Goss Graphic Systems, Inc. (the petitioner) requested that the Department determine whether antidumping duties have been absorbed by KBA or MAN Roland. On April 20, 2001, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. *See* discussion in the ''Duty Absorption section,'' below.

On October 10, 2000, the petitioner requested that the Department defer for one year the initiation of its review of entries by KBA subject to the above-referenced order covering the period September 1, 1999, to August 31, 2000. On October 30, 2000, we granted the petitioner's request to defer the review of KBA's entries, as well as initiated a review of MAN Roland. *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Reviews,* 65 FR 64662.

On October 27, 2000, we issued an antidumping questionnaire to MAN Roland. We received a response on February 5, 2001. We issued supplemental questionnaires in April and August 2001, and received responses in May and September 2001.

On March 22, 2001, the Department extended the time limit for the preliminary results in this review until October 1, 2001. *See Large Newspaper Printing Presses, and Components Thereof, from Germany and Japan: Notice of Extension of Time Limits for Antidumping Duty Administrative Reviews,* 66 FR 16040.

Scope of the Order

The products covered by the order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production

process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's-length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Duty Absorption

On September 29, 2000, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, MAN Roland sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act.

Because this review was initiated four years after the publication of the antidumping duty order, we will make a duty absorption determination in this segment of the proceeding.

On April 20, 2001, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. On June 18, 2001, MAN Roland responded to the Department's request stating that there is no basis under the statute for a finding that any antidumping duties ''have been absorbed'' by MAN Roland or its affiliates since the final results of the only review completed to date found no dumping by MAN Roland. As we have found preliminarily that there is no dumping margin for MAN Roland with respect to its U.S. sale under this review, we find preliminarily that there is no duty absorption.

Fair Value Comparisons

To determine whether MAN Roland's sale of a LNPP to the United States was made at less than normal value, we compared constructed export price (CEP) to the normal value, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Although MAN Roland's home market was viable, in accordance with section 773 of the Act and our past practice in this proceeding and in the companion proceeding involving Japan, we based normal value on constructed value because we determined that, even though the general product characteristics of LNPP systems are comparable enough for them to be considered a foreign like product, the physical differences in the sub-component specifications between LNPPs sold in the United States and the home market are so great that meaningful price-to-price comparisons cannot be made. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews,* 65 FR 62700, 62702 (October 19, 2000), followed in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review,* 66 FR 11555 (February 26, 2001); and *Large Newspaper Printing Presses and Components Thereof: Whether Assembled or Unassembled, from Germany: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Reviews and Final Determinations of Scope Inquiries,* 65 FR 62695, 62697 (October 19, 2000), followed in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Final Results of Antidumping Duty Administrative Review,* 66 FR 11557 (February 26, 2001) *(1998–1999 Final Results).*

Constructed Export Price

We calculated CEP, in accordance with sections 772(b), (c) and (d) of the Act, for MAN Roland's sale under review because the contract governing the U.S. sale was executed in the United States by MAN Roland's affiliated sales agent in the United States.

We calculated CEP based on the packed price to an unaffiliated customer in the United States. In accordance with section 772(c)(2) of the Act, we made deductions for the following charges: foreign inland freight charges; combined German inland insurance, marine insurance and U.S. inland insurance expenses; German handling, ocean freight, U.S. handling and U.S. inland freight expenses; U.S. brokerage; and U.S. Customs duty (including harbor maintenance and merchandise processing fees). We also made

deductions for commissions, imputed credit, warranty, direct training expenses, testing expenses, casualty insurance premium expenses and other direct selling expenses, pursuant to section 772(d)(1) of the Act. We deducted further those indirect selling expenses incurred by MAN Roland and its U.S. affiliate that related to economic activity in the United States.

As in prior segments of this proceeding, we calculated an imputed credit expense by multiplying an interest rate by the net balance of production costs incurred, and progress payments made, during the construction period. Consistent with the revised methodology discussed at Comment 4 of the *1998–1999 Final Results,* we used MAN Roland's euro short-term interest rate for the production period, and the U.S. dollar short-term interest rate for the post-production imputed credit portion. MAN Roland used the commercial production date to mark the end of the production period, rather than the installation date as requested in our supplemental questionnaire. For purposes of the preliminary results, we have accepted the imputed credit calculation using the commercial production date. However, we may consider this part of the methodology further in our final results.

In addition, we deducted the cost of further manufacturing or assembly expenses in accordance with section 772(d)(2) of the Act.

Further, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by MAN Roland and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

As noted above under the ''Fair Value Comparisons'' section of this notice, we based normal value on constructed value in accordance with section 773 of the Act because we determined that the unique, custom-built nature of each LNPP sold does not permit proper price-to-price comparisons, even though the home market was viable for MAN Roland.

Cost of Production Analysis and Constructed Value

Pursuant to section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect MAN Roland made sales in the home market at prices below its cost of production (COP) in this review because the Department disregarded certain sales made by MAN Roland during the less-than-fair-value (LTFV) investigation and during the previous administrative review pursuant to a finding that sales failed the cost test. *See 1998–1999 Final Results.* As a result, the Department initiated an investigation to determine whether MAN Roland made home market sales during the POR at prices below its COP within the meaning of section 773(b) of the Act.

We calculated the COP based on the sum of MAN Roland's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) and financial expenses, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a contract-specific basis, we compared the COP to home market prices, less any applicable movement charges, direct and indirect selling expenses, and packing expenses.

MAN Roland reported commissions paid to unaffiliated and affiliated sales agents, and claimed that the commissions paid to its affiliated sales agents are made at arm's length. In support of this claim, MAN Roland provided a regression analysis based on the estimated profitability of each sale. However, as we discussed in Comment 5 of the Decision Memorandum to the *1998–1999 Final Results,* this analysis fails to demonstrate that the affiliated commissions were made at arm's length. Further, our analysis comparing the commissions paid to both affiliated and unaffiliated agents for the home market sales in this review shows that the average commission percentage paid to affiliated agents was significantly different than the average commission percentage paid to unaffiliated agents (*see* Memorandum to the File entitled *Preliminary Results Calculation Worksheets for MAN Roland,* dated October 1, 2001). Consequently, we have not deducted affiliated party commissions from the home market price for purposes of comparison to the COP.

MAN Roland reported an additional warranty expense for delayed installation. MAN Roland allocated this expense based on past historical experience, although it reported that it did not incur this expense on any of the home market sales included in this review (*see* May 29, 2001, supplemental Section B response at page 34). As explained at Comment 6 of the Decision Memorandum to the *1998–1999 Final Results,* this expense is properly considered a direct selling expense and will be deducted only from those sales to which the expense applies. Since none of the sales in this review incurred this expense, we have not deducted this expense from the home market price for purposes of comparison to the COP.

In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. *See* section 773(b)(1) of the Act.

The results of our cost test for MAN Roland indicated that certain home market sales were at prices below COP within an extended period of time, were made in substantial quantities, and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales from our analysis and used the remaining sales as the basis for determining selling expenses and profit.

In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of MAN Roland's cost of materials, fabrication, selling, general and administrative (SG&A) expenses and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A expenses and profit on the amounts incurred and realized by MAN Roland in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We relied on MAN Roland's reported COP and constructed value amounts.

CEP to Constructed Value Comparisons

For CEP to constructed value comparisons, where appropriate, we deducted imputed credit, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. We calculated imputed credit for constructed value purposes in accordance with the methodology explained in the ''Constructed Export Price'' section of this notice.

We also made a CEP offset adjustment to normal value, as explained below, in accordance with section 773(a)(7)(B) of the Act, by deducting the home market indirect selling expenses up to the amount of indirect selling expenses incurred on U.S. sales.

Level of Trade and CEP Offset

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate normal value

based on sales at the same level of trade (LOT) as the export price or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See id.; see also Notice of Final Determination of Sales of Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997) (*Steel Plate*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[1] including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for export and comparison market sales (*i.e.,* normal value based on either home market or third country prices [2]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match sales of the foreign like product in the comparison market at the same LOT as the export price or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing export price or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a normal value LOT is more remote from the factory than the CEP LOT and we are unable to make a LOT adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See, Steel Plate,* 62 FR at 61731, 61732.

We obtained information from MAN Roland regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by MAN Roland for each channel of distribution.

MAN Roland reported home market sales through one channel of distribution: directly from MAN Roland's production facilities to the customer. We observed that MAN Roland provides the following services on sales to home market customers: market research, sales contacts and negotiations, personnel training for customer, installation at customer site, advertising to customer, packing, warranty service, and freight and delivery arrangements. Accordingly, all of MAN Roland's home market sales are made through the same channel of distribution and constitute one LOT.

As discussed above, we have determined that MAN Roland's U.S. sale under review is properly classified as a CEP sale. In its questionnaire response, MAN Roland reported that sales to the unaffiliated customers were made at the same LOT in both the United States and the home market. However, MAN Roland contends that, in the event that the Department classifies its U.S. sale as a CEP sale, then a LOT adjustment is appropriate to account for the differences between the actual LOT of the home market sales and the constructed LOT of the U.S. sale.

We examined the sales to MAN Roland's affiliated importer, MAN Roland, Inc., and found only one LOT. This CEP LOT differed considerably from the home market LOT with respect to selling activities associated with market research, sales contacts and negotiations, personnel training for customers, installation at the customer site, advertising to customers, and warranty service. Therefore, we find the CEP LOT to be different from the home market LOT and to be at a less advanced stage of distribution than the home market LOT. Based on this analysis, we conclude that the comparison market and U.S. channels of distribution, and the sales functions associated with each are sufficiently different so as to constitute two different levels of trade, and we find that the comparison market sales are made at a more advanced level of trade than are CEP sales. Because MAN Roland made sales in the home market at only one level of trade, the difference in the level of trade cannot be quantified. Further, we do not have information which would allow us to examine pricing patterns based on MAN Roland's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not form an appropriate basis for making a level of trade adjustment, but the level of trade in the home market is at a more advanced stage of distribution than the level of trade of the CEP, we have made a CEP offset to normal value in accordance with section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions, in accordance with section 773A(a) of the Act, based on the official exchange rates in effect on the date of the U.S. sale as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for the 1999–2000 POR is:

Manufacturer/exporter	Period	Margin
MAN Roland	9/1/99–8/31/00	0.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 35 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale occurs.

[2] Where normal value is based on constructed value, we determine the normal value LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for constructed value, where possible.

Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. If these preliminary results are adopted in our final results, we will instruct the Customs Service to liquidate all entries subject to this review without regard to antidumping duties.

If these preliminary results are not adopted in the final results, we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rates calculated in the final results of this review are above *de minimis* (*i.e.,* at or above 0.5 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the antidumping duty margins calculated for all U.S. sales examined and dividing the amount by the total entered value of the sales examined.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company (MAN Roland) will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 30.72 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: October 1, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–25271 Filed 10–5–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–588–837

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Preliminary Determination To Rescind the Administrative Review, in Part, To Revoke the Order, in Part, and Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination to rescind the administrative review, in part, to revoke to order, in part and results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner and one producer/exporter of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan. This review covers two manufacturers/exporters of the subject merchandise to the United States (Mitsubishi Heavy Industries, Ltd. and Tokyo Kikai Seisakusho, Ltd.). The period of review is September 1, 1999 through August 31, 2000.

We have preliminarily found that no sales of subject merchandise by Tokyo Kikai Seisakusho, Ltd. have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on entries of the subject merchandise exported by Tokyo Kikai Seisakusho, Ltd. covered by this review. Furthermore, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping duty order with respect to Tokyo Kikai Seisakusho, Ltd., based on three consecutive review periods of sales at not less than normal value (*see* 19 CFR 351.222(b)(i)). *See Intent to Revoke* section of this notice. We also have preliminarily determined that the review of Mitsubishi Heavy Industries, Ltd. should be rescinded.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The period of review (POR) is September 1, 1999 through August 31, 2000.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

During the previous administrative review period, covering sales of the subject merchandise for the period September 1, 1998 through August 31, 1999, Tokyo Kikai Seisakusho, Ltd. (TKS) requested that it defer reporting a sale to Dow Jones & Company (Dow Jones) until the next administrative review because, although TKS entered into a Large Newspaper Printing Presses

(LNPP) sales contract with Dow Jones during the POR, the entries relating to this sale would not have been fully delivered and installed by the conclusion of the POR. *See* TKS's letter to the Department dated December 14, 1999. On December 21, 1999, we notified TKS that it may report data on the Dow Jones sale after it is completed, during the next administrative review (1999–2000 review).

On September 20, 2000, the Department published in the **Federal Register** a notice advising of the opportunity to request an administrative review of this order for the period September 1, 1999, through August 31, 2000 (65 FR 56868).

On September 22, 2000, in accordance with 19 CFR 351.213(b), we received a request for a review and revocation of the antidumping duty order from TKS. On September 29, 2000, the petitioner, Goss Graphic Systems, Inc., requested an administrative review of the antidumping duty order for the following producers/exporters of LNPP: Mitsubishi Heavy Industries, Ltd. (MHI) and TKS. The petitioner also requested that the Department determine whether antidumping duties have been absorbed by MHI and TKS. On September 7, 2001, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. *See* discussion in the ''Duty Absorption section,'' below.

We published a notice of initiation of this review on October 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Reviews*, 65 FR 64662.

On October 25, 2000, we issued antidumping questionnaires to the two respondents. On December 11, 2000, MHI notified the Department that it had not made any U.S. sales or entries of subject merchandise during the POR. *See* the ''Partial Rescission of Administrative Review'' section of the notice below. The Department received a response to the questionnaire from TKS in January and February 2001.

On March 22, 2001, the Department extended the time limit for the preliminary results in this review until October 1, 2001. *See Large Newspaper Printing Presses, and Components Thereof, from Germany and Japan: Notice of Extension of Time Limits for Antidumping Duty Administrative Reviews*, 66 FR 16040.

We issued supplemental questionnaires to TKS in May and June 2001, and received responses to these questionnaires in June 2001. TKS submitted updates and revisions to its responses in August 2001, as well as a post-verification submission in September 2001.

Pursuant to section 782(i)(2) and (3) of the Act, we conducted verification of TKS's sales and cost responses in Japan in August 2001. The verification report will be issued following the issuance of these preliminary results.

Scope of the Order

The products covered by the order are large newspaper printing presses, including press systems, press additions, and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) A printing unit, which is any component that prints in monocolor, spot color, and/or process (full) color; (2) a reel tension paster, which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this order. Also included in the scope are elements of a LNPP system, addition, or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the order, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): (1) the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this order. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's-length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Also excluded from the scope, in accordance with the Department's determination in a changed-circumstances antidumping duty administrative review of the order which resulted in the partial revocation of the order with respect to certain merchandise, are elements and components of LNPP systems, and additions thereto, which feature a 22 inch cut-off, 50 inch web width and a rated speed no greater than 75,000 copies per hour. *See Large Newspaper Printing Presses Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order, In Part,* 64 FR 72315 (Dec. 27, 1999). In addition to the specifications set out in this paragraph, all of which must be met in order for the product to be excluded

from the scope of the order, the product must also meet all of the specifications detailed in the five numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not excluded from the scope of the order.

1. *Printing Unit:* A printing unit which is a color keyless blanket-to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:

- Each tower consisting of four levels, one or more of which must be populated.
- Plate cylinders which contain slot lock-ups and blanket cylinders which contain reel rod lock-ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in-line with bearers of other cylinders.
- Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non-anilox and non-porous metering roller.
- The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
- The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.

2. *Folder:* A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut-off length of 22 inches. The upper section consists of three-high double formers (total of 6) with six sets of nipping rollers.

3. *RTP:* A component which is of the two-arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back-to-back configuration (left and right hand load pairs).

4. *Conveyance and Access Apparatus:* Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.

5. *Computerized Control System:* A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

Further, this order covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this order are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Partial Rescission of Administrative Review

MHI notified the Department that it had not made any U.S. sales or entries of subject merchandise during the POR. Based on Customs Service information obtained to date, we find no indication of entries of subject merchandise by MHI. *See* Memorandum to the File dated September 28, 2001.

Therefore, consistent with the Department's practice, we preliminarily determine to rescind this review with respect to MHI. *See Stainless Steel Bar From India: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review,* 65 FR 12209 (March 8, 2000); *Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review,* 65 FR 18963 (Apr. 10, 2000).

Duty Absorption

On September 29, 2000, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, TKS sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act.

Because this review was initiated four years after the publication of the antidumping duty order, we will make a duty absorption determination in this segment of the proceeding.

On September 7, 2001, the Department requested proof that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. On September 17, 2001, TKS responded to the Department's request stating that it has not entered into any written agreement with its U.S. customers whereby the customer would agree to pay any antidumping duties. As we have found preliminarily that there is no dumping margin for TKS with respect to its U.S. sales under this review, we find preliminarily that there is no duty absorption.

Fair Value Comparisons

To determine whether TKS's sales of LNPPs to the United States were made at less than normal value, we compared constructed export price (CEP) to the normal value, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Although TKS's home market was viable, in accordance with section 773 of the Act and our past practice in this proceeding and in the companion proceeding involving Germany, we based normal value on constructed value because we determined that, even though the general product characteristics of LNPP systems are comparable enough for them to be considered a foreign like product, the physical differences in the sub-component specifications between LNPPs sold in the United States and the home market are so great that meaningful price-to-price comparisons cannot be made. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews*, 65 FR 62700, 62702 (October 19, 2000) (*1998–1999 Preliminary Results*), followed in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review*, 66 FR 11555 (February 26, 2001) (*1998–1999 Final Results*); and *Large Newspaper Printing Presses and Components Thereof: Whether Assembled or Unassembled, from Germany: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Reviews and Final Determinations of Scope Inquiries*, 65 FR 62695, 62697 (October 19, 2000), followed in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled,*

from Germany: Final Results of Antidumping Duty Administrative Review, 66 FR 11557 (February 26, 2001).

Constructed Export Price

We based the U.S. price on CEP, in accordance with sections 772(b), (c), and (d) of the Act, because the sales contracts were executed by TKS's affiliated sales agent in the United States.

We calculated CEP based on the packed, installed price to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight to port in Japan, foreign brokerage and handling, international freight expenses, freight and marine insurance, U.S. Customs duty, U.S. brokerage and handling, and unloading expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for warranty, imputed credit, direct training expenses, testing expenses, other technical service expenses, and U.S. indirect selling expenses incurred by TKS and its U.S. affiliate associated with economic activity occurring in the United States, in accordance with section 772(d)(1) of the Act.

TKS reported warranty expenses based on actual warranty expenses incurred through August 2001. These expenses reflect services under TKS's standard warranty. However, TKS occasionally provides additional warranty coverage based on design or fabrication errors, as noted, for example, on page 25 of TKS's June 29, 2001, supplemental Section C questionnaire response. Such expenses are not included in the actual warranty expenses reported to the Department, but are reflected in the historical warranty expense information reported at Exhibit C–18 of the February 9, 2001, Section C response. Therefore, in order to estimate the warranty expense incurred on the sale of the subject merchandise, it is necessary to add both the actual warranty expense and the historical warranty experience. Accordingly, we have deducted from the CEP an additional amount, based on the historical warranty experience, to reflect the additional, post-warranty period expense.

As in prior segments of this proceeding, we calculated an imputed credit expense by multiplying an interest rate by the net balance of production costs incurred, and progress payments made, during the construction period. In accordance with the revised methodology discussed at Comments 7 and 8 to the Decision Memorandum in the *1998–1999 Final Results*, we used the Japanese yen short-term interest rate for the production period, and the U.S. dollar short-term interest rate for the post-production imputed credit portion. TKS used the contract acceptance date to mark the end of the production period, rather than the installation date as requested in our supplemental questionnaire. For purposes of the preliminary results, we have accepted the imputed credit calculation using the contract acceptance date. However, we may consider this part of the methodology further in our final results.

In addition, we deducted the cost of any further manufacturing or assembly expenses in accordance with section 772(d)(2) of the Act. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(e) of the Act, we calculated the CEP profit rate using the expenses incurred by TKS and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

As noted above under the ''Fair Value Comparisons'' section of this notice, we based normal value on constructed value in accordance with section 773 of the Act because we determined that the unique, custom-built nature of each LNPP sold does not permit proper price-to-price comparisons, even though the home market was viable for TKS.

Cost of Production Analysis and Constructed Value

Pursuant to section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect TKS made sales in the home market at prices below its cost of production (COP) in this review because the Department disregarded certain sales made by TKS during the less-than-fair-value (LTFV) investigation and during the previous administrative reviews pursuant to a finding that sales failed the cost test. *See 1998–1999 Final Results*. As a result, the Department initiated an investigation to determine whether TKS made home market sales during the POR at prices below the COP within the meaning of section 773(b) of the Act.

We calculated the COP based on the sum of TKS's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) and financial expenses, in accordance with section 773(b)(3) of the Act.

We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a contract-specific basis, we compared the COP to home market prices, less any applicable movement charges, direct and indirect selling expenses, and packing expenses. As discussed above under ''Constructed Export Price,'' TKS's reported warranty expenses included only actual warranty expenses incurred through August 2001, and did not include post-warranty period expenses that may occur. Accordingly, we have deducted an additional amount from the home market price based on the historical warranty expense reported in the response to estimate the post-warranty period expenses. We also deducted payments for non-subject merchandise included in the contract price for certain sales.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

The results of our cost test for TKS indicated that certain home market sales were at prices below COP within an extended period of time, were made in substantial quantities, and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales from our analysis and used the remaining sales as the basis for determining selling expenses and profit. In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of TKS's cost of materials, fabrication, selling, general and administrative (SG&A) expenses and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A expenses and profit on the amounts incurred and realized by TKS in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We relied on TKS's reported COP and constructed value amounts except for G&A, where we applied a revised rate, based on information developed at verification and submitted for the record by TKS on September 10, 2001, at Tab C.

CEP to Constructed Value Comparisons

For CEP to constructed value comparisons, where appropriate, we deducted imputed credit, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. We calculated imputed credit for constructed value purposes in accordance with the methodology explained in the ''Constructed Export Price'' section of this notice.

We also made a CEP offset adjustment to normal value, as explained below, in accordance with section 773(a)(7)(B) of the Act, by deducting the home market indirect selling expenses up to the amount of indirect selling expenses incurred on U.S. sales.

Level of Trade and CEP Offset

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate normal value based on sales at the same level of trade (LOT) as the export price or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See, id.; see also Notice of Final Determination of Sales of Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997) (*Steel Plate*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chain of distribution''),[1] including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for export and comparison market sales (*i.e.,* normal value based on either home market or third country prices [2]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match sales of the foreign like product in the comparison market at the same LOT as the export price or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing export price or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a normal value LOT is more remote from the factory than the CEP LOT and we are unable to make a LOT adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Steel Plate,* 62 FR at 61731, 61732.

TKS claims that it made home market sales at only one level of trade (*i.e.,* direct sales to end users), which is more advanced than the level of trade in the U.S. market (*i.e.,* CEP sales to the U.S. affiliate). According to TKS, the level of trade in the home market is not comparable to the CEP level of trade because the majority of the selling functions with respect to its home market sales were performed by TKS in Japan at a more advanced level of trade than those selling functions relating to its U.S. sales, which are generally performed by its U.S. affiliate. TKS claims that the selling functions between the two markets differ even further once the applicable selling expenses are deducted from the CEP starting price. Therefore, TKS requested that the Department grant it a CEP offset under section 773(a)(7)(B) of the Act.

In order to determine whether normal value was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the respondent and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, exclusive of economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different and more advanced stage of distribution than the CEP level of trade.

TKS reported that it sold through one channel of distribution in the home market, and through a different channel in the United States. In Japan, TKS sold subject merchandise directly to unaffiliated customers, while in the United States, TKS sold the subject merchandise through its affiliate TKS (U.S.A.), who then sold the subject merchandise directly to unaffiliated purchasers.

We compared the selling functions and the level of activity in each distribution channel and found that several of the functions performed in the comparison market either were not performed in connection with the U.S. sale at the export level of trade, or were performed at a significantly lower level of activity on the part of TKS.

Moreover, as we have determined that installation expenses incurred on the U.S. sales should be treated as further manufacturing expenses, the CEP after deduction for all expenses under section 772(d) of the Act reflects an uninstalled LNPP. Supporting this contention is the fact that many of the same selling functions that are performed at the comparison market level of trade are performed not at the export level of trade, but by TKS's U.S. affiliate. Based on this analysis, we conclude that the comparison market and U.S. channels of distribution and the sales functions associated with each are sufficiently different so as to constitute two different levels of trade, and we find that the comparison market sales are made at a more advanced level of trade than are CEP sales. Because TKS made sales in the home market at only one level of trade, the difference in the level of trade cannot be quantified. Further, we do not have information which would allow us to examine pricing patterns based on TKS's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not form an appropriate basis for making a level of trade adjustment, but the level of trade in the home market is at a more advanced stage of distribution than the level of trade of the CEP, we have made a CEP offset to normal value in accordance with section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions, in accordance with section 773A(a) of the Act, based based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Intent To Revoke

On September 22, 2000, TKS requested that, pursuant to 19 CFR 351.222(b), the Department revoke the antidumping duty order in the above-referenced proceeding with respect to TKS at the conclusion of this administrative review. TKS submitted

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale occurs.

[2] Where normal value is based on constructed value, we determine the normal value LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for constructed value, where possible.

along with its revocation request a certification stating that: (1) The company sold subject merchandise at not less than normal value during the POR, and that in the future it would not sell such merchandise at less than normal value (*see* 19 CFR 351.222(e)(1)(i)); (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agrees to immediate reinstatement of the order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than normal value (*see* 19 CFR 351.222(e)(1)(iii)).

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value in the current review period and that the company will not sell at less than normal value in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than normal value. (*See* 19 CFR 351.222(e)(1).) Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that: (1) The company in question has sold subject merchandise at not less than normal value for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than normal value, and (3) the continued application of the antidumping duty order is not otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2). *See* also *Professional Electric Cutting Tools From Japan: Final Results of the Fifth Antidumping Duty Administrative Review and Revocation of the Antidumping Duty Order, in Part*, 64 FR 71411 (December 21, 1999); and *Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part: Pure Magnesium from Canada*, 64 FR 12977, 12982 (March 16, 1999).

We received no comments from the petitioner on TKS's request for revocation.

Upon review of the three criteria outlined at § 351.222(b) of the Department's regulations and the evidence in the record, we have preliminarily determined that the Department's requirements for revocation have been met. Based on the preliminary results in this review and the final results of the two preceding reviews, TKS has preliminarily demonstrated three consecutive years of sales at not less than normal value. Furthermore, we find that TKS's aggregate sales to the United States have been made in commercial quantities during all segments of this proceeding. TKS also agreed in writing to the immediate reinstatement of the antidumping duty order if the Department concludes that, subsequent to the partial revocation, TKS sold the subject merchandise at less than normal value.

Based on the above facts, and absent a determination that the continued application of the antidumping duty order is otherwise necessary to offset dumping, we preliminarily intend to revoke the antidumping duty order with respect to TKS. If these preliminary findings are affirmed in our final results, we intend to revoke the order with respect to all LNPP produced by TKS that are also exported by TKS. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct the Customs Service to refund any cash deposit.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period September 1, 1999, through August 31, 2000:

Manufacturer/exporter	Percent margin
Tokyo Kikai Seisakusho, Ltd	0.00

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. *See* 19 CFR 351.310(c). Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 35 days, respectively, from the date of publication of these preliminary results. See 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative reviews, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. If these preliminary results are adopted in our final results, we will instruct the Customs Service to liquidate all entries subject to this review without regard to antidumping duties.

If these preliminary results are not adopted in the final results, we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rates calculated in the final results of this review are above *de minimis* (*i.e.*, at or above 0.5 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the antidumping duty margins calculated for all U.S. sales examined

and dividing the amount by the total entered value of the sales examined.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of LNPP from Japan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(c) of the Act: (1) No cash deposit will be required for LNPP from Japan that are produced by TKS and that are also exported by TKS (unless the margin established for the company in the final results of this review is above *de minimis*); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 58.69 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 351.221.

Dated: October 1, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–25272 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from U.S. producers of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from the Republic of Korea (Korea). The review covers two manufacturers/exporters of subject merchandise to the United States during the period of review (POR), September 1, 1999 through August 31, 2000. Based upon our analysis, the Department has preliminarily determined that dumping margins exist for both manufacturers/exporters. If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Karine Gziryan, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–5346 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (2000).

Background

On September 15, 1998, the Department published in the **Federal Register** the antidumping duty order on SSWR from Korea. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod From Korea,* 63 FR 49331 (September 15, 1998). On September 20, 2000, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on SSWR from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR 56868 (September 20, 2000). On September 29, 2000, the petitioners, Carpenter Technology Corp., Empire Specialty Steel, and the United Steel Workers of America, AFL–CIO/CLC, requested an administrative review of Changwon Specialty Steel Co., Ltd. (Changwon) and Dongbang Specialty Steel Co., Ltd. (Dongbang) (collectively, respondents) for the period September 1, 1999 through August 31, 2000. On October 24, 2000, the Department initiated an administrative review of Changwon and Dongbang.[1]

On October 20, 2000, we issued an antidumping questionnaire to Changwon and Dongbang. The Department received Changwon's and Dongbang's responses in December 2000. We issued supplemental questionnaires to Changwon and Dongbang in February and May 2001, and received responses from Changwon and Dongbang in March and June 2001.

On June 11, 2001, the Department published in the **Federal Register** a notice extending the deadline for issuing the preliminary results in this case until no later than October 1, 2001. *See Stainless Steel Wire Rod From the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 31210 (June 11, 2001).

Scope of the Review

For purposes of this review, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares,

[1] The Department inadvertently omitted this case from the initiation notice published on October 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews,* 65 FR 64662 (October 30, 2000). However, a correction in the subsequent initiation notice was published on November 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 65 FR 71299 (November 30, 2000).

octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the review. SF20T and K–M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon 0.05 max
Manganese 2.00 max
Phosphorous 0.05 max
Sulfur 0.15 max)
Silicon 1.00 max
Chromium 19.00/21.00
Molybdenum 1.50/2.50
Lead-added (0.10/0.30)
Tellurium-added (0.03 min)

K–M35FL

Carbon 0.015 max
Silicon 0.70/1.00
Manganese 0.40 max
Phosphorous 0.04 max
Sulfur 0.03 max
Nickel 0.30 max
Chromium 12.50/14.00
Lead 0.10/0.30
Aluminum 0.20/0.35

The products subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Verification

As provided in section 782(i) of the Act, on July 17 to 27, 2001 and August 2 to 3, 2001, we verified sales and cost information provided by Changwon and sales information provided by Dongbang, using standard verification procedures, including an examination of relevant sales and financial records. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit (CRU) located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Duty Absorption

On November 14, 2000, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondents. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because the collapsed entity Pohang Iron and Steel Co., Ltd. (POSCO)/Changwon/Dongbang (*see* ''Affiliation and Collapsing'' section of this notice) sold to unaffiliated customers in the United States through an importer that is affiliated, and because this review was initiated two years after the publication of the order, we will make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On February 16, 2001, the Department requested evidence from each respondent to demonstrate that U.S. purchasers will pay any ultimately assessed duties charged to them. The Department requested that this information be provided no later than March 2, 2001. No respondent provided such evidence. Consequently, we have preliminarily determined that duty absorption by all respondents has occurred in this administrative review. As our analysis of the dumping margins may be modified in our final results, if interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay any ultimately assessed duty charged to affiliated importers, they must do so no later than 15 days after publication of these preliminary results. Any such information will be considered by the Department if we determine in our final results that there are dumping margins on the respondents' U.S. sales.

Affiliation and Collapsing

A. Changwon, POSCO, and Dongbang

During the less than fair value (LTFV) investigation, POSCO was the sole supplier to Dongbang of black coil (unfinished SSWR). *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Korea,* 63 FR 40404, 40410 (July 29, 1998) (*Final Determination*). Based on this fact, and the fact that Dongbang was not able to obtain suitable black coil from alternative sources, the Department determined that POSCO and its wholly-owned subsidiary, Changwon, were affiliated with Dongbang through a close supplier relationship pursuant to section 771(33)(G) of the Act and § 351.102(b) of the Department's regulations. *See id.* The Department, in the investigation stage, also collapsed Changwon, POSCO, and Dongbang as a single entity for purposes of the dumping analysis in accordance with § 351.401(f) of the Department's regulations. *See id.*

Because neither POSCO, Changwon, nor Dongbang has provided any new evidence showing that this finding no longer holds true, we have continued to find that POSCO and Changwon are affiliated with Dongbang through a close supplier relationship.[2] Further, we have continued to treat POSCO, Changwon, and Dongbang as a single entity and to calculate a single margin for them. (*See, e.g., Frozen Concentrated Orange Juice from Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 29930, 29931 (June 4, 2001), citing *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 64 FR 17998, 17999 (April 13, 1999) (unchanged by the final results)).

B. Affiliation Between Changwon, Dongbang and U.S. Trading Company Customers

Changwon and Dongbang[3] reported U.S. sales to trading companies whom they classified as unaffiliated parties in their December 11 and December 20, 2000 section A and C questionnaire

[2] During the POR, Changwon, and not POSCO, was Dongbang's sole supplier of black coil. However, since we continue to treat POSCO and Changwon as a single entity (as we did in the LTFV investigation), this does not change our determination that POSCO/Changwon are affiliated with Dongbang through a close supplier relationship.

[3] Although, as discussed above, we are treating POSCO, Changwon, and Dongbang, as a single entity, we may, in certain instances, refer to POSCO, Changwon, and Dongbang separately to distinguish the information separately reported by these companies.

responses. The petitioners contend that Changwon and Dongbang are affiliated with these trading company customers through a principal/agent relationship. Under section 771(33)(G) of the Act, principals and agents are affiliated because, ''by definition, a principal controls its agent.'' *See Notice of Final Determination of Sales at Less than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan,* 62 FR 24394, 24403 (May 5, 1997) (*Turbo-Compressors from Japan*). In determining whether a principal/agent relationship exists, the Department first examines whether an explicit agreement exists from the alleged principal, authorizing the agent to act on its behalf in a specified context. This agreement must not only state that such a relationship exists, but the alleged agent must expressly consent to such representation on behalf of the principal. However, the Department also recognizes that while agency relationships are ''frequently established by a written contract, this is not essential.'' *See id.* at 24402–24403 (expressing the principal/agent test); *see also Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 66 FR 41509, 41512 (August 8, 2001).

In the absence of an agency contract, ''the analysis of whether a relationship constitutes an agency is case-specific and can be quite complex; there is no bright line test.'' *See Turbo-Compressors from Japan,* 62 FR at 24403. The Department's examination of allegations of an agency relationship has focused on a range of criteria, including (but not limited to) the following: (1) The foreign producer's role in negotiating price and other terms of sale; (2) the extent of the foreign producer's interaction with the U.S. customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; and (5) whether the agent/reseller further processes or otherwise adds value to the merchandise. *Id.*

In the instant case, based on the totality of the circumstances, we believe that Changwon's and Dongbang's trading company customers are independent, unaffiliated resellers, and that a principal/agent relationship does not exist between Changwon, Dongbang, and their respective trading company customers. The record evidence indicates that, even though most of Changwon's and Dongbang's sales and order documentation on the record indicates the name of the ultimate end user, and Changwon's and Dongbang's identity presumably was disclosed to most of the end user customers, Changwon and Dongbang negotiated the terms of sales and set the prices with their trading company customers, and did not market to the trading companies' end user customers. *See, e.g.,* Changwon sales verification exhibits 11 to 18; Dongbang sales verification exhibits 8, 9, 10, 11 and 20; and Pohang Steel America Corp. Verification exhibits 7 and 8. Furthermore, Changwon and Dongbang, except in very limited instances, did not interact directly with the ultimate end users. The sales documentation in the questionnaire responses and verification exhibits also shows that trading company customers take title to the inventory and bear the risk of loss.

We also note that the facts in this case differ from those in *Turbo-Compressors from Japan,* where the Department determined that a principal/agent relationship existed based upon the fact that the respondent effectively controlled the price, among other terms of sale, in the transaction with the ultimate U.S. end user, and conducted some marketing of its product to the end user in the pre-sale period. *See Turbo-Compressors from Japan,* 62 FR at 24403. In the present case, the record does not contain any of these same facts. Furthermore, we also note that *Turbo-Compressors from Japan* involved a single sale through a single trading company, while the present case involves numerous sales to multiple trading companies, as well as more complex and varied fact patterns.

Because of the proprietary nature of this issue, for further discussion, *see* Memorandum from Holly Kuga to Bernard Carreau on Whether Changwon and Dongbang are Affiliated With Certain U.S. Customers Under Section 771(33) of the Act, dated October 1, 2001.

Normal Value Comparisons

To determine whether the respondents' sales of SSWR from Korea to the United States were made at less than normal value, we compared the export price (EP) and constructed export price (CEP), as appropriate, to the normal value (NV), as described in the ''Export Price,'' ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. We first attempted to compare contemporaneous U.S. and comparison market sales of products that are identical with respect to the following characteristics: grade, diameter, further processing and coating. Where we were unable to compare sales of identical merchandise, we compared U.S. sales to comparison market sales of the most similar merchandise based on the above characteristics, which are listed in order of importance for matching purposes. Where we were unable to find appropriate comparison market sales made in the ordinary course of trade, of comparable merchandise for the merchandise sold in the United States, we made comparisons to constructed value (CV).

Export Price

For Dongbang's reported sales, in calculating U.S. price, the Department used EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, by Dongbang to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, and CEP methodology was not otherwise warranted based on the facts on the record. We calculated EP based on the packed, delivered prices charged to unaffiliated customers in the United States or to unaffiliated customers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price, where applicable, for foreign movement expenses (including brokerage and handling and inland freight), international freight, and marine insurance. We added duty drawback received on imported materials, pursuant to section 772(c)(1)(B) of the Act, as recalculated pursuant to corrections presented at verification.

Constructed Export Price

Changwon reported its sales as EP sales. However, after an analysis of Changwon's information on the record, we preliminarily determine that Changwon's sales should be classified as CEP sales. The record in this case shows that Changwon's U.S. sales during the POR were made through two of its affiliates: POSCO Steel Sales & Service Co., Ltd. (POSTEEL) in Korea and Pohang Steel America Corporation (POSAM) in the United States. POSAM served as a point of contact for Changwon's U.S. customers, and relayed price inquiries and purchase orders from U.S. customers to and from Changwon through POSTEEL. *See* p. 24 of Changwon's December 11, 2000 Section A response. After Changwon confirmed the price and quantity of the sales and produced the orders, POSTEEL and POSAM arranged for transportation of Changwon's merchandise to the U.S. customers. *See id.* During this process, title passed from Changwon to POSTEEL, and then to

POSAM. POSAM then invoiced Changwon's U.S. customers, and received payment from these U.S. customers. *See id.* These facts were also present in the original LTFV investigation in which we determined Changwon's sales through POSTEEL and POSAM to be CEP sales (*see Stainless Steel Wire Rod From Korea: Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision,* 66 FR 41550 (August 8, 2001)) (*Amended Final Determination*).

Based upon these facts, including POSAM's role in invoicing and receiving payment from Changwon's U.S. customers, and Changwon's lack of direct contact with its U.S. customers, we have determined, consistent with the decision of the U.S. Court of Appeals for the Federal Circuit in *AK Steel* v. *United States,* 226 F.3d 1330 (Fed. Cir. 2000), that Changwon's U.S. sales were made in the United States by its U.S. affiliate, and thus, are properly classified as CEP sales.

We calculated CEP based on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for foreign and U.S. brokerage and handling, foreign and U.S. inland freight, international freight, marine insurance, U.S. duties, and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with sections 772(c)(2)(A) and 772(d)(1)(B) and (D) of the Act. These deductions included credit expenses. We added duty drawback received on imported materials pursuant to section 772(c)(1)(B) of the Act. Finally, in accordance with section 772(d)(3) of the Act, we made a deduction for CEP profit.

We included those U.S. sales presented in the corrections at Changwon's U.S. verification. Consistent with the Department's practice, we excluded those reported sales that entered the U.S. under a temporary import bond and were subsequently re-exported to a third country. *See, e.g., Oil Country Tubular Goods from Japan: Preliminary Results and Recission of Antidumping Administrative Review,* 64 FR 48589 (September 7, 1999) (unchanged by the final results); *see also Remand Determination: Titanium Metals Corp.* v. *United States,* 94–04–00236 (CIT April 17, 1995), affirmed by, *Titanium Metals Corp.* v. *United States,* 901 F. Supp. 362 (CIT 1995).

For further details, see Calculation Memorandum dated October 1, 2001.

Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same LOT as the EP or CEP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale. For CEP sales, it is the level of the constructed sale from the exporter to the importer. The Court of Appeals for the Federal Circuit (Federal Circuit) has held that the statute unambiguously requires Commerce to deduct the selling expenses set forth in section 772(d) from the CEP starting price prior to performing its LOT analysis. *See Micron Technology, Inc.* v. *United States,* 243 F.3rd 1301, 1315 (Fed. Cir. 2001). Consequently, the Department will continue to adjust the CEP, pursuant to section 772(d), prior to performing the LOT analysis, as articulated by the Department's regulations at 351.412.

To determine whether NV sales are at a different LOT than the EP or CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In determining whether separate levels of trade (LOTs) exist, we obtained information from the collapsed entity POSCO/Changwon/Dongbang about the marketing stages for the reported U.S. and comparison market sales, including a description of the selling activities performed by POSCO/Changwon/Dongbang for each channel of distribution. In identifying LOTs for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments. *See* 19 CFR 351.412(c)(1)(i) and (iii). In identifying LOTs for CEP sales, we considered the selling functions reflected in the starting price, as adjusted under section 772(d) of the Act. *See* 19 CFR 351.412(c)(ii). We expect that, if claimed LOTs are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In this review, Changwon and Dongbang claimed that their respective sales involved identical selling functions, irrespective of the channel of distribution or market. We examined these selling functions for the collapsed entity POSCO/Changwon/Dongbang (for Changwon's CEP sales, after deducting POSAM's selling expenses incurred in the United States), and found that sales activities were limited in nature and scope in both the comparison and U.S. markets, and consisted primarily of providing freight and packing services. Therefore, we have preliminarily found that there is one LOT in the U.S. and comparison market, and thus, no LOT adjustment or CEP offset is required for comparison of U.S. sales to comparison market sales. For further details, *see* Memorandum on Level of Trade Analysis dated October 1, 2001.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales failed the cost test, we calculated NV as noted in subsection 4, ''Calculation of NV,'' below.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Because the respondents' aggregate volume of home market sales of the foreign like product is greater than five percent of their aggregate volume of U.S. sales of subject merchandise, we determined that the home market is viable for the respondents.

2. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because the Department considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, the Department compared, on a model-specific and quality-specific (*i.e.,* prime and non-prime quality) basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, the Department determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, the Department was unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, the Department made a comparison to the next most similar product.

3. Cost of Production (COP) Analysis

In the investigation of SSWR from Korea, the most recently completed segment of this proceeding, the Department disregarded POSCO/Changwon/Dongbang's sales that were found to have failed the cost test. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated a COP investigation of the respondents for purposes of this administrative review. We conducted the COP analysis as described below.

A. Cost Averaging Periods

On December 4, 2000, the respondents notified the Department that they intended to calculate and report semi-annual weighted-average costs in their respective Section D submissions. The respondents contended that reporting annual weighted-average costs in this review would distort the dumping analysis due to substantial increases in the price of nickel, a major input of SSWR, during the POR. The Department decided to use a single weighted-average POR cost in its calculations. The Department concluded that, because nickel prices, and the respondents' costs, did not consistently increase during the POR, and because the nickel prices and the respondents' average reported sales price did not correspondingly increase during the POR, using a single POR weighted-average cost would not distort the dumping analysis. See Memorandum to Tom Futtner, on the 1999–2000 Administrative Review of the Antidumping Order on Stainless Steel Wire Rod from Korea, dated March 19, 2001.

On December 4, 2000, the respondents also requested that the Department allow them to report costs for the two closest semi-annual periods to the POR, July 1, 1999, through June 30, 2000. The Department, as stated in the Department's October 20, 2000 antidumping questionnaire, may permit reporting of COP and CV based on a company's fiscal year, if the fiscal year ends within three months of the POR. However, the respondents' fiscal year, the calendar year, does not end within three months of the POR. Furthermore, the respondents did not demonstrate that the costs that they incurred for the period July 1, 1999 through June 30, 2000 are representative of the costs that they incurred during the POR. Therefore, on February 7, 2001, the Department denied the respondents' request, and requested that the respondents calculate the reported COP and CV figures based on the actual costs incurred during the POR. On March 16, 2001, the respondents reported model-specific weighted-average costs for the POR.

B. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, for the POR based on the sum of materials and fabrication costs, general and administrative (G&A) expenses, and packing costs. Pursuant to section 773(f)(3) of the Act, and § 351.407(b) of the Department's regulations, for a certain proprietary major input supplied to Changwon by affiliates, we used the higher of cost, transfer price, or market price. We relied on the submitted collapsed costs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

1. In 1999, POSCO and Dongbang Transport Logistics Co., Ltd. (Dongbang Transport) (the companies on which we based the consolidated interest expense of Changwon and Dongbang, respectively) wrote off all of their deferred foreign exchange losses through retained earnings. POSCO and Dongbang Transport originally capitalized these losses with the intention of recognizing the loss over time on their income statements. Subsequently, POSCO and Dongbang Transport expensed these deferred losses directly to equity in 1999. Therefore, we adjusted POSCO/Changwon/Dongbang's reported interest expense to include the entire amount of the remaining deferred foreign exchange losses.

2. We excluded from Changwon's G&A expense calculation certain non-operating expense and income items, such as gains and losses on disposal of certain monetary instruments and other investment; gain on valuation of certain monetary instruments and redemption of debenture; extraordinary gain on a received asset; and certain proprietary miscellaneous non-operating income because these items do not relate to the general manufacturing activities of the company.

3. We excluded from Dongbang's G&A calculation a loss on disposition of trade receivables because this item does not relate to the general manufacturing activities of the company, and included this loss in Dongbang's indirect selling expenses.

4. We excluded from POSCO's G&A calculation (for G&A expenses included in certain proprietary inputs transferred to Changwon) certain non-operating expense and income items, such as gains and losses on futures, and disposition of investment assets; gain on valuation of securities, disposition of securities, disposition of investment assets, and redemption of corporate bond; and extraordinary gain on asset donation, because these items do not relate to the general manufacturing activities of the company.

For further details, *see* Calculation Memorandum dated October 1, 2001.

C. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COPs to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges and direct and indirect selling expenses.

D. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of POSCO/Changwon/Dongbang's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of POSCO/Changwon/Dongbang's sales of a given product were made at prices below the COP, we determined that such sales were made in substantial quantities within an extended period of time (*i.e.,* a period of one year). Further, because we compared prices to POR-average costs, we determined that the below-cost prices would not permit recovery of all costs within a reasonable time period, and thus, we disregarded the below-cost sales in accordance with sections 773(b)(1) and (2) of the Act.

We found that for certain products, POSCO/Changwon/Dongbang made home market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

E. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated POSCO/Changwon/ Dongbang's CV based on the sum of POSCO/Changwon/Dongbang's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by POSCO/Changwon/Dongbang in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

4. Calculation of NV

We determined price-based NVs for POSCO/Changwon/Dongbang as follows: We calculated NV based on packed, delivered and ex-factory prices to home market customers. We increased the starting price for freight and interest revenue, where applicable, and duty drawback revenue received from customers (as corrected by Dongbang in the corrections presented at the beginning of verification). We made deductions from the starting price for foreign inland freight, where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale (COS) adjustments to the starting price, where appropriate, for differences in credit, warranty, and bank expenses.

We deducted home market packing costs from, and added U.S. packing costs to, the starting price, in accordance with section 773(a)(6)(A) and (B) of the Act. Where appropriate, we made adjustments to NV to account for differences in the physical characteristics of the merchandise sold in the U.S. and comparison market, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where we based NV on CV, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period September 1, 1999, through August 31, 2000:

Manufacturer/exporter	Margin (percent)
POSCO/Changwon/Dongbang	4.56

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication date of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the deadline for filing case briefs. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on a diskette. The Department will publish the notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from the publication date of this notice.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct Customs to assess antidumping duties on appropriate entries. For Changwon's reported sales, since Changwon reported the entered values and importer for its sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. For Dongbang's reported sales, since Dongbang did not report the entered value for its sales, we have calculated importer-specific [4] per unit duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the quantity of sales used to calculate those duties. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess the importer-specific rate uniformly on all entries made during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate listed above (except that if the rate is *de minimis, i.e.,* less than 0.5 percent, a cash deposit rate of zero will be required); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original

[4] Dongbang also did not report the importers of its sales, but we determined the importers from Dongbang's sales documentation on the record.

LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 5.77 percent, which is the ''all others'' rate established in the LTFV investigation (*see Amended Final Determination*). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 1, 2001.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–25270 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration; Notice of Intent To Prepare a Restoration Plan and Programmatic Environmental Impact Statement/Environmental Impact Report (RP/EIS); Request for Comments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: Natural Resource Trustee agencies (the Trustees) have formed the Montrose Settlements Restoration Program (MSRP) to plan and oversee the restoration of natural resources that have been injured by the release of hazardous substances, DDTs and PCBs, in the Southern California Bight marine environment. The MSRP will prepare a Restoration Plan and programmatic Environmental Impact Statement/ Environmental Impact Report (RP/EIS) addressing the restoration of these natural resources. The Trustees announce the initiation of a public process to determine the scope of issues under consideration. The purpose of this notice is to inform the public of this process and the opportunity to participate in the development of the RP/EIS. All persons affected by, or otherwise interested in, the proposed restoration plan are invited to participate in determining the scope of significant issues to be considered in the RP/EIS by submitting written comments or by attending scoping meetings. Through the scoping process, the Trustees will identify and prioritize alternatives for potential restoration actions.

DATES: Comments must be submitted in writing on or before November 24, 2001. Public meetings have been scheduled October 13, 2001, October 21, 2001, November 1, 2001. Details on these meetings are provided in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Comments should be submitted to: The Montrose Settlements Restoration Program, c/o NOAA's Office of General Counsel, 501 W. Ocean Boulevard, Suite 4470, Long Beach, California 90802. Alternatively, comments may be submitted electronically to the following E-mail address: msrp@noaa.gov. All comments received, including names and addresses, will become part of the public record.

FOR FURTHER INFORMATION CONTACT: Jennifer Boyce, Montrose Settlements Restoration Program c/o NOAA's Office of General Counsel 501 W. Ocean Boulevard, Suite 4470, Long Beach, California 90802, (562) 980–4086; or visit the MSRP web site at: www.darcnw.noaa.gov/montrose.htm.

SUPPLEMENTARY INFORMATION:

Background

During the period from the late 1940s to the early 1970s, Los Angeles area industries discharged and dumped thousands of tons of DDTs and PCBs into ocean waters off the Southern California coast. Almost all of the DDT originated from the Montrose Chemical Corporation's manufacturing plant in Torrance, CA, and was discharged into Los Angeles County sewers that empty into the Pacific Ocean at White Point, on the Palos Verdes shelf. Montrose also dumped hundreds of tons of DDT-contaminated waste into the ocean near Santa Catalina Island. Additionally, large quantities of PCBs (polychlorinated biphenyls) from numerous sources throughout the L.A. basin were released into ocean waters through the Los Angeles County sewer system. In 1992 and 1993, United States Geological Survey (USGS) surveys found that more than 100 metric tons (110 US tons) of DDTs and 10 metric tons (11 US tons) of PCBs remained in the sediments of the Palos Verdes Shelf.

In 1990, the U.S. Department of Justice (DOJ) and the California Attorney General filed a lawsuit under CERCLA, alleging that a number of defendants were responsible for releasing DDTs and PCBs and other hazardous substances into the environment. The lawsuit charged that the DDTs and PCBs injured natural resources, including fish and wildlife that live in and around coastal waters in Southern California.

The state and federal governments have settled the final remaining legal claims brought in 1990. A total of $140 million in damages have been paid under four separate settlement agreements. The majority of the settlement money will go to the U.S. EPA to reduce the exposure of people and wildlife to DDTs and PCBs. Approximately $30 million is available for natural resource restoration projects.

Injuries to Natural Resources

DDTs and PCBs are slow to break down and, therefore, bioaccumulate and become more concentrated in animals at higher levels in the food web. When feeding on prey contaminated with DDTs and PCBs, animals at the top of the food web, such as bald eagles and peregrine falcons, can accumulate injurious concentration of these chemicals. DDTs in particular cause these birds to produce eggs with shells that are so thin that they allow developing embryos to dry out, or they break when the adults sit on them during incubation.

Bald eagles were a resident breeding species on all of the California Channel Islands from before the turn of the century until at least the 1930's. The last confirmed nesting of an eagle on the Channel Islands was in 1947. By the early 1960s, bald eagles had disappeared from all of the Channel Islands.

The American peregrine falcon preys on birds of both aquatic and terrestrial ecosystems. As mentioned above, DDTs cause eggshell thinning in birds, including peregrines. This reduces the number of fledglings per nest, which eventually decreases the number of adults in the breeding population. Peregrines were relatively common throughout California in the early 1900s and were part of Native American history and culture. The peregrines declined dramatically in North America following the application of DDT beginning in the 1940s. In California,

only two breeding pairs were found in 1970, where formerly there had been hundreds of known pairs. The Channel Islands population, which historically was 15–20 pairs, was eliminated between the mid-1940s and the early 1960s.

Many common sports fish in the L.A. area (approximately 50 species in eight groups) have levels of DDTs that exceed the State of California trigger level (0.1 ppm wet weight). A number of these sports fish also have concentrations of PCBs that exceed State of California trigger levels. Consequently, the State of California has issued health advisories warning to limit or avoid consumption of these fish at certain coastal locations of Los Angeles and Orange Counties. In addition, because of high levels of DDTs and PCBs in white croaker, the State has imposed bag limits for this fish and has banned commercial fishing for white croaker in the vicinity of the Palos Verdes Shelf.

By present estimates, DDTs and PCBs will continue to contaminate marine resources and birds in Southern California for decades. If instituted, clean up options under evaluation by the U.S. Environmental Protection Agency would reduce the severity of DDT and PCB contamination in the local ecosystem. At present, however, it appears not to be feasible to clean up all of the area contaminated with DDTs and PCBs, so some resources will continue to be injured.

Restoration Planning

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund,'' 42 U.S.C. 9601 et seq.) designates as possible natural resource trustees Federal, state, or tribal authorities who represent the public interest in natural resources. The trustees are responsible for recovering funds through litigation or settlement for damages for natural resource injuries. CERCLA requires that any recovered monies be used to ''restore, replace, or acquire the equivalent of'' the natural resources that have been injured by a release of a hazardous substance. The trustees are required to develop a restoration plan before settlement money can be spent on restoration projects. The Trustees include the: National Oceanic and Atmospheric Administration, Department of Commerce; U.S. Fish and Wildlife Service and National Park Service, U.S. Department of the Interior; California Department of Fish and Game; California State Lands Commission; and California Department of Parks and Recreation.

The restoration plan and programmatic environmental impact statement/environmental impact report (RP/EIS) will be prepared in accordance with the requirements of CERCLA, the National Environmental Policy Act, (NEPA, 42 U.S.C. 4321 et seq.) and the California Environmental Quality Act (CEQA, Pub. Res. Code sections 21000–21177.1). The Trustees' primary task is to determine how best to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources, and the Trustees are seeking the assistance of the public in this process. The Trustees must use the settlement monies to restore natural resources that were harmed by the DDTs and PCBs that were at issue in the Montrose litigation. By incorporating the public in the process and developing a formal restoration plan, there is a greater likelihood of success and acceptance.

The restoration planning process is aimed at developing a strategy for restoring habitats, species, and natural resource services that are lost or impaired as a result of the releases of DDTs and PCBs at issue in the Montrose litigation.

The draft RP/EIS will describe the restoration alternatives considered and identify a preferred restoration alternative. The RP/EIS will, among other things, include an analysis of the effects of each restoration alternative on the quality of the human environment, the relative effectiveness of alternative actions in achieving restoration goals using criteria developed for evaluating the alternatives, and the estimated costs of the alternatives.

The alternative projects will be described in the RP/EIS on a conceptual level since the plan is being prepared prior to the completion of detailed studies needed to design specific projects. At a later stage in the restoration process, after more detailed information is developed, public involvement will once again be sought through the preparation of supplemental environmental documentation and additional public comment periods.

Criteria

As required by CERCLA, restoration projects must be closely related to the lost or injured resources. The Trustees have compiled the following initial set of criteria for analyzing potential restoration projects for this case:

Nexus to Injured Resources—As described above, restoration efforts of the MSRP are directed at projects that restore, rehabilitate, replace, enhance or acquire the equivalent of the resources and services impacted by the release of DDTs and PCBs.

Feasibility—Based on past experience or studies, the restoration projects must be technically and procedurally sound.

No Duplicate or Replacement Funding—The Trustees will not fund projects that are already going to be funded or accomplished by other means or should be funded by more appropriate sources.

Legality—The projects must comply with all applicable laws.

Likelihood of Success—Projects will be evaluated for their potential for success, including the level of expected return of resources and resource services. Performance criteria of projects will have to be clear and measurable.

Cost Effectiveness—The projects will be evaluated by considering the relationship of expected project costs to the expected resource/service benefits from each project alternative.

Multiple Resource Benefits—Benefits can be increased if proposed projects benefit more than one natural resource or resource service.

Duration of Benefits—As described previously, contamination by DDTs and PCBs is expected to continue for decades. Long-term benefits are the objective of these projects, and the Trustees will evaluate project alternatives according to their expected duration of benefits.

Public Health and Safety—Possibility that a proposed alternative would create a threat to the health and safety of the public will be part of the evaluation process.

Likelihood of Adverse Impacts—Evaluation of projects will include examination of potential adverse impacts on the environment and the associated natural resources.

Opportunities for Collaboration—Cost effectiveness can be enhanced by matching funds, in-kind services, or volunteer assistance as well as coordination with on-going or proposed projects.

Proposals for alternative restoration concepts should attempt to meet these criteria. As part of the scoping process, newly proposed projects can be identified and incorporated into the restoration planning process provided that they meet legal requirements, technical feasibility and selection criteria.

Alternatives

Currently, the Trustees have identified six categories of restoration projects to be developed further in the draft RP/EIS. Through the scoping process, the Trustees are seeking public comment on these project concepts. The

Trustees are also seeking input on any other categories of restoration projects not already included here that the public believes may fulfill the restoration objectives identified for this case.

The Trustees will evaluate whether each project proposed satisfies the fundamental requirement restoration actions must meet in the Montrose case, i.e. that they restore, replace, rehabilitate, and/or acquire the equivalent of the natural resources injured and services lost as a result of the DDTs and PCBs at issue in the Montrose litigation. (Natural resource ''services'' are the functions a resource performs for the benefit of another natural resource and/or for the benefit of the public.) The highest priority will go to projects that most directly and effectively restore the natural resources still being harmed by the DDTs and PCBs. Thus, the Trustees will focus restoration efforts on the bald eagles, peregrine falcons, and fishing resources still being affected by these contaminants. Projects that only indirectly address the injuries to these resources, or that address injuries to other resources that were not the focus of the government's case, will receive secondary priority.

The six categories of restoration projects identified at this point by the Trustees are:

1. Continued Reintroduction of Bald Eagles to Santa Catalina Island

In 1980, the U.S. Fish and Wildlife Service and the Institute for Wildlife Studies, with the cooperation of the California Department of Fish and Game and the Santa Catalina Island Conservancy, initiated a program to reintroduce bald eagles to Catalina Island. Between 1980 and 1986, 33 eagles were placed in three different artificial nest or hacking platforms on Catalina Island. The first eggs were laid in 1987, but broke soon after they were laid. Subsequent contaminant analysis of egg remains revealed DDE (a metabolite of DDT) levels sufficient to cause complete reproductive failure.

The trustees are currently developing a long-term restoration plan for the eagles on Catalina Island. Elements of this plan may include continued manipulation of eggs and chicks at each nest site and additional hacking of birds onto the island.

2. Expansion of Efforts To Reintroduce Bald Eagles to All the Northern Channel Islands

The Trustees are preparing to initiate a study to determine the feasibility of reintroducing bald eagles to other Channel Islands where they historically bred. The results of the feasibility study will be used by the Trustees to evaluate whether to proceed with a full-scale reintroduction program to additional islands in the Channel Islands National Park or other Channel Islands where they historically bred, and aid in the development of plans for such a program. Potential activities of this program would include releasing additional bald eagles with the hope to establish breeding sites on several of the Northern Channel Islands.

3. Restoration of Peregrine Falcons on the Channel Islands

The intent of this proposed restoration project would be to restore a stable and healthy population of peregrine falcons throughout the Channel Islands including the southern islands. The proposed restoration project would involve the reintroduction of additional birds to all of the Channel Islands. An intensive monitoring effort would also be included in the project to determine the success of the restoration effort and to document any future impacts due to pesticides on the recovering population.

4. Cleaner Fish for Anglers: Projects To Restore Fishing Injured by DDTs and PCBs

Since the Trustees do not have a way to entirely eliminate contamination of local sports fish, the Trustees are considering restoration projects that will, instead, increase the abundance and availability of cleaner fish at easily accessible fishing locations. In addition, these projects would displace highly contaminated fish, such as white croaker. These restoration projects will have to provide sustainable fishing for sizes and species of fish that would satisfy anglers' requirements for acceptable fishing.

One way to do this is to modify the habitats for fish at easily accessible locations for fishing, such as piers, jetties, and other nearshore locations. Surveys of fish in different habitats indicate that white croaker frequents sandy and muddy areas, but avoids rocky habitats. In contrast, less contaminated species of fish, such as rockfish, are most abundant in rocky areas, including kelp beds. The Trustees will examine the feasibility of placing rocky habitat, including kelp habitat, in sandy/muddy areas where anglers now catch large amounts of white croaker.

Examples of such projects are constructed reefs, which have been used widely and successfully to increase the local abundance of sports fish. There is some controversy as to whether constructed reefs actually increase the production and overall populations of fish or merely attract fish; however, studies have provided evidence that the production of fish on relatively large constructed reefs in Southern California is about nine times greater than on adjacent sand habitat. Regardless of whether providing more fish by production or attraction, constructed rocky habitat could serve the purpose of providing local anglers with a greater availability of cleaner fish.

Other methods, such as ''fish aggregation devices'' also exist to make desirable fish more available to anglers. The Trustees will examine and evaluate all available methods that would serve the double purpose of decreasing the availability of highly contaminated sports fish while also increasing the availability of clean sports fish.

As another measure to provide anglers access to cleaner fish, the Trustees may conduct long-term, multi-cultural education campaigns so anglers will have the information they need to choose the safest species of fish to eat and the best locations to catch these fish. Such activities would be conducted in close collaboration with other federal, state, and local agencies.

5. Wetlands and Estuarine Projects To Benefit Resources Injured in the Montrose Case

The Trustees will evaluate projects creating or enhancing habitats in estuaries and coastal wetlands as restoration to address the injuries caused by DDTs and PCBs in the Montrose case.

Coastal wetlands and estuarine habitats are spawning grounds and nurseries for certain sports fish, and they produce sources of food that contribute to the productivity of coastal sports fish populations. Coastal wetlands and estuaries may also benefit the injured populations of bald eagles and peregrine falcons by increasing productivity of potential prey species.

Coastal wetlands in Southern California have been extensively destroyed and degraded; consequently, there is a widespread and well-documented need for creating and improving wetlands to benefit the larger coastal ecosystem. However, the benefits provided by wetlands and estuaries restoration projects vary among sites and depend on many factors. The Trustees' evaluation of such projects will focus on the extent to which they can directly and effectively provide cleaner fish to local anglers and cleaner or more abundant prey for local bald eagles and peregrine falcons.

6. Seabird Projects

As stated above, the Montrose litigation and settlements were focused on those injuries that appeared to be continuing. The Trustees recognize that a variety of other species such as brown pelicans and double-crested cormorants were severely affected by DDT in the past. Substantial seabird populations occur in the Southern California Bight, including breeding and non-breeding birds.

Since these populations have declined from historical numbers, they provide an opportunity for restoration projects. Efforts to enhance the populations of marine birds in the SCB could also benefit reintroduced bald eagles and peregrine falcons by providing prey that may contain lower contaminant levels than other food sources such as carcasses of marine mammals. The Trustees may explore methods to enhance the populations of seabirds through the development of innovative restoration concepts, such as reducing anthropogenic impacts and other factors that adversely affect the seabirds' survival.

These project concepts are described in further detail in a public scoping document issued on August 24, 2001 by the trustees to inform the public of the restoration planning process and to seek input from affected individuals and groups. The scoping document may be obtained from the MSRP web site (www.darcnw.noaa.gov/montrose/htm), or by a copy may be requested by calling (866) 795–7786 or by sending an e-mail request to msrp@noaa.gov.

Public Scoping Meetings

The Trustees have scheduled three public meetings in the fall of 2001. Comments will be received at these meetings and throughout the scoping period. The scoping meetings are scheduled as follows:

1. Saturday, October 13, 2001, 3:30 p.m.–6:30 p.m., Channel Islands National Park Headquarters, 1901 Spinnaker Drive, Ventura, CA.

2. Sunday, October 21, 2001, 10:00 a.m.–6:00 p.m., Cabrillo Sea Fair event, Cabrillo Aquarium, 3720 Stephen White Drive, San Pedro, CA—The Trustees will sponsor an information booth and be available to answer questions.

3. Thursday, November 1, 2001, 7:00 p.m. –9:00 p.m., Ken Edwards Center, 1527 Fourth Street, Santa Monica, CA.

The purpose of these meetings will be to introduce the public to the MSRP staff and Trustee Council, define the Trustees' role and responsibilities, explain what restoration means and the legal requirements that must be followed. Additionally, the Trustees will present the restoration goals, objectives, and project selection criteria for this case, and describe the restoration alternatives the Trustees plan to develop in the RP/EIS. The Trustees will take comments from the public on the factors they would like addressed concerning the restoration alternatives presented, as well as taking comments on other restoration alternatives the public would like the Trustees to consider.

Administrative Record

The Trustees have made available for public review the documents comprising the Administrative Record (Record) of the Montrose Settlements Restoration Program. The Record includes documents that the Trustees have relied upon during the development of the RP/EIS, and that form the basis for determining a restoration action under CERCLA and NEPA. Documents now in the Record include a copy of this notice, the MSRP fact sheet, the scoping document, and consent decrees. Other documents will be added as the restoration process progresses.

The Record is available for viewing at NOAA's Office of General Counsel for Natural Resources, located at: 501 West Ocean Blvd, Suite 4700, Long Beach, CA 90802 The repository is open from 9:00 to 5:00 Monday through Friday, except for Federal holidays. Arrangements may be made to the review the Record by contacting Kolleen Bannon at 501 W. Ocean Blvd., suite 4470, Long Beach, CA 90802 or by calling her at 562–980–4078.

How To Submit Comments

Pursuant to NEPA, 42 U.S.C. 4321 *et seq.*, CERCLA, 42 U.S.C. 9601 *et seq.*, and CEQA, Pub. Res. Code sections 21000–21177.1, the Trustees seek public involvement in determining the scope of significant issues to be considered in the RP/EIS. Comments should be sent to the Montrose Settlements Restoration Program, NOAA, Suite 4470, 501 W. Ocean Blvd., Long Beach, CA 90803, (866) 795–7786. Comments also may be submitted by e-mail to msrp.noaa.gov. Comments should be received on or before November 24, 2001.

Authority: 42 U.S.C. 4321 *et seq.* and 9601 et. seq.

Dated: October 1, 2001.

Alan Neuschatz,

Chief Financial Officer/Chief Administrative Officer.

[FR Doc. 01–25135 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100101F]

Mid–AtlanticFishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Committee Chairmen will hold a public meeting.

DATES: The meeting will be held on Tuesday, October 23, 2001, from 10 a.m. until 5 p.m.

ADDRESSES: This meeting will be held at the Renaissance Philadelphia Hotel Airport, 500 Stevens Drive, Philadelphia, PA 19113, telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review committee appointments, address advisory panel composition and membership, review federal schedules, and initiate development of the Council's annual work plan for 2002.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 2, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–25301 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091901C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) and Scientific and Statistical Committee (SSC) Salmon Subcommittee will hold a joint work session, which is open to the public.

DATES: The work session will be held Tuesday, October 23, 2001, from 8:30 a.m. to 5 p.m., and Wednesday, October 24, 2001, from 8:30 a.m. to 5 p.m.

ADDRESSES: The work session will be held at the Embassy Suites Hotel, Pine Room II, 7900 NE 82nd Ave., Portland, OR 97220

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to brief the STT and SSC on changes made to or proposed for the Klamath Ocean Harvest Model (KOHM) and the coho Fishery Regulation Assessment Model (FRAM), and review the scientific bases for those changes. The KOHM will be reviewed on October 23, 2001 and the FRAM will be reviewed on October 24, 2001.

Although non-emergency issues not contained in the meeting agenda may come before the STT and the SSC subcommittee for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 2, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–25302 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092101D]

Marine Mammals; File No. 87-1593-00

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Daniel P. Costa, Professor of Biology, Department of Ecology and Evolutionary Biology, Center for Ocean Health, Santa Cruz, CA 95060, has requested an amendment to scientific research Permit No. 87–1593.

DATES: Written or telefaxed comments must be received on or before November 8, 2001.

ADDRESSES: The amendment request and related documents are in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 87–1593, issued on February 21, 2001 (66 FR 12763), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No.87–1593 authorizes the permit holder to conduct research on marine mammals in two different projects: Project I authorizes capture, tag, sample and release of California sea lions (*Zalophus californianus*); Project II authorizes capture, tag, sample and release of Crabeater seals (*Lobodon carcinophagus*) and secondarily takes for leopard seals (*Hydrurga leptonyx*), Weddell seals (*Leptonychotes weddellii*), and Ross seals (*Ommatophoca rossii*).

The permit holder requests authorization to: a) Take 40 adult male California sea lions per year by capture, tag, bleach mark, restraint, anesthetization, blood sample (80ml), weigh, morphometric measurements, muscle biopsy and instrument with TDRs and/or ARGOS linked PTTs and heart-rate/stomach-temperature (GTR) recorders, insertion of a stomach temperature pill, and release; b) incidentally harass up to 1000 sea lions per adult capture event (approx. 40K); c) incidentally harass up to 2600 animals during fecal collection; d)incidentally harass up to 1000 Northern elephant seals, and up to 100 Northern fur seals during all research on California sea lions. Takes are requested annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal

Commission and its Committee of Scientific Advisors.

Dated: October 2, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–25300 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Final Guidance for Coastal Impact Assistance Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Availability of Final Guidance for Coastal Impact Assistance Program.

SUMMARY: Notice is hereby given of the availability of Final Guidance for the Coastal Impact Assistance Program (CIAP). The fiscal year 2001 appropriations for the Departments of Commerce, Justice and State created the CIAP.

The CIAP will direct approximately $145 million to the outer continental (OCS) shelf oil and gas producing states of Alaska, Alabama, California, Florida, Louisiana, Mississippi and Texas and the approximately 150 coastal political subdivisions within those states to help mitigate the impacts of OCS activities and protect coastal resources. The CIAP requires these states to submit Coastal Impact Assistance Plans detailing how the funds will be expended. This guidance provides the information necessary for eligible states and coastal political subdivisions to develop CIAP plans and submit them to the National Oceanic and Atmospheric Administration (NOAA).

Copies of the Final Guidance for the Coastal Impact Assistance Program can be found on the NOAA website at http://www.ocrm,nos.noaa.gov/cpd or may be obtained upon request from: Joseph Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. 301–713–3155, extension 201, e-mail *joseph.flanagan@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Josh Lott, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. 301–713–3155, extension 178, e-mail *josh.lott@noaa.gov.*

SUPPLEMENTARY INFORMATION: (1) Program Authorities: Specific authority for this Announcement is found in 43 U.S.C. 1331 *et seq.,* as amended, December 21, 2000. (2) Catalog of Federal Domestic Assistance Numbers: 11.419 for NOAA Coastal Zone Management Program Administration.

I. Introduction

The fiscal year 2001 appropriations act for the Departments of Commerce, Justice, and State created the Coastal Impact Assistance Program (CIAP) by amending the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.). The CIAP recognizes that impacts from Outer Continental Shelf (OCS) oil and gas activities fall disproportionately on the coastal states and localities nearest to where the activities occur, and where the associated facilities are located. The CIAP legislation appropriates money to the Secretary of Commerce who will disburse it to eligible states and coastal political subdivisions, and requires the states to submit Coastal Impact Assistance Plans detailing how the funds will be expended. This guidance provides information necessary for eligible states and coastal political subdivisions to participate in the CIAP. Alabama, Alaska, California, Florida, Louisiana, Mississippi, and Texas are the seven eligible states. Counties, parishes, or equivalent units of government within those states lying all or in part within the coastal zone as defined by section 304(1) of the Coastal Zone Management Act of 1972, as amended (CZMA), are the coastal political subdivisions eligible for CIAP funding (§ 31(a)(1)), a total of 147 local jurisdictions.

States must develop CIAP plans and submit them to the National Oceanic and Atmospheric Administration (NOAA) by July 1, 2001, and NOAA has 90 days from receipt to complete review (§ 31(d)(1), (3)). If a state has not submitted a plan by July 1, 2001, NOAA will hold the funds in escrow provided that the state is making a good faith effort to develop and submit its CIAP plan (§ 31(c)(4)).

II. Funding Allocations

The total fiscal year 2001 appropriation is $149,670,000 (this is $150 million less the 0.22% across the board reduction mandated in the appropriations act). Congress authorized and appropriated funds for the CIAP for fiscal year 2001 only. NOAA may utilize no more than five percent of the available funding to cover some of the costs of program administration. These costs include legal and program work for developing and implementing the program; financial assistance expertise to ensure prompt delivery of funds; technical assistance to address other statutory requirements such as the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), the Essential Fish Habitat provisions of the Sustainable Fisheries Act, Coastal Barrier Resources Act, National Historic Preservation Act, Americans with Disabilities Act, and others; technical needs for funding formula development; and other costs such as printing and public notices. Until the state plans have been submitted, it is difficult to predict the costs of complying with NEPA, ESA, and other federal authorities. If less than five percent is required for program administration, we will look to reallocate the remaining funds to the states and coastal political subdivisions.

The CIAP legislation allocates funds to eligible states and coastal political subdivisions according to a formula based on revenues from OCS leases, shoreline mileage and population of coastal political subdivisions, and distance from coastal political subdivisions to the OCS leased tracts. NOAA completed and released the allocations on April 16, 2001.

III. Developing the Coastal Impact Assistance Plan

Each Governor must designate a state agency to develop the Coastal Impact Assistance Plan. Coastal political subdivisions must supply a point of contact to the Governor's designated agency and a description of how they will expend their allotted funds. The local projects will be incorporated into the state plan and the Governor must certify that the uses of funds by the coastal political subdivisions are consistent with the authorized uses of funds specified in § 31(e) (§ 31(d)(2)(C)). Federal funds appropriated to the states under sections 306 or 309 of the CZMA may be used to develop the plan. See section IV.A. for more information on how states and coastal political subdivisions may incur CIAP costs before the funds are disbursed.

A. Public Participation

The CIAP legislation requires local input and public participation in the development of the plan (§ 31(d)(1)). This can be achieved through a variety of means: use of advisory committees; commission meetings; informal public workshops; or formal public hearings. At a minimum, states should involve the public in plan development, provide

adequate public notice of plan availability, and a 30-day public comment period.

States should complete the 30-day public review period prior to July 1, 2001 so that the plans may be revised as necessary based on public comments before they are submitted by the statutory deadline. States may submit a draft plan to NOAA at the same time it is made available for public review. This will expedite NOAA's review and approval and allow NOAA to disburse the funds as quickly as possible.

B. Level of Detail

The plan must describe the individual state and local projects in as much detail as available. For most projects, a total budget will be sufficient, rather than a budget broken down into object class categories (e.g., personnel, equipment, contracts, etc.). However, NOAA reserves the right to request additional budget detail for large or complex projects. given the extremely ambitious schedule established in the legislation, and that state and local funding allocations were not completed until April 16, 2001, NOAA understands that many specific state and local projects may not be finalized by the July 1, 2001 due date. In addition, some states may want to spend more time working with state and local agencies to encourage the most beneficial use of funds. Therefore, NOAA will approve plans that describe generally how the state and coastal political subdivisions will expend their funds, i.e., by specifying the types of eligible projects they may undertake rather than complete project descriptions. However, NOAA must approve the specific projects and comply with NEPA, etc., before the funds are disbursed and the projects are undertaken. Before the funds are disbursed, the state, and coastal political subdivisions will submit a project description in sufficient detail to allow NOAA to review and approve it in accordance with the CIAP legislation.

1. Deadline

The CIAP legislation has a deadline of July 1, 2001, for submittal of CIAP plans. NOAA cannot extend the deadline beyond that date. However, the CIAP legislation gives NOAA the authority to hold funds in escrow for a state provided that the state is making a good faith effort to develop and submit, or update, a CIAP Plan) § 31(c)(4)). We recognize the difficult time lines and will use this authority to hold funds in escrow while a state completes its Plan. Our goal is to ensure that all states and counties receive their share of the CIAP funding in a timely manner, and we will work with you to see that this happens. States that are not going to meet the July 1, 2001 deadline should submit a letter or e-mail to NOAA briefly describing their plan development process and a target date for plan submittal.

C. Project Funding

Only the designated state agency and eligible coastal political subdivisions are guaranteed to receive funds under the CIAP legislation. However, the designated state agency and coastal political subdivisions may make sub-awards to other state or local agencies, universities, or other entities. The state or a coastal political subdivision may make sub-awards to municipalities within the coastal zone or coastal watershed for authorized projects. All projects do not need to be undertaken solely within the state's coastal zone; for example, the state or a coastal political subdivision may fund a watershed management plan that includes areas beyond the state's coastal zone. Coastal political subdivisions may combine their allocations to fund larger, mutually beneficial projects, or a state may choose to contribute some of its funding to a coastal political subdivision to allow that locality to fund a larger project. A coastal political subdivision may not receive less than its authorized allocation, however, unless the Governor or NOAA finds that its proposed uses of funds are inconsistent with the CIAP legislation, or the coastal political subdivision chooses to give up some of all of its allotted funds (see section D. Governor's Certification below).

D. Governor's Certification

Each coastal political subdivision must supply a point of contact and description of how it will expend its allotted funds. The coastal political subdivision must supply this information to the Governor, for the Governor to include in the plan. The Governor must certify that the uses of funds for local projects are consistent with the uses specified in the CIAP legislation (§ 31(d)(2)(C)). However, the Governor may not direct local funds toward or away from any authorized uses, with the exception of the limitation on infrastructure and other public service needs discussed in section IV of this document. If the Governor or NOAA find that uses of funds proposed by some coastal political subdivisions are inconsistent with the CIAP legislation, and the subdivisions are not making a good faith effort to revise the uses of their funds, or if some coastal political subdivisions choose not to participate in the CIAP, NOAA will allocate those funds to the remaining coastal political subdivisions in the state.

E. Plan Outline

To expedite disbursement of funds, NOAA recommends that the plan be written and submitted in sufficient detail to serve as a grant application. The CIAP legislation includes five elements which must be included in the plan, detailed in § 31(d)(2)(A)–(E). To ensure the required elements are included in the plan, NOAA recommends the following outline:

1. Designated State Agency

The CIAP legislation requires that the plan provide the name of the state agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of the program (§ 31)(d)(2)(A)). The seven governors have already designated agencies to serve as CIAP points of contact NOAA will assume that the currently designated agency remains the point of contact until we receive different information from the Governor. The Governor may make this determination at any time, even after plan approval.

2. Certification

The CIAP legislation requires a certification by the Governor that the uses of funds proposed by the coastal political subdivisions are consistent with the requirements of the program (§ 31(d)(2)(A)); and that ample opportunity has been accorded for public participation in the development of the plan (§ 31(d)(2)(D)). The certification can take the form of a letter from the Governor submitting the plan to NOAA, or an opening statement from the Governor in the plan itself. The plan should be submitted to the Secretary of Commerce.

3. Public Participation

This section should describe how the public and coastal political subdivision were involved in the development of the CIAP Plan (see section III.A. above)

4. Implementation Program

The CIAP legislation requires that the state plan contain ''a program for the implementation of the plan which describes how the amounts provided under this section will be used'' (§ 31(d)(2)(B)). NOAA anticipates that this section will be the bulk of the plan and will be central to NOAA's determination whether a state plan is consistent with the purposes specified

in the CIAP legislation. A suggested format for this section is the following:

(1) a brief description of what the state hopes to achieve under the plan;

(2) a description of the major activities and/or categories to be funded under the plan (e.g., infrastructure, habitat restoration, acquisition, construction, etc.);

(3) a description of how the state will implement the plan (e.g., through state agencies, requests for project proposals, competitive grants, etc.); and

(4) an estimate of the amount of funds that will be spent on each activity or category.

When describing specific projects, the plan should describe the projects in the following manner:

(1) a one or two paragraph abstract plus up to two pages of background/additional detail, if necessary;

(2) a brief explanation of how the project is consistent with at least one of the uses authorized by the program; and

(3) the total cost of the project (NOAA reserves the right to request additional budget detail for large or complex projects).

The overall plan must contain a single budget broken down by object classes. See sections III.B–D of this document for more information on project selection and funding. *All projects in the plan must be consistent with the uses of funds specified in the legislation.*

5. Coordination With Other Federal Resources and Programs

The CIAP legislation requires that plans contain measures for taking into account other relevant federal resources and programs. (§ 31(d)(2)(E)) Examples of other federal resources and programs include: Coastal Zone Management Programs; National Estuarine Research Reserves; National Marine Sanctuaries; National Estuary Programs; National Wildlife Refuges and other preservation areas; restoration programs such as NOAA's Community-Based Habitat Restoration and Damage Assessment and Restoration Programs; federally funded conservation, development, or transportation projects; and federally mandated activities such as wetlands or endangered species protection. Projects funded under the CIAP should be consistent with other federal programs.

The plan should describe generally how the activities funded under the CIAP take into account other federal programs. This could be done through the public involvement process by ensuring that federal agencies are able to review and comment on the plan, through an existing state clearinghouse process whereby specific funding proposals are brought to the attention of federal and state agencies, or through similar means.

Specific activities funded under the CIAP should be coordinated with federal resources and programs wherever possible. For example, a state or local government could use some CIAP funds to expand or improve an existing restoration project, or acquire habitat areas needed to protect endangered species, or develop and implement regional restoration plans, or to apply best management practices to reduce nonpoint source pollution from land-based activities.

6. Coastal Political Subdivision Information

The CIAP legislation requires that the plan identify a contact for each coastal political subdivision (§ 31(d)(2)(C)). The list may be attached to the plan and should include the name of each coastal political subdivision, the name of the subdivision's contact and the contact's phone number and e-mail address. The legislation also requires that the plan contain a description of how coastal political subdivisions will use the amounts provided by the program. This section should contain a description of each political subdivision's plan that follows the format described in III.E.4.

F. Plan Amendments

Section 31(d)(4) of the CIAP legislation states that any amendment to the CIAP Plan shall be prepared according to the requirements and procedures of the Plan itself, including public involvement, Governor's certification, etc. For ease of administration, NOAA will use a similar process for reviewing plan amendments as we do for reviewing changes to state Coastal Zone Management Programs. There is an abbreviated process for minor changes and a more involved process for major changes. NOAA realizes that some minor changes to CIAP Plans may not constitute ''amendments'' and may be undertaken simply by notifying NOAA of the proposed change.

The plan amendment process may also be used by states to obtain NOAA approval of specific state or local projects after the overall CIAP Plan has been submitted. However, NOAA may not disburse the funds to be expended on those projects until the specific projects have been approved.

IV. Authorized Uses of Funds

The legislation identifies several categories of authorized uses of funds (§ 31(e)). The specific authorized uses of funds are:

1. Uses set forth in new section 32(c)(4) of the Outer Continental Shelf Lands Act proposed by the amendment to H.R. 701 of the 106th Congress as reported by the Senate Committee on Energy and Natural Resources. Those use are:

(A) Activities which support and are consistent with the Coastal Zone Management Act, including National Estuarine Research Reserve programs, the National Marine and Management Act, or the National Estuaries program;

(B) Conservation, restoration, enhancement or protection of coastal or marine habitats including wetlands, estuaries, coastal barrier islands, coastal fishery resources and coral reefs, including projects to remove abandoned vessels or marine debris that may adversely affect coastal habitats;

(C) Protection, restoration and enhancement of coastal water quality consistent with the provisions of the Coastal Zone Management Act (16 U.S.C. 1451 et seq.), including the reduction or monitoring of coastal polluted runoff or other coastal contaminants;

(D) Addressing watershed protection or other coastal or marine conservation needs which cross jurisdictional boundaries;

(E) Assessment, research, mapping and monitoring of coastal or marine resources and habitats, including, where appropriate, the establishment and monitoring of marine protected areas;

(F) Addressing coastal conservation needs associated with seasonal or otherwise transient fluctuations in coastal populations;

(G) Protection and restoration of natural coastline protective features, including control of coastline erosion;

(H) Identification, prevention and control of invasive exotic and harmful non-indigenous species;

(I) Assistance to local communities to assess, plan for and manage the impacts of growth and development on coastal or marine habitats and natural resources, including coastal community fishery assistance programs that encourage participation in sustainable fisheries; and

(J) Projects that promote research, education, training and advisory services in fields related to coastal and Great Lakes living marine resource use and management;

2. Projects and activities for the conservation, protection or restoration of wetlands;

3. Mitigating damage to fish, wildlife or natural resources, including such activities authorized under subtitle B of the title IV of the Oil Pollution Act of

1990 (oil spill removal and contingency planning);

4. Planning assistance and administrative costs of complying with the provisions of this section;

5. Implementation of Federally approved marine, coastal, or comprehensive conservation management plans; and

6. Onshore infrastructure projects and other public service needs intended to mitigate the environmental effects of Outer Continental Shelf activities (up to 23 percent of allocation).

Please note that the CIAP legislation limits funds spent on category six above to 23 percent of the total funds allocated to each state (including the portion allocated to coastal political subdivisions). Thus, each plan may expend up to 23 percent on onshore infrastructure projects and other public service needs, but there is no restriction on whether portions of the state or local allocations, or both, are used for these purposes. The state plan must clearly identify which projects fall into this category and the Governor must ensure that no more than 23 percent of the funds are spent on eligible onshore infrastructure projects and other public service needs. The descriptions of these types of project must include information on how the projects meet the statutory requirement of mitigating the environmental effects of Outer Continental Shelf activities.

For CIAP purposes, NOAA has developed proposed definitions of infrastructure and non-infrastructure:

Infrastructure—Construction of public services and facilities (such as buildings, roads, bridges, sewer and water lines, wastewater treatment facilities, detention/retention ponds, seawalls, breakwaters, piers, port facilities) needed to support commerce as well as economic development. Infrastructure encompasses land acquisition, new construction, and upgrades and repairs to existing facilities.

Non-infrastructure—Projects that involve construction-type activities that are not considered infrastructure include: wetlands/coastal habitat protection and restoration, vegetative erosion control, and beach re-nourishment (however, sea walls, breakwaters, etc., that may accompany beach re-nourishment projects are considered infrastructure). Small scale construction projects for public access and resource protection purposes (similar to CZMA section 306A projects) such as boardwalks, dune walkovers, hiking trails, recreational boat ramps, and picnic shelters, as well as land acquisition associated with these projects, are not considered infrastructure.

A. Incurring Costs before CIAP Plan Approval

States and coastal political subdivisions may request ''pre-award costs,'' *i.e.,* costs incurred by the state and/or counties prior to plan submittal and approval. Pre-award costs would allow states and coastal political subdivisions to use CIAP funds to pay for eligible costs incurred before the CIAP plans are approved and funds disbursed. Only pre-award costs incurred after March 1, 2001, when NOAA released the preliminary draft CIAP guidance, may be recovered by CIAP funds. States or coastal political subdivisions may begin work on eligible projects prior to the disbursement of funds at their own risk, i.e., funding is not guaranteed until NOAA reviews and approves the state CIAP plan.

V. Plan Review and Approval

NOAA has 90 days from receipt of the plan to review it and make an approval decision. NOAA's review will be based on the five program approval criteria specified in the CIAP legislation (§ 31(d)(2)(A)–(E)). This includes a review of the Governor's certification that all uses of local funds are consistent with the legislation. If NOAA does not approve the plan, NOAA will work with the state to revise it until it can be approved, and hold the funds in escrow until the plan is approved as called for in the CIAP legislation (§ 31(4)). If the state is not making good faith effort to develop, submit, or update the plan, NOAA may allocate those funds to the remaining states and coastal political subdivisions.

VI. Compliance With Federal Authorities

The approval of CIAP plans and disbursement of funds are federal activities subject to authorities such as the National Environmental Policy Act (NEPA), Endanagered Species Act (ESA), the federal consistency provisions of the CZMA, the Essential Fish Habitat provisions of the Sustainable Fisheries Act, Coastal Barrier Resources Act, National Historic Preservation Act, and Americans with Disabilities Act. As the federal funding agency, NOAA is responsible for complying with these and other relevant authorities before disbursing funds.

NOAA is working to determine the best process for complying with these authorities. NOAA is now developing an Environmental Assessment for our approval of the seven state CIAP plans, and reviewing specific project proposals to determine what additional reviews will be necessary. NOAA may ask for the states' assistance in providing information on specific projects to facilitate this task and the disbursing of funds. Such information could include an assessment of the projects' potential impacts on threatened and endangered species and their habitats, coastal resources, and the coastal environment.

NOAA uses a ''Section 306A Project Checklist'' for construction and land acquisition projects funded under section 306A and CZMA. The checklist is used to ensure funded projects comply with NEPA, ESA, and other federal programs. We have distributed a modified checklist that states and counties have the option of using as a screening tool for CIAP projects to ascertain which projects require additional NEPA, ESA, or other compliance review beyond the initial Environmental Assessment on the state CIAP plan. The checklist was reviewed by the Office of Management and Budget under the Paperwork Reduction Act and has been forwarded to the states. The use of the checklist does not affect the eligibility of any project under the CIAP.

A. Federal Consistency

State and local agencies applying for CIAP funds may be subject to federal consistency under 15 CFR part 930, subpart F (Federal assistance activities). Pursuant to section 31(d)(2)(C) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq), as amended by the Department's of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, the Governor of each participating state must certify that all state and local expenditures are consistent with the overall CIAP plan. Thus, federal consistency can be conducted for the plans and in that case consistency would not be required for each expenditure proposal. A consistency certification would need to be prepared even in cases where the state agency responsible for preparing the CIAP plan is also the state coastal management agency designated under the CZMA and the CZMA federal consistency regulations (15 CFR § 930.11(o)). This will ensure compliance with the public participation requirements under the CZMA. Described below are the general federal consistency requirements for federal assistance activities.

Review Procedures

Federal consistency review for federal assistance activities is normally conducted through procedures established by states pursuant to

Executive Order 12372—intergovernmental review of federal programs. The agency preparing the CIAP plan should submit the plan for consistency review through the intergovernmental review process or directly to the state coastal management agency responsible for implementing the coastal management program (CMP). In addition to the plan, the state agency should provide a brief evaluation of the relationship of the proposed activities in the plan and any reasonably foreseeable effects on the state's coastal uses or resources to the CMP's enforceable policies. 15 CFR § 930.94(c).

Please contact the federal consistency coordinator in your state coastal management agency or the CIAP contacts at NOAA for further information on federal consistency.

VII. Disbursing the Coastal Impact Assistance Program Funds

NOAA will award individual grants directly to the state and all coastal political subdivisions within the state. The NOAA Grants Management Division has developed a streamlined grant application process for CIAP awards. Subsequent to NOAA approval of the state CIAP plans, the state and local CIAP points of contact will be receiving a ''Coastal Impact Assistance Program Award Notification'' letter containing information on how to access CIAP funds and information on Administrative/Programmatic requirements. The state and local recipients of CIAP awards will fill out several standard forms, sign the notification letter, and return the package to NOAA.

States and coastal political subdivisions will be able to draw down funds on a ''pay as you go'' basis. This means that funds may be drawn down a reasonable amount of time in advance of when they are needed in order to comply with 15 CFR Part 24.21.

The CIAP legislation does not have a time limit for use of the appropriated funds. However, a NOAA grant to a state or coastal political subdivision will need an end date. NOAA will issue grants with a 3-year award period. A no-cost extension of the award period could be requested if necessary.

A. Trust Funds

The CIAP legislation allows states and coastal political subdivisions to deposit funds in trust funds dedicated to uses consistent with the legislation (§ 31(e)). Trust funds should be established in accordance to relevant state or local laws and procedures. However, the Department of Commerce has determined that any interest generated from the trust fund must be returned to the federal government. The ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' (15 CFR part 24) provide that advance payments made to a recipient are to be placed in an interest-bearing account until actually disbursed and that the interest earned is to be returned to the Federal government. The issue, then, is whether placing the money in the trust funds constitutes a ''disbursement.'' The Department of Commerce has determined that placing the CIAP grant money in the trust fund would not be considered a disbursement and therefore the interest would need to be returned to the federal government.

VIII. Compliance With Authorized Uses of Funds

The CIAP legislation states that if NOAA finds that a state or coastal political subdivision has expended funds inconsistent with the specified uses, NOAA will not disburse any further amounts under the CIAP until the funds in question have been repaid or obligated for authorized uses (§ 31(f)). NOAA would cease disbursing funds directed only toward the specific jurisdiction, not all funds covered under a single grant, under this scenario.

To ensure all funds are spent on authorized uses, the states and coastal political subdivisions will submit annual progress reports to NOAA until all funds have been expended. NOAA will accept separate reports from the state and each coastal political subdivision, so the state will not need to receive and collate local reports (the state may choose to receive local reports). The report must include all uses of state and local funds. At a minimum, the report should include:

(1) The status of each project, including accomplishments to date, estimated time for completion, and explanation for any anticipated delays;

(2) any approved amendments and/or extensions to the CIAP plan; and

(3) for completed projects, submittal of relevant work products (e.g., reports, data sets, links to on-line photographs, etc.)

If some or all the funds have been deposited in a trust fund, the trust fund must report annually on the uses of those funds.

Dated: October 3, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 01–25198 Filed 10–5–01; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget has approved this information collection requirement for use through October 31, 2001.

DATES: Consideration will be given to all comments received by Nobember 8, 2001.

Title, Form Number, and OMB Number: Request for Reference; DD Form 370; OMB Number 0704–0167.

Type of Request: Extension.

Number of Respondents: 43,000.

Responses Per Respondent: 1.

Annual Responses: 43,000.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 7,167.

Needs and Uses: Sections 504, 505, 508, and 12102 Title 10 U.S.C., establish minimum standards for enlistment into the Armed Forces. This information collection is for reference information on individuals applying for enlistment in the Armed Forces of the United States who require a waiver. The form associated with this information collection, DD Form 370, Request for Reference, is used by recruiters to obtain reference information on applicants who have admitted committing a civil or moral offense. The respondents may provide character information which would allow the applicant to be considered for a waiver in order to continue the application process.

Affected Public: Individuals or Households; Business or Other For-Profit; Federal Government; State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR,

1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 2, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–25122 Filed 10–5–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget has approved this information collection requirements for use through December 31, 2001.

DATES: Consideration will be given to all comments received by November 8, 2001.

Title, Form Number, and OMB Number: Request for Verification of Birth; DD Form 372; OMB Number 0704–0006.

Type of Request: Extension.

Number of Respondents: 100,000.

Responses Per Respondent: 1.

Annual Responses: 100,000.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 8,300.

Needs and Uses: Title 10, USC 505, 3253, 5013, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces. If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, Request for Verification of Birth, to a state or local agency requesting verification of the applicant's birth date. This verification of birth ensures that the applicant does not fall outside the age limitations, and that the applicant's place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, Local or Tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 2, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–25123 Filed 10–5–01; 8:45 am]

BILLING CODE 5001–08–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 (DSB) Task Force on Training for Future Conflict will meet in closed session on November 5–6, 2001, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA. This Task Force will focus on identifying and characterizing what education and training are demanded by Joint Vision 2010/2020, and will address the development and demonstration time phasing over the next two decades for the combined triad of technology modernization, operational concepts, and training.

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 also identify those approaches and techniques that potential enemies might take that could prepare them to revolutionize their warfare capabilities, thereby achieving a training surprise against the U.S. or its allies. This review will include, not be limited to, unique training/education developments which might be spawned by allies or an adversary, training techniques and methodologies which might be transferred from the U.S. or through third parties, and finally, the possibilities emerging as a result of the globalization of military and information technologies, related commercial services and their application by other nations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: October 2, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–25121 Filed 10–5–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army, DOD.

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army is adding a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action is effective without further notice on November 8, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 25, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 2, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0715rrr USAEUR

SYSTEM NAME:

DOD Technical Experts/Troop Care/Analytical Support Contractor Employees.

SYSTEM LOCATION:

Headquarters, U.S. Army Europe and Seventh Army, Unit 29150, Attn: Department of Defense Contractor Personnel Office, APO AE 09100–9150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for Troop Care Status Accreditation or Technical Expert Status Accreditation pursuant to an Exchange of Notes, Numbers 146 and 147, dated March 27, 1998, and Exchanges of Notes, Numbers 866 and 883, dated June 29, 2001, in accordance with Articles 72 and 73 of the German Supplementary Agreement to the NATO Status of Forces Agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' name; Social Security Number; passport number; citizenship; local address; applications for status accreditation with substantiating documents, evaluations, correspondence and responses thereto; applications for status accreditation; questions pertaining to entitlement to status accreditation, allowances, privileges or other benefits granted as a result of accreditation; revocation of accreditation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; NATO SOFA Supplementary Agreement, Article 72 and 73 between the United States of America and the Federal Republic of Germany; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure compliance with the established bilateral implementation of Articles 72 and 73 of the Supplementary Agreement to the NATO Status of Forces Agreement. These two Articles govern the use in Germany of DoD contractor employees as Technical Experts, Troop Care, and Analytical Support providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be disclosed to officials of the Federal Republic of Germany (the host nation) and its various States (Laender) responsible for the enforcement of tax, labor and other host nation law.

Information from this system may be disclosed to officials of the Federal Republic of Germany and its various States (Laender) responsible for the implementation of the Exchange of Notes.

The DoD ''Blanket Routine Uses'' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Deposition pending (until NARA has approved a disposition and retention schedule, treat records as permanent).

SYSTEMS MANAGER AND ADDRESS:

Headquarters, U.S. Army Europe and Seventh Army, ATTN: Unit 29150, Director, Department of Defense Contractor Personnel Office, APO AE 09100–9150.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Director, Department of Defense Contractor Personnel Office, Headquarters, U.S. Army Europe and Seventh Army, Unit 29150, APO AE 09100–9150.

Individual should provide his/her full name, the address and telephone number, and any other personal data that would assist in identifying records pertaining to him/her.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, Department of Defense Contractor Personnel Office, Headquarters, U.S. Army Europe and Seventh Army, Unit 29150, APO AE 09100–9150.

Individual should provide his/her full name, the address and telephone number, and any other personal data that would assist in identifying records pertaining to him/her.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records, and other public and private records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–25117 Filed 10–5–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The alteration adds six routine uses to the existing system of records that will permit the release of records to the White House Military Office; the Sergeants-at-Arms of the House and Senate; the Department of State; the Department of Transportation; the presidential libraries and foundations; and to state and local law enforcement for the purposes of facilitating the planning and execution of funerals.

DATES: This proposed action will be effective without further notice on November 8, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or

DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 25, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 2, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–25 MDW

SYSTEM NAME:

State, Official, and Special Military Funeral Plans (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 38 U.S.C. 2301, Flags; DoD Directive 1300.15, Military Funeral Support; Army Regulation 600–25, Salutes, Honors, and Visits of Courtesy, and E.O 9397 (SSN).'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the White House Military Office to facilitate planning and coordination with participating and support personnel prior to execution of State and Official and possibly Special Military funerals.

To the Sergeants-at-arms of the House and Senate to facilitate planning and coordination with participating and support personnel prior to execution of state and official and possibly special military funerals.

To the Departments of State to facilitate planning and coordination with participating and support personnel prior to execution of state and official and possibly special military funerals.

To the Department of Transportation to facilitate planning and coordination with participating and support personnel prior to execution of a state, official and possibly special military funeral.

To the presidential libraries and foundations to facilitate planning and coordination with participating and support personnel prior to execution of state funerals.

To state and local law enforcement to facilitate planning and coordination with participating and support personnel prior to execution of state, official and possibly special military funerals.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.'

* * * * *

STORAGE:

Delete entry and replace with 'Records are stored in file cabinets, magnetic tapes/disc and electronic storage media.'

* * * * *

SAFEGUARDS:

Delete entry and replace with ' Records are maintained in safes and are accessible only to authorized personnel who have an official need therefor in the performance of their duties. Access to computerized information is controlled by a system of assigned passwords; computerized records are accessible only by authorized personnel.''

RETENTION AND DISPOSAL:

Delete entry and replace with 'Ceremonies of historical importance, such as presidents, ex-presidents, vice presidents, heads of state, heads of government records are permanent. All other ceremonial funerals, maintain records for five years then destroy. Offices not having Army-wide responsibility maintain records for 2 years or when no longer needed for current operations, whichever is later.'

* * * * *

A0600–25 MDW

SYSTEM NAME:

State, Official, and Special Military Funeral Plans.

SYSTEM LOCATION:

Office of Ceremonies and Special Events, U.S. Army Military District of Washington, 103 Third Avenue, Fort Lesley J. McNair, DC 20319–5058. Segments of the system may exist at DoD commands and installations supporting State, Official and Special Military Funerals.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government officials or service-connected persons and dependent family members who are authorized a State, Official or Special Military funeral.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, maps, diagrams, ceremonial plans, and similar relevant documents for military honors and/or funeral support for only those authorized individuals who have requested special arrangements for their funeral ceremony.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 38 U.S.C. 2301, Flags; DoD Directive 1300.15, Military Funeral Support; Army Regulation 600–25, Salutes, Honors, and Visits of Courtesy, and E.O 9397 (SSN).

PURPOSE(S):

To maintain funeral plans or requests by specifically authorized individuals who have requested special arrangements for their funeral ceremony; to facilitate coordination of military support for State, Official, or Special Military funerals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the White House Military Office to facilitate planning and coordination with participating and support personnel prior to execution of State and Official, and possibly Special Military funerals.

To the Sergeants-at-arms of the House and Senate to facilitate planning and coordination with participating and support personnel prior to execution of State or Official, and possibly Special Military funerals.

To the Departments of State to facilitate planning and coordination with participating and support personnel prior to execution of State or

Official, and possibly Special Military funerals.

To the Department of Transportation to facilitate planning and coordination with participating and support personnel prior to execution of a State or Official, and possibly Special Military funeral.

To the presidential libraries and foundations to facilitate planning and coordination with participating and support personnel prior to execution of State funerals.

To state and local law enforcement to facilitate planning and coordination with participating and support personnel prior to execution of State or Official, and possibly Special Military funerals.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records are stored in file cabinets, magnetic tapes/disc and electronic storage media.

RETRIEVABILITY:

By individual's name and plan number.

SAFEGUARDS:

Records are maintained in safes and are accessible only to authorized personnel who have an official need therefor in the performance of their duties. Access to computerized information is controlled by a system of assigned passwords; computerized records are accessible only by authorized personnel.

RETENTION AND DISPOSAL:

Ceremonies of historical importance, such as presidents, ex-presidents, vice presidents, heads of state, heads of government records are permanent. All other ceremonial funerals, maintain records for five years then destroy. Offices not having Army-wide responsibility maintain records for 2 years or when no longer needed for current operations, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military District of Washington, 103 Third Avenue, Fort Lesley J. McNair, DC 20319–5058.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Military District of Washington, 103 Third Avenue, Fort Lesley J. McNair, DC 20319–5058.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Military District of Washington, 103 Third Avenue, Fort Lesley J. McNair, DC 20319–5058.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual or designated representative.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–25118 Filed 10–5–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Information Systems Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on November 8, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, CIO/D03A, 3701 N. Fairfax Drive, Arlington, VA 22203–1713.

FOR FURTHER INFORMATION CONTACT: Mr. Tommie Gregg at (703) 696–1891.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on September 26, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: October 2, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K270–01,

SYSTEM NAME:

DoD Digital Certificate Records.

SYSTEM LOCATION:

Defense Enterprise Computing Center-Chambersburg, Letterkenny Army Depot, Building 3, Chambersburg, PA 17201–4186; and

Defense Enterprise Computing Center–C–DE, 6760 East Irvington Place, Denver, CO 80279–8000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD military and civilian personnel, selected reservists; eligible DoD contractor personnel who have been assigned a digital certificate or have had their existing certificates renewed, replaced, revoked, or denied.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish accountability and audit control of digital certificates that have been assigned to DoD personnel who transmit electronic data that requires protection by enabling the use of public key cryptography.

Records include operator's/user's name, organization, work telephone number, Social Security Number, date of birth, Electronic Identification Number, work e-mail address, username and password. Records on the creation, renewal, replacement, or revocation of digital certificates under the DoD Public Key Infrastructure, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied, and revoked, including reasons for denial, and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; The Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229; Presidential Directive on Electronic Commerce, July 1, 1997; OASD(C3I) Policy Memorandum dated

August 12, 2000, subject: Department of Defense (DoD) Public Key Infrastructure (PKI) and, OASD(C3I) Memorandum dated Jan 2001, subject: Common Access Card (CAC), and Government Paperwork Elimination Act; and E.O. 9397 (SSN).

PURPOSE(S):

This system of records is being maintained in order to issue digital certificates to DoD personnel who transmit electronic data that requires protection by enabling the use of public key cryptography.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DISA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper files and electronic media.

RETRIEVABILITY:

Name, Social Security Number, date of birth, and the electronic identification number.

SAFEGUARDS:

Facilities where the systems are maintained are locked when not occupied. Paper records are kept in filing cabinets and other storage places that are locked when office is not occupied. Computerized records maintained in a controlled area are accessible only to authorized personnel. Physical and electronic access is restricted to individuals having a need for the record in the performance of their official duties.

RETENTION AND DISPOSAL:

Disposition pending (until NARA has approved the retention and disposition schedule for these records, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

DoD Public Key Infrastructure and Directory Service Project Officer, 5111 Leesburg Pike, Suite 900, Falls Church, VA 22041–3205.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the DoD Public Key Infrastructure and Directory Service Project Officer, 5111 Leesburg Pike, Suite 900, Falls Church, VA 22041–3205.

Requests should contain the individual's full name, Social Security Number, and date of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the DoD Public Key Infrastructure and Directory Service Project Officer, 5111 Leesburg Pike, Suite 900, Falls Church, VA 22041–3205.

Requests should contain the individual's full name, Social Security Number, and date of birth.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The information is obtained from the subject individual, the Defense Manpower Data Center, and other official personnel documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–25120 Filed 10–5–01; 8:45 am]

BILLING CODE 5001–08–P 1

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on November 8, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 26, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 2, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S360.20 DLA KI

SYSTEM NAME:

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem (February 22, 1993, 58 FR 10890).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S360.20'.

SYSTEM NAME:

Delete entry and replace with 'Civilian Personnel Data System.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Defense Logistics Agency (DLA) civilian employees and employees of other Federal agencies who receive personnel support from DLA.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'or the current Federal hiring agency.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'The information is used to effect personnel actions, to fulfill Federal personnel reporting requirements, and to provide current and historical statistics to DLA officials for effective personnel

management and personnel administration. Salary and pay information may be used by management to track and allocate personnel costs. Demographic statistical data, without personal identifiers, may be used by EEO offices to evaluate workforce composition or by organizational development offices to evaluate organizational effectiveness, employee attitudes, and similar personnel research studies.'

* * * * *

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Add three routine uses as follows: 'To Federal agencies receiving personnel support through the Defense Logistics Agency to administer personnel issues and to manage personnel cost and planning functions.

To the Department of Labor to evaluate, process, and adjudicate workers' compensation cases and claims;

To the Equal Employment Opportunity Commission to evaluate, process, and adjudicate EEO complaints.'

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a secure, limited access, or monitored areas. Physical entry by unauthorized persons is restricted by the use of locks, guards, passwords, and administrative procedures. Archived data is stored on magnetic tapes and discs which are kept in a locked or controlled access area. Access to personal information is limited to those individuals who require the records to perform their official assigned duties. Data handlers are periodically briefed on Privacy Act requirements and the consequences of inappropriate use of the data. Official requests for access to the data that are made by employees of other DLA activities and routine users are carefully screened to ensure that only those data elements and individual records actually required to perform official government duties are relayed.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Data is deleted after the expiration of the retention period authorized for the disposable paper copy file or when no longer needed, whichever is later.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Record subject, agency supervisors and administrative personnel, medical officials, previous Federal employers, U.S. Office of Personnel Management, and existing records.''

* * * * *

S360.20

SYSTEM NAME:

Civilian Personnel Data System.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, Human Resources Office (J–1), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221;

Human Resources Offices of the DLA Primary Level Field Activities (PLFAs); and

Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Building 11, Section 3, Columbus, OH, 43216–5000. Official mailing addresses of the PLFAs are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees and employees of other Federal agencies who receive personnel support from DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current personnel data on employment status and selected personal data, such as Social Security Number, name, grade, home address, sex, race and national origin identification, date of birth, age, physical handicap, Government health or life insurance, military reserve status, retired military status, education and training, status preceding employment with DLA or the current Federal hiring agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 3 and 51–59; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology and Logistics; E.O. 10561, Official Personnel Folders and E.O. 9397 (SSN).

PURPOSE(S):

The information is used to effect personnel actions, to fulfill Federal personnel reporting requirements, and to provide current and historical statistics to DLA officials for effective personnel management and personnel administration. Salary and pay information may be used by management to track and allocate personnel costs. Demographic statistical data, without personal identifiers, may be used by EEO offices to evaluate workforce composition or by organizational development offices to evaluate organizational effectiveness, employee attitudes, and similar personnel research studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To health and life insurance carriers, hospitals, medical offices, and institutions to verify benefits enrollment, to verify eligibility for payment of a claim, or to carry out the coordination or audit of benefit provisions.

To Federal agencies receiving personnel support through DLA to administer personnel issues and to manage personnel cost and planning functions.

To the Department of Labor to evaluate, process, and adjudicate workers' compensation cases and claims.

To the Equal Employment Opportunity Commission to evaluate, process, and adjudicate EEO complaints.

The DoD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes or discs, computer paper printouts. Paper records in file folders.

RETRIEVABILITY:

Information identified to a specific civilian employee is accessed and retrieved by Social Security Number.

SAFEGUARDS:

Records are maintained in a secure, limited access, or monitored areas. Physical entry by unauthorized persons is restricted by the use of locks, guards, passwords, and administrative procedures. Archived data is stored on magnetic tapes and discs which are kept in a locked or controlled access area. Access to personal information is limited to those individuals who require the records to perform their official assigned duties. Data handlers are periodically briefed on Privacy Act requirements and the consequences of inappropriate use of the data. Official requests for access to the data that are

made by employees of other DLA activities and routine users are carefully screened to ensure that only those data elements and individual records actually required to perform official government duties are relayed.

RETENTION AND DISPOSAL:

Data is deleted after the expiration of the retention period authorized for the disposable paper copy file or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Human Resources Management Information, (J–14), Human Resources Office, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to the DLA compilation of systems of records notices.

Individuals must provide name (last, first, middle initial) and Social Security Number in order to determine whether or not the system contains a record about them. With a written request, individual must provide a return address.

For personal visits, the individual should be able to provide some acceptable identification, such as employing office identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, HQ DLA, Attn: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to the DLA compilation of systems of records notices.

The request is to contain the name of the individual (last, first, middle initial), Social Security Number, return mailing address, telephone number where individual can be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, agency supervisors and administrative personnel, medical officials, previous Federal employers, U.S. Office of Personnel Management, and existing records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–25119 Filed 10–5–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be reviewing the fiscal plan for next year; the University's Institutional/Research Effectiveness Plan, the University's Institutional Purpose Statement, and conducting Board officer elections. All sessions of the meeting will be open to the public.

DATES: The meetings will be held on Thursday, November 15, 2001, and Friday, November 16, 2001, from 9 a.m. to 4 p.m.

ADDRESSES: The meetings will be held at the Marine Corps University, Breckinridge Hall, 2076 South Street, Room 215, Quantico, Virginia 22134.

FOR FURTHER INFORMATION CONTACT: Garry Smith, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number (703) 784–4037.

Dated: September 26, 2001.

Robert E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–25139 Filed 10–5–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Correction; Notice reopening competitions or extending application deadline dates for certain direct grants.

On September 28, 2001, we published in the **Federal Register** (66 FR 49644) a notice reopening competitions or extending application deadline dates for certain direct grants. In the chart, (66 FR 49645), under Office of Special Education and Rehabilitative Services, the name of the competition for CFDA No. 84.133P was stated incorrectly as ''Field-Initiated Projects.'' This notice corrects that name to read ''Advanced Rehabilitation Research Training Projects.''

FOR FURTHER INFORMATION CONTACT: The address and telephone number for obtaining an application for, or information about, this competition are in the original application notice for this competition published in the **Federal Register** on July 31, 2001 (66 FR 39612).

If you use a telecommunications device for the deaf (TDD), you may call the TDD number, if any, listed in the application notice. If we have not listed a TDD number, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you are an individual with a disability, you may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the application notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free

at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: October 1, 2001.

Mark Carney,

Deputy Chief Financial Officer.

[FR Doc. 01–25129 Filed 10–5–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for FY 2002 competitions under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (five priorities).

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This priority addresses the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed under each applicable priority and in the table at the end of this notice, using the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Special Education—Personnel Preparation to Improve Services and Results For Children With Disabilities [CFDA 84.325]

Purpose of Program: The purposes of this program are to (a) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (b) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children.

Eligible Applicants: Institutions of higher education are eligible applicants for Absolute Priorities 1–4 under this program. Eligible applicants for Absolute Priority 5, Projects of National Significance, are: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) Program regulations in 34 CFR part 304; (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (c) The selection criteria for the priorities under this program that are drawn from the EDGAR general selection menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Additional Requirement for All Personnel Preparation Program Priorities

Student financial assistance is authorized only for the preservice preparation of special education and related services personnel who serve children ages 3 through 21, early intervention personnel who serve infants and toddlers, and leadership personnel who work in these areas.

Priority

Under section 673 of the Act and 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities (84.325A)

Background

The national demand for educational, related services, and early intervention personnel to serve infants, toddlers, and children with low-incidence disabilities exceeds available supply. However, because of the small number of these personnel needed in each State, institutions of higher education and individual States have not given priority to programs that train personnel to work with those with low-incidence disabilities. Moreover, of the programs that do exist, many are not producing graduates with the prerequisite skills

needed to meet the needs of the low-incidence disability population. Thus, Federal support is required to ensure an adequate supply of personnel to serve children with low-incidence disabilities and to improve the quality of appropriate training programs so that graduates possess necessary prerequisite skills.

Priority: This priority supports projects that increase the number and quality of personnel to serve children with low-incidence disabilities by providing preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level.

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licenses.

The term ''low-incidence disability'' means a visual or hearing impairment, or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education (IDEA, section 673(b)(3)). Training for personnel to serve children with mild-moderate mental retardation, specific learning disabilities, speech or language disorders, or emotional and behavioral disabilities is addressed under the priority for the preparation of personnel to serve children with high-incidence disabilities (84.325H), and, therefore, is not supported under this priority.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Early intervention personnel who serve children birth through age 2 (until the third birthday) with low-incidence disabilities and their families. For the purpose of this priority, all children who require early intervention services are considered to have a low-incidence disability. Early intervention personnel include persons who train, or serve as consultants to, service providers and service coordinators;

(b) Special educators, including early childhood, speech and language, adapted physical education, and assistive technology, and paraprofessional personnel who work with children with low-incidence disabilities; or

(c) Related services personnel who provide developmental, corrective, and other support services (such as school psychologists, occupational or physical therapists, and recreational therapists) that assist children with low-incidence disabilities to benefit from special education. Both comprehensive programs, and specialty components within a broader discipline, that prepare personnel for work with the low-incidence population may be supported. For the purpose of this priority, eligible related service providers do not include physicians.

We particularly encourage projects that address the needs of more than one State, provide multi-disciplinary training, and provide for collaboration among several training institutions and between training institutions and public schools. In addition, we encourage projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings.

Each project funded under this absolute priority must—

(a) Use research-based curriculum and pedagogy to prepare personnel who are able to improve outcomes for students with low-incidence disabilities and to foster appropriate access to and achievement in the general education curriculum whenever appropriate;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services for children with the disabilities;

(d) Prepare personnel to address the specialized needs of children with low-incidence disabilities from diverse cultural and language backgrounds by—

(1) Determining the additional competencies needed for personnel to understand and work with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education, and related services training programs, as appropriate;

(e) Develop or improve and implement mutually beneficial partnerships between training programs and schools where children are served to promote continuous improvement in preparation programs and in service delivery;

(f) If field-based training is provided, include field-based training opportunities for students in schools and settings reflecting wide contextual and student diversity, including schools and settings in high poverty communities;

(g) If the project prepares personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, prepare those individuals to provide those services in Braille.

(h) Provide clear, defensible data-based methods for evaluating the extent to which graduates of the training program are prepared to provide high quality services that result in improved outcomes for children with disabilities; and, describe how the data-based results of this evaluation process will be communicated to OSEP in required annual continuation reports and final grant reports;

(i) Describe how the proposed training program is aligned with State learning standards for children; and

(j) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under (b) above.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)-(i) of the Act and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that such State or States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Part B or C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service

obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of the Act and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) In accordance with section 673(i) of the Act and § 304.20 of the regulations, use at least 55 percent of the total requested budget for student scholarships or provide sufficient justification for any designation less than 55 percent of the total requested budget for student scholarships.

Under this absolute priority, we plan to award approximately:

- 60 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 10 percent of the available funds for projects that support careers in educational interpreter services for hearing impaired individuals;
- 15 percent of the available funds for projects that support careers in related services, other than educational interpreter services; and
- 15 percent of the available funds for projects that support careers in early intervention.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which institutions of higher education are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 120 points.

Project Period: Up to 60 months.

Maximum Award: The maximum award amount is $300,000. Consistent with EDGAR (34 CFR 75.104(b)), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Preparation of Leadership Personnel (84.325D)

This priority supports projects that conduct the following preparation activities for leadership personnel:

(a) Preparing personnel at the doctoral, and postdoctoral levels of training to administer, enhance, or to provide special education, related services, or early intervention services for children with disabilities; or

(b) Master's and specialist level programs in special education administration.

Projects funded under this absolute priority must—

(a) Prepare personnel to work with culturally and linguistically diverse populations by—

(1) Determining the additional competencies for personnel needed to understand and work with culturally diverse populations; and

(2) Infusing those competencies into early intervention, special education and related services training programs.

(b) Include coursework reflecting current research and pedagogy on—

(1) Participation and achievement in the general education curriculum and improved outcomes for children with disabilities; or

(2) The provision of coordinated services in natural environments to improve outcomes for infants and toddlers with disabilities and their families.

(c) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(d) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services for children with disabilities.

(e) Provide clear, defensible data-based methods for evaluating the extent to which graduates of the training program are prepared to provide high quality services that result in improved outcomes for children with disabilities; and communicate the results of this evaluation process to OSEP in annual performance reports and the final performance report;

(f) Describe how the proposed training program is aligned with State learning standards for children; and

(g) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research based curriculum and pedagogy as required under (c) above.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(i) of the Act and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that such State or States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Part B or C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Meet State and professionally-recognized standards for the preparation of leadership personnel in special education, related services, or early intervention fields;

(d) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(2) of the Act and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(e) In accordance with section 673(i) of the Act and § 304.20 of the regulations, use at least 65 percent of the total requested budget for student scholarships or provide sufficient justification for any designation less than 65 percent of the total requested budget for student scholarships.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are

otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which institutions of higher education are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

In addition, we will give the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 120 points.

Project Period: Up to 48 months.

Maximum Award: The maximum award amount is $200,000. Consistent with EDGAR (34 CFR 75.104(b)), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 3—Preparation of Personnel in Minority Institutions (84.325E)

This priority supports awards to institutions of higher education with minority student enrollments of at least 25 percent, including Historically Black Colleges and Universities, for the purpose of preparing personnel to work with children with disabilities.

This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, specialist, doctoral, or post-doctoral level.

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Special educators, including early childhood, speech and language, adapted physical education, and assistive technology, and paraprofessional personnel who work with children with disabilities;

(b) Related services personnel who provide developmental, corrective, and other support services (such as school psychologists, occupational or physical therapists, recreational therapists) that assist children with disabilities to benefit from special education. Both comprehensive programs, and specialty components within a broader discipline, that prepare personnel for work with children with disabilities may be supported. For the purpose of this priority, eligible related services providers do not include physicians; or

(c) Early intervention personnel who serve children birth through age 2 (until the third birthday) and their families. Early intervention personnel include persons who train, or serve as consultants to service providers and service coordinators.

Projects funded under this absolute priority must—

(a) Use research-based curriculum and pedagogy to prepare personnel who are able to improve outcomes for students with disabilities and to foster appropriate access to and achievement in the general education curriculum where appropriate;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services for children with the disabilities;

(d) Prepare personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds by—

(1) Determining the additional competencies needed for personnel to understand and work with culturally and linguistically diverse populations; and

(2) Infusing those competencies into early intervention, special education, and related services training programs, as appropriate;

(e) Develop or improve and implement mutually beneficial partnerships between training programs and schools where children are served to promote continuous improvement in preparation programs and in service delivery;

(f) If field-based training is provided, include field-based training opportunities for students in schools and settings reflecting wide contextual and student diversity, including schools and settings in high poverty communities;

(g) Employ effective strategies for recruiting students from culturally and linguistically diverse populations; and

(h) Provide student support systems (including tutors, mentors, and other innovative practices) to enhance student retention and success in the program.

(i) Provide clear, defensible data-based methods for evaluating the extent to which graduates of the training program are prepared to provide high quality services that result in improved outcomes for children with disabilities; and describe how the data-based results of this evaluation process will be communicated to OSEP in required annual continuation reports and final grant reports;

(j) Describe how the proposed training program is aligned with State learning standards for children; and

(k) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research based curriculum and pedagogy as required under (b) above.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(i) of the Act and 34 CFR part 304—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Part B or C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or

serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel, if the purpose of the project is to assist personnel in obtaining degrees;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of the Act and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) In accordance with section 673(i) of the Act and § 304.20 of the regulations, use at least 55 percent of the total requested budget for student scholarships or provide sufficient justification for any designation less than 55 percent of the total requested budget for student scholarships.

Sufficient justification for proposing less than 55 percent of the budget for student support would include activities such as program development, expansion of a program, or the addition of a new emphasis area. Examples include:

- A project that is starting a new program may request up to a year for program development and capacity building. In the initial project year, no student support would be required. Instead, a project could hire a new faculty member, or a consultant to assist in program development;
- A project that is proposing to build capacity may hire a field supervisor so that additional students can be trained; and
- A project that is expanding or adding a new emphasis area to the program may initially need additional faculty or other resources such as expert consultants, additional training supplies or equipment that would enhance the program.

Projects that are funded to develop, expand, or to add a new emphasis area to special education or related services programs must provide information on how these new areas will be institutionalized once Federal funding ends.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference points under 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

Up to ten (10) points to applicant institutions that have not received a FY 2001 or FY 2002 award under the IDEA personnel preparation program.

In addition, we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which institutions of higher education are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

In addition, we will also give the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of these competitive preferences applicants can be awarded up to a total of 30 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 130 points.

Project Period: Up to 48 months.

Maximum Award: The maximum award amount is $200,000. Consistent with EDGAR (34 CFR 75.104(b)), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 4—Improving the Preparation of Personnel To Serve Children With High-Incidence Disabilities (84.325H)

Background

State agencies, university training programs, local schools, and other community-based agencies and organizations confirm both the importance and the challenge of improving training programs for personnel to serve children with high-incidence disabilities and of meeting the staffing needs of localities experiencing chronic shortages of these personnel.

This priority is intended to improve personnel preparation programs throughout the nation and help meet shortages in particular areas. A number of important factors that are common to effective personnel preparation programs are:

(a) Collaboration among governmental, educational and community-based organizations on the Federal, State, and local levels in meeting personnel needs;

(b) Field-based training opportunities for students to use acquired knowledge and skills in demographically diverse schools;

(c) Multi-disciplinary training of teachers, including regular and special education teachers, and related services personnel;

(d) Coordinating personnel preparation programs aimed at addressing chronic personnel shortages with State practices for addressing those needs;

(e) Addressing shortages of teacher's in particular geographic and content areas;

(f) Integration of research-based curriculum and pedagogical knowledge and practices; and

(g) Meeting the needs of trainees, and of children with disabilities, from diverse backgrounds.

Priority

Consistent with section 673(e) of the Act, the purpose of this priority is to develop or improve, and implement, programs that provide preservice preparation for special and regular education teachers and related services personnel in order to meet the diverse needs of children with high incidence disabilities and to enhance the supply of well-trained personnel to serve these children in areas of chronic shortage. For the purpose of this priority, high-incidence disabilities include mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disability. Training of early intervention personnel is addressed under the priority for the preparation of personnel to serve children with low-incidence disabilities (84.325A), and, therefore, is not included as part of this priority).

A preservice program is a program that leads toward a degree, certification, professional license or endorsement (or its equivalent), and may include the preparation of currently employed personnel who are seeking additional

degrees, certifications, endorsements, or licenses.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Special educators, including early childhood, speech and language, adapted physical education, assistive technology, and paraprofessional personnel who work with children with high-incidence disabilities.

(b) Related services personnel, who provide developmental, corrective, and other support services (such as school psychologists, occupational or physical therapists, recreational therapists) that assist children with high-incidence disabilities to benefit from special education. For the purpose of this priority, eligible related service providers do not include physicians. Both comprehensive programs, and specialty components within a broader discipline that prepare personnel for work with the high incidence population, may be supported.

Projects funded under this priority must—

(a) Use research-based curriculum and pedagogy to prepare personnel who are able to assist students with disabilities in achieving in the general education curricula and to improve student outcomes;

(b) Demonstrate how research-based curriculum and pedagogy are incorporated into training requirements and reflected in all relevant coursework for the proposed training program.

(c) Offer integrated training and practice opportunities that will enhance the collaborative skills of appropriate personnel who share responsibility for providing effective services for children with high-incidence disabilities;

(d) Prepare personnel to work with culturally and linguistically diverse populations by—

(1) Determining the additional competencies needed for personnel to understand and work with culturally and linguistically diverse students with high-incidence disabilities; and

(2) Infusing those competencies into special education or related services training;

(e) Develop or improve and implement partnerships that are mutually beneficial to grantees and LEAs in order to promote continuous improvement of preparation programs; and

(f) Include field-based training opportunities for students in schools reflecting wide contextual and student diversity, including high poverty schools;

(g) Provide clear, defensible data-based methods for evaluating the extent to which graduates of their training program are prepared to provide high quality services that result in improved outcomes for children with disabilities; and, describe how the data-based the results of this evaluation process will be communicated to OSEP in required annual continuation reports and final grant reports;

(h) Describe how the proposed training program is aligned with State learning standards for children; and

(i) Include, in the application Appendix, all course syllabi that are relevant to the training program proposed. Course syllabi must clearly reflect the incorporation of research based curriculum and pedagogy as required under (b) above.

An applicant must satisfy the following requirements contained in section 673(f)–(i) of the Act and 34 CFR part 304:

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that such State or States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Part B of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education and related services personnel;

(e) Ensure that individuals who receive financial assistance under the proposed project will meet the service obligation requirements, or repay all or part of the cost of that assistance, in accordance with section 673(h)(1) of the Act and the regulations in 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(f) In accordance with section 673(i) of the Act and § 304.20 of the regulations, use at least 65 percent of the total requested budget for student scholarships or provide sufficient justification for any designation less than 65 percent of the total requested budget for student scholarships.

Competitive Preferences

Within this absolute priority we will give the following competitive preference points under section 673(g)(3)(B) of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority.

Up to ten (10) points based on the extent to which institutions of higher education are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals.

In addition, we will give the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority.

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of these competitive preferences applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting each of these competitive preferences could earn a maximum total of 120 points.

Project Period: Up to 48 months.

Maximum Award: The maximum award amount is $200,000. Consistent with EDGAR (34 CFR 75.104(b)), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 5—Projects of National Significance (84.325N)

We establish an absolute priority to support projects that address issues of national significance and have broad applicability. Projects supported under this priority must develop, evaluate, and disseminate innovative models. These models must be designed to serve as blueprints for systemic improvement in the recruitment, preparation, induction, retention, or ongoing professional development of personnel who have responsibility for ensuring that children with disabilities achieve to high standards and become independent,

productive citizens. These personnel include early intervention personnel, regular and special education teachers, administrators, related service personnel, and paraprofessionals. If the project maintains a web site, it must include relevant information and documents in an accessible form.

Projects must (1) use current research-validated practices and materials and (2) communicate appropriately with target audiences.

Applicants must note that:

(a) The purpose of this priority is model development. Thus, we do not expect that student scholarships will be supported. However, release time for staff for development activities is appropriate; and

(b) We expect that projects funded under this priority will incorporate a systemic approach to dissemination to relevant training and technical assistance entities.

Invitational Priorities

Within this absolute priority, we are particularly interested in applications that meet one or more of the following priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(a) Projects that are designed to reduce personnel shortages by developing innovative models for promoting the transferability, across State and local jurisdictions, of licensure and certification of personnel serving infants, toddlers, and children with disabilities;

(b) Projects that are designed to increase the quantity, quality, and diversity of personnel who serve infants, toddlers, or children with disabilities by developing innovative, proactive models for recruiting personnel into training programs or professional positions;

(c) Projects that are designed to increase the retention of new personnel by developing innovative, multi-year, developmental induction models;

(d) Projects that are designed to improve the learning of children with disabilities in the general education curricula by developing innovative models for collaborative training of regular and special education personnel, including paraprofessionals;

(e) Projects that are designed to enhance professional development curricula for personnel serving infants, toddlers, or children with disabilities by developing case or problem-based training modules that can be integrated into training curricula. We expect that these projects would incorporate state-of-the-art technology in the design and dissemination of the modules;

(f) Projects that are designed to enhance teaching and learning through the development of innovative training models that incorporate state-of-the-art assistive, instructional and communicative technology knowledge and use; and

(g) Projects that are designed to enhance professional development curricula for teachers and administrators serving infants, toddlers, or children with disabilities by developing modules for individualized education program (IEP) decisionmaking, particularly with regard to a child's participation in assessments.

Competitive Preference

Within this absolute priority, we will give the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The maximum award amount is $200,000. Consistent with EDGAR (34 CFR 75.104(b)), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. *Telephone (toll free):* 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site (*http://www.ed.gov/pubs/edpubs.html*) or its E-mail address (edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

For Further Information Contact: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT, APPLICATION NOTICE FOR FISCAL YEAR 2002

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year) [1]	Project period	Page limit [2]	Estimated number of awards
84.325A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities.	10/09/01	01/11/02	03/12/02	$300,000	Up to 60 mos	50	30
84.325D Preparation of Leadership Personnel.	10/09/01	01/04/02	03/05/02	200,000	Up to 48 mos	50	13
84.325D Preparation of Personnel in Minority Institutions.	10/09/01	02/01/02	04/02/02	200,000	Up to 48 mos	50	16
84.325H Improving the Preparation of Personnel to Serve Children with High-Incidence Disabilities.	10/09/01	01/18/02	03/19/02	200,000	Up to 48 mos	50	26
84.325N Projects of National Significance.	10/09/01	01/25/02	03/26/02	200,000	Up to 36 mos	50	10

[1] Consistent with EDGAR (34 CFR 75.104(b)), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

[2] Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements and the page limit standards described in the ''General Requirements'' section included under each priority description. We will reject and will not consider an application that does not adhere to this requirement.

Electronic Access to This Document

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To use the PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo/nara/index.html

Program Authority: 20 U.S.C. 1405, 1461, and 1473.

Dated: September 28, 2001.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–25130 Filed 10–5–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Tuesday, October 23, 2001. 1 p.m.—5 p.m.

ADDRESSES: Carson County Squarehouse Museum 5th and Elsie Streets Panhandle, Texas 79068

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806) 477–5896 or e-mail *jjohnson@pantex.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

1:00 Agenda Review/Approval of Minutes
1:15 Co-Chair Comments
1:30 Task Force/Subcommittee Reports
2:00 Ex-Officio Reports
2:15 Break
2:30 Updates—Occurrence Reports—DOE
3:00 Presentation (To Be Announced) 24 hr. information line: (806) 372–1945
4:00 Questions/Public Questions/Comments
5:00 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on October 3, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–25279 Filed 10–5–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: October 25, 2001 from 8:30 AM to 5:30 PM, and October 26, 2001 from 8:30 AM to 2 PM.

PLACE: National Transportation Research Center, Room CC01A,B,C, 2360 Cherahala Boulevard, Knoxville, TN 37932 and Oak Ridge National Laboratory, Building 3147 Conference Room, Bethel Valley Road, Oak Ridge, TN 37831.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Planning, Budget, and Outreach, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda:

- STEAB Committee updates
- STEAB Annual Report Update
- EERE State Success Stories
- Presentations from ORNL staff
- Tours of the NTRC and various ORNL labs
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 3, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–25280 Filed 10–5–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–521–000, FERC–521]

Proposed Information Collection and Request for Comments

October 2, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before December 10, 2001.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–521 ''Payments for Benefits from Headwater Benefits'' (OMB No. 1902–0087) is used by the Commission to implement the statutory provisions of Section 10(f) of the Federal Power Act (FPA)(16 U.S.C. 803). The FPA authorizes the Commission to determine headwater benefits received by downstream hydropower project owners. Headwater benefits are the additional energy production possible at a downstream hydropower project resulting from the regulation of river flows by an upstream storage reservoir.

When the Commission completes a study of a river basin, it determines headwater benefits charges that will be apportioned among the various downstream beneficiaries. A headwaters benefits charge, and the cost incurred by the Commission to complete an evaluation are paid by downstream hydropower project owners. In essence, the owners of non-federal hydropower projects that directly benefit from a headwater(s) improvement must pay an equitable portion of the annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury. The regulations provide for apportionment of these costs between the headwater project and downstream projects based on downstream energy gains and propose equitable apportionment methodology that can be applied to all river basins in which headwater improvements are built. The data the Commission requires owners of non-federal hydropower projects to file for determining annual charges is specified in 18 Code of Federal Regulations (CFR) Part 11.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
5	1	40	200

The estimated total cost to respondents is $33,716 (200 hours divided by 2,080 hours per year per employee times $117,041 per year per average employee = $11,254). The cost per respondent is $2,250.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

David P. Boergers,

Secretary.

[FR Doc. 01–25202 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–124–000]

Calpine Eastern Corporation; Mirant Americas Energy Marketing, L.P.; Mirant New England, LLC; Mirant Kendall, LLC; and Mirant Canal, LLC v. ISO New England, Inc.; Notice of Complaint

October 2, 2001.

Take notice that on September 28, 2001, Calpine Eastern Corporation, Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC, and Mirant Canal, LLC (collectively, the Joint Complainants) tendered for filing a complaint pursuant to Sections 206 and 306 of the Federal Power Act against ISO New England Inc. (''ISO–NE'') with respect to its unilateral modification of Market Rule 5 and Appendix 5–C of the New England Power Pool (NEPOOL) FERC Electric Rate Schedule No. 6, through which ISO–NE has excluded external energy contracts from its calculation of the Energy Clearing Price since September 1, 2001.

The Joint Complainants have served copies of the complaint on ISO–NE and the NEPOOL.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 18, 2001. 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. Answers to the complaint shall also be due on or before October 18, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25201 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–002]

Colorado Interstate Gas Company; Notice of Motion To Place Tariff Sheets Into Effect

October 2, 2001.

Take notice that on September 27, 2001, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendices A, B and C attached to the filing to become effective October 1, 2001.

CIG states that on March 30, 2001 at Docket No. RP01–350–000, it filed with the Commission a notice of change in rates for natural gas transportation service. By order issued April 25, 2001, the Commission accepted the tariff sheets, suspended their effectiveness for five months to become effective October 1, 2001 subject to refund and conditions, and established hearing procedures and a technical conference.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 9, 2001. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25209 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–344–002]

Dominion Transmission, Inc.; Notice of Compliance Filing

October 2, 2001.

Take notice that on September 27, 2001, Dominion Transmission, Inc. (DTI) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below, in order to implement the ''Order Conditionally Accepting Compliance Filing'' issued in the captioned proceedings on September 12, 2001.

First Revised Sheet No. 1185
First Revised Sheet No. 1502

As described in DTI's filing, these two tariff sheets are required to comply with the conditions imposed on DTI's July 31, 2001 compliance filing in these proceedings. In addition, DTI submits a motion to implement effective on September 1, 2001, all of the tariff sheets included in that compliance filing, which were listed on Appendix A of that filing and are repeated in the Appendix of this filing, with one change: the inclusion of revised sheet No. 1502. DTI proposes an effective date of November 1, 2001, for new First Revised Sheet No. 1185: a sheet that was not modified in DTI's previous compliance filing. That sheet implements the Commission's refined discounting policy, as required by the Commission.

DTI states that copies of its filing have been served on parties on the service list in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25206 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–611–001]

Dominion Transmission, Inc.; Notice of Errata to Compliance Filing

October 2, 2001.

Take notice that on September 27, 2001, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet:

Sixth Revised Sheet No. 33.

DTI states that the purpose of this filing is to correct a pagination error in DTI's September 21, 2001, filing. As with the original filing, DTI requests an effective date of November 1, 2001, for the revised tariff sheet.

DTI states that copies of this filing are being served upon DTI's customers and interested state commissions and to the parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25210 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–006]

Dominion Transmission, Inc.; Notice of Errata Filing

October 2, 2001.

Take notice that on September 27, 2001, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Substitute Second Revised Sheet No. 1121
Substitute Second Revised Sheet No. 1122
Substitute First Revised Sheet No. 1123

DTI requests an effective date of November 1, 2001 for these proposed tariff sheets which are submitted to replace the original sheets submitted in its September 21, 2001 filing to incorporate additional language approved in the Settlement (proposed GT&C Sections 16.6 through 16.9) and reserves two sheets for future use in accordance with the Commission's requirements.

DTI states that copies of this filing are being served upon DTI's customers and interested state commissions and to the parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25208 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–619–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

October 2, 2001.

Take notice that on September 28, 2001, Enbridge Pipelines (KPC), formerly Kansas Pipeline Company (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2001:

First Revised Sheet No. 15
First Revised Sheet No. 21
First Revised Sheet No. 26
First Revised Sheet No. 28
First Revised Sheet No. 30
First Revised Sheet No. 31A
First Revised Sheet No. 31C

KPC states that the purpose of the filing is to reflect a decrease of 0.3251% in its Fuel Reimbursement Percentage for volumes delivered between November and March pursuant to Section 23 of the General Terms and Conditions of its FERC Gas Tariff. After the change, KPC states that, other than the 1.25% fuel retention collected pursuant to the Transok lease, its system Fuel Reimbursement Percentage will be 0.00% for each of its three (3) Zones.

KPC further states that because of an administrative oversight, it did not file to change its Fuel Reimbursement Surcharge effective on November 1, 2000, however, because the rates would have increased, there was no adverse effect on its shippers. KPC requested any waiver that may be required, to permit the proposed tariff sheets to be made effective on November 1, 2001.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25217 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–390–002]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

October 2, 2001.

Take notice that on September 27, 2001, Granite State Gas Transmission, Inc. (Granite State) tendered its filing in compliance with the Commission's September 12, 2001 Order on Compliance Filing.

Granite State states that copies of its filing have been mailed to all firm and interruptible customers, affected state commissions, and parties on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25207 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–616–000]

Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing

October 2, 2001.

Take notice that on September 28, 2001, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 4A, with an effective date of November 1, 2001.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.3 of the General Terms and Conditions of its tariff, it is filing Fourth Revised Sheet No. 4A and supporting workpapers as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with its Deferred Asset for the amortization period commencing November 1, 2001. Iroquois states that the revised tariff sheet reflects a decrease of $.0001 per Dth in Iroquois effective Deferred Asset Surcharge for Zone 2 of $.0001 per Dth (from $.0005 to $.0004 per Dth), which results in a decrease in the Inter-Zone surcharge of $.0001 per Dth (from $.0012 to $.0011 per Dth).

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25214 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–617–000]

Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing

October 2, 2001.

Take notice that on September 28, 2001, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 4A, with an effective date of November 1, 2001.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.5 of the General Terms and Conditions of its tariff, it is filing Fifth Revised Sheet No. 4A and supporting workpaper as part of its annual Transportation Cost Rate Adjustment filing to reflect changes in Account No. 858 costs for the twelve month period commencing November 1, 2001.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docketı'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary,

[FR Doc. 01–25215 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–123–000]

Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC, Mirant Canal, LLC and Calpine Eastern Corporation v. ISO New England Inc.; Notice of Complaint

October 2, 2001.

Take notice that on September 28, 2001, Mirant Americas Energy Marketing, L.P., Mirant New England, LLC, Mirant Kendall, LLC, Mirant Canal, LLC and Calpine Eastern Corporation (collectively, the Joint Complainants) tendered for filing a complaint pursuant to Sections 206 and 306 of the Federal Power Act against ISO New England Inc. (ISO–NE) in connection with ISO–NE's implementation of a two-week cure period for installed capacity deficiencies.

The Joint Complainants have served copies of the complaint on ISO–NE and the New England Power Pool.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 18, 2001. 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. Answers to the complaint shall also be due on or before October 18, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25200 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–615–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

October 2, 2001.

Take notice that on September 28, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective October 1, 2001:

Forty-First Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $0.18 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25213 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–038]

Natural Gas Pipeline Company of America; Notice of Amendment Negotiated Rate

October 2, 2001.

Take notice that on September 28, 2001, Natural Gas Pipeline Company of America (Natural) tendered for filing an amendment to a negotiated rate agreement currently on file with the Federal Energy Regulatory Commission (Commission).

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the amendment submitted to become effective October 1, 2001.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25204 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–614–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2001.

Take notice that on September 27, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of it FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective October 29, 2001:

Title Page
Fourth Revised Sheet No. 1
First Revised Sheet No. 4
Fifth Revised Sheet No. 201
Second Revised Sheet No. 213B
Fourth Revised Sheet No. 214
Second Revised Sheet No. 224
Fifth Revised Sheet No. 230
Fifth Revised Sheet No. 248A
Third Revised Sheet No. 248A.01
First Revised Sheet No. 266A
Fifth Revised Sheet No. 285
Third Revised Sheet No. 298A
Fifth Revised Sheet No. 300A
Second Revised Sheet No. 400
Second Revised Sheet No. 405
First Revised Sheet No. 407
Second Revised Sheet No. 419
Fourth Revised Sheet No. 420
Second Revised Sheet No. 425
Original Sheet No. 429C
Second Revised Sheet No. 430
Fifth Revised Sheet No. 431
Second Revised Sheet No. 435
First Revised Sheet No. 441
Third Revised Sheet No. 455
First Revised Sheet No. 462
First Revised Sheet No. 467

Northern Border states that it is filing tariff sheets to incorporate housekeeping and other minor changes to its FERC gas tariff.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docketı'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25212 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–613–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 2, 2001.

Take notice that on September 26, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective October 26, 2001:

Third Revised Sheet No. 221
First Revised Sheet No. 222
Sixth Revised Sheet No. 244
Fourth Revised Sheet No. 245
Sixth Revised Sheet No. 246

Third Revised Sheet No. 247
Third Revised Sheet No. 276
Fourth Revised Sheet No. 277
Third Revised Sheet No. 278
First Revised Sheet No. 278–A
Second Revised Sheet No. 278–B
Second Revised Sheet No. 278–C
Original Sheet No. 278–D
Original Sheet No. 278–E

Northwest states that the purpose of this filing is (1) to expand the scope of the negotiated rate provisions in Northwest's tariff to make those provisions more flexible, and (2) to clarify the priority of service provisions for interruptible service at negotiated rates.

Northwest states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25211 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–023]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

October 2, 2001.

Take notice that on September 28, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1–A, First Revised Sheet No. 54C and Fifth Revised Sheet No. 87 to comply with the Commission's September 13, 2001 Order on Negotiated Rate Filings in Docket Nos. RP99–518–019, –020, –021, and –022.

GTN states that these tariff sheets more clearly articulate, within the Tariff, GTN's historic practices of posting available capacity. GTN requests that these tariff sheets become effective October 29, 2001.

GTN further states that a copy of this filing has been served upon all parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25205 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–620–000]

Transwestern Pipeline Company v. Southern California Gas Company; Notice of Complaint

October 2, 2001.

Take notice that on September 28, 2001, Transwestern Pipeline Company (Transwestern) filed a complaint against Southern California Gas Company (SoCalGas) pursuant to 18 CFR 2385.206. Transwestern states that SoCalGas is violating Transwestern's tariff by failing to pay the appropriate Settlement Bas Rates established for and agreed to by SoCalGas as a Current Firm customer under the Settlement in Docket Nos. RP95–271, *et al.* (Global Settlement) and that SoCalGas' payment of a non-escalated non-Current Customer rate constitutes a violation of the terms of the Global Settlement and the Commission's order approving the Global Settlement. Transwestern requests that SoCalGas comply with Transwestern's Tariff and the Global Settlement. Transwestern requests that SoCalGas comply with Transwestern's Tariff and the Global Settlement by paying the proper Settlement Bas Rates, reflected on the applicable tariff sheet for the period dating back to November 1, 1996, in accordance with Transwestern's invoices.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 18, 2001. 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. Answers to the complaint shall also be due on or before October 18, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25218 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Notice of Annual Report

[Docket No. RP01–618–000]

Williston Basin Interstate Pipeline Company

October 2, 2001.

Take notice that on September 28, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing, First Revised Sheet No. 358I to its FERC Gas Tariff, Second Revised Volume No. 1, pursuant to Section 39 of that Tariff. The proposed effective date of the tariff sheet is September 28, 2001.

Williston Basin states that as of July 31, 2001 it had a zero balance in FERC Account No. 191. As a result, Williston Basin will neither refund nor bill its former sales customers for any amounts under the conditions of Section No. 39.3.1 of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25216 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1895–002, et al.]

Tampa Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 1, 2001.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket Nos. ER01–1895–002 and ER01–2485–001]

Take notice that on September 27, 2001, Tampa Electric Company (Tampa Electric) refiled with the Federal Energy Regulatory Commission (Commission), 17 interchange contracts and related documents in the format required by the Commission's Order No. 614. The filing was made in compliance with the Commission's letter orders dated May 30 and July 31, 2001 in Docket Nos. ER01–1895–000 and ER01–2485–000, respectively.

A copy of the compliance filing has been served on each person designated on the official service lists in these dockets, each party to a contract affected by the filing, and the Florida Public Service Commission.

Comment date: October 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER98–2329–002]

Take notice that Central Vermont Public Service Corporation (Central Vermont), on September 25, 2001, tendered for filing with the Federal Energy Regulatory Commission (Commission) its three-year updated market power analysis in compliance with Paragraph (D) of the Commission's order granting Central Vermont's market-based rate authority. Central Vermont Public Service Corporation, 83 FERC 61,166 (1998).

Copies of the filing were served upon the public utility's jurisdictional customers, the New Hampshire Public Utilities Commission and the Vermont Public Service Board.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER01–2362–001]

Take notice that on September 25, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission), two executed Generator Interconnection and Operating Agreements (Interconnection Agreements) with Old Dominion Electric Cooperative (Old Dominion). Each Interconnection Agreement sets forth the terms and conditions governing the interconnection between combustion turbine plants that Old Dominion has not yet constructed and Dominion Virginia Power's transmission system. The executed Interconnection Agreements replace the unexecuted Interconnection Agreements that were filed in the above referenced docket on June 20, 2001. Dominion Virginia Power respectfully requests an effective date of November 26, 2001 for the executed Interconnection Agreements.

Copies of the filing were served upon Old Dominion Electric Cooperative and the Virginia State Corporation Commission.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Tri-State Power, LLC

[Docket No. ER01–2444–001]

Take notice that on September 26, 2001, Tri-State Power, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a Revised Sheet No. 1 which provides the additional information requested by the Commission in its September 12, 2001, Order.

Comment date: October 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. ARE Generation Company, L.L.C.

[Docket No. ER01–2586–001]

Take notice that on September 25, 2001, ARE Generation Company, L.L.C. (AGC) filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application dated July 13, 2001 for grant of certain blanket authorizations, waiver of certain of the Commission's Regulations and issuance of an order accepting AGC's FERC Electric Tariff, Original Volume No. 1, and filed an umbrella service agreement for short-term sales of energy and capacity from AGC's facility to BP Energy Company.

AGC amended its application to provide a detailed explanation of the extraordinary circumstances which justify its request for waiver of the Commission's 60-day notice requirement.

Comment date: October 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Astoria Energy LLC

[Docket No. ER01–3103–000]

Take notice that on September 24, 2001, Astoria Energy, LLC (Astoria Energy) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Astoria Schedule FERC No.1, the granting of certain blanket approvals including the authority to sell electric energy and capacity and ancillary services at market-based rates; and the waiver of certain Commission regulations.

Astoria Energy is a subsidiary of SCS Energy, LLC. The members of SCS Energy LLC do not have any ownership interest in a franchised electric utility. Neither Astoria Energy, nor SCS Energy, LLC own or control any transmission facilities (other than limited interconnection facilities). Copies of this filing are on file with the Commission and are available for public inspection.

Comment date: October 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Edison Sault Electric Company

[Docket No. OA01–7–000]

Take notice that on September 19, 2001, Edison Sault Electric Company (Edison Sault) submitted a filing providing notice that its standards of conduct filed with the Federal Energy Regulatory Commission (Commission) in the above-captioned docket are no longer applicable to Edison Sault or its employees. On January 1, 2001, Edison Sault transferred its transmission facilities to American Transmission Company, LLC (ATCLLC), a for-profit transmission company formed pursuant to Wisconsin state law. Edison Sault now operates as a generation and distribution utility. Edison Sault is required to abide by the standards of conduct filed by ATCLLC in Docket No. ER01–702–000, to the extent required by that filing.

Comment date: October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No.OA01–8–000]

Take notice that on September 19, 2001, Wisconsin Electric Power Company (Wisconsin Electric) submitted a filing providing notice that its standards of conduct filed with the Federal Energy Regulatory Commission (Commission) in the above-captioned docket are no longer are applicable to Wisconsin Electric or its employees. Wisconsin Electric's filing states that because Wisconsin Electric no longer provides transmission service pursuant to an open access transmission tariff, the standards of conduct filed by Wisconsin Electric have become moot. Certain employees will be bound by the American Transmission Company, LLC standards of conduct accepted by the Commission in Docket No. ER01–702–000.

Comment date: October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–25164 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–000]

East Tennessee Natural Gas Company Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Patriot Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

October 2, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the East Tennessee Natural Gas Company's (East Tennessee) Patriot Project in Tennessee, Virginia, and North Carolina.[1] The proposed facilities consist of an expansion of the existing mainline that would include replacement, looping, and uprating of about 187 miles of pipeline and the addition of 71,710 horsepower (hp) of compression at 5 new and 10 existing compressor stations, and an extension of the mainline that would include 99.63 miles of new pipeline. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with applicable state laws.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' should have been attached to the project notice East Tennessee provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. The fact sheet is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

This notice is being sent to affected landowners along East Tennessee's route; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries and newspapers; and the Commission's list of parties to the proceeding. We[2] encourage government representatives to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this notice, we are

[1] East Tennessee's application in Docket No. CP01–415–000 was filed with the Commission under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

asking other Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues in the project area to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated East Tennessee's proposal relative to their responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described later in this notice.

Summary of the Proposed Project

East Tennessee wants to expand the capacity of its facilities to transport up to 510,000 dekatherms per day (dth/day) of natural gas to four local distribution companies and three power plants. East Tennessee seeks authority to construct and operate the Patriot Project that consists of two components: the Mainline Expansion and the Mainline Extension.

A. Mainline Expansion, which involves improvements along East Tennessee's existing pipeline in Tennessee and Virginia includes:

a. a total of about 85 miles of loop [3] (20 and 24-inch-diameter) in Franklin, Grundy, Hamilton, Knox, Marion, Sequatchie, and Sullivan Counties, Tennessee, and Smyth, Washington, and Wythe Counties, Virginia;

b. about 24.7 miles of 24-inch-diameter pipeline to replace existing smaller diameter pipelines in Smyth, Washington, and Wythe Counties, Virginia;

c. hydrostatic pressure testing of about 77.3 miles of existing pipeline [4] to increase the maximum allowable operating pressure (MAOP) of the pipeline in Fentress, Greene, Grundy, Hamilton, Jackson, Morgan, Roane, Sevier and Washington Counties, Tennessee;

d. five new compressor stations in Fentress, Green, Jackson, Jefferson, and Hamilton Counties, Tennessee, and changes at 10 existing compressor stations in Blount, Macon, Monroe, Sevier, Sullivan, Trousdale, and Verton Counties, Tennessee, and Washington and Wythe Counties, Virginia; and

e. associated mainline valves, piping, and appurtenant pipeline facilities.

B. Mainline Extension which includes construction of:

a. about 92.6 miles of 24-inch-diameter pipeline extending through Wythe, Carroll, Floyd, Patrick, and Henry Counties, Virginia to a new terminus at an interconnection with Transcontinental Gas Pipe Line Corporation's (Transco) system in Rockingham County, North Carolina;

b. about 7 miles of 16-inch-diameter pipeline to a power plant under development by Henry County Power, LLC, in Henry County, Virginia;

c. 3 new meter stations: DENA Wythe Energy Meter Station, Henry County Power Meter Station, and Transco Meter Station; and

d. associated mainline valves and appurtenant pipeline facilities.

Nonjurisdictional Facilities:

Wythe and Henry County Power Energy Projects, respectively) that would be constructed in southwest Virginia. In addition, the Patriot Project would provide supply to the DENA Murray LLC facility, which is currently under construction in Georgia.

A general overview map of the major project facilities is shown in appendix 1.[5] If you are interested in obtaining detailed maps of a specific portion of the project, follow instructions provided in appendix 4. A listing of the facilities is in appendix 2.

Land Requirements for Construction

Construction of East Tennessee's proposed facilities would require about 2,786.4 acres (including compressor stations, meter stations, and 116.2 acres of additional temporary work spaces) of land of which about 766.1 acres are within existing easements. Following construction, about 635.4 acres would be retained as new permanent right-of-way. The remaining 1,384.9 acres of temporary work space would be restored and allowed to revert to former use.

The nominal construction right-of-way for the pipeline would be 100 feet wide, with 50 feet retained as permanent right-of-way where new right-of-way would be required. About 68 percent of the pipeline route (over 99 percent of the Mainline Expansion and about 10 percent of the Mainline Extension) would be adjacent to existing rights-of-way.

Construction would disturb 1,269.9 acres of agricultural land, 145.3 acres of non-forested open space, 1,076.1 acres of woodland, 178.9 acres of developed land, and 116.2 acres of additional work spaces in several counties in Tennessee, Virginia, and North Carolina.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to solicit and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the EIS on the important environmental issues. By this Notice of Intent, the Commission is requesting public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to avoid impacts on various resource areas.

Our independent analysis of the issues will result in the publication of a draft EIS that will be mailed to Federal, state, and local government agencies; Native American tribes; elected officials; public interest groups; interested individuals; affected landowners; newspapers; libraries; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. The final EIS will include our response to all comments received on the draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation and Scoping Meeting section of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by East Tennessee, and early input from intervenors. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils:

[3] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the pipeline.

[4] Work would not take place over the entire length of the uprate, but would include land disturbance at specific locations for the installation of manifolds at the hydrostatic test sites; replacement of mainline and side valves; and replacement of short sections of pipeline at road crossings.

[5] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

—Potential impacts associated with blasting
—Potential geologic hazards, including karst terrain
—Effects on soils
Water Resources and Wetlands:
—Potential effects on groundwater resources
—Effects on 243 perennial streams
—Effects on 5 waterbodies greater than 100 feet in width (Elk River and South Fork Holston River in Tennessee, and Reed Creek, New River, and Smith River in Virginia)
—Effects on 18.2 acres of wetlands
• Vegetation and Wildlife:
—Effect on vegetation, wildlife, and fisheries resources
• Endangered and Threatened Species:
—Potential effect on 17 federally listed species and 1 Federal candidate species that may occur in the project area
• Cultural Resources:
—Effect on archaeological sites and other historic properties.
• Land Use, Recreation, and Visual Resources:
—Potential impacts on residential areas
—Effects on the Jefferson National Forest, Appalachian Trail, Blue Ridge Parkway, and New River Trail State Park
—Visual effects of the aboveground facilities on surrounding areas
• Socioeconomics:
—Effects of construction workforce in migration
• Air and Noise Quality:
—Effects on air and noise quality from construction and operation of the compressor stations
• Reliability and Safety:
—Assessment of public safety factors associated with natural gas pipelines
• Alternatives:
—Assessment of alternative routes, systems or energy sources to reduce or avoid environmental impacts

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
• Refer to Docket No. CP01–415–000;
• Label one copy of the comments for the attention of the Gas Branch 2, PJ 11.2; and
• Mail your comments so that they will be received in Washington, DC on or before October 31, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account by clicking on Login to File and then ''New User Account''.

Everyone who responds to this notice or comments throughout the EIS process will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the draft and final EIS, please return the Information Request (appendix 4). You must send comments or return the Information Request for your name to remain on the mailing list.

Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings that the FERC will conduct in the Mainline Extension area of the Patriot Project. The locations and times for these meetings are listed below.

Monday October 15—Stuart, Patrick County High School, 215 Cougar Lane, Stuart, VA 24171, (276) 694–7137

Tuesday October 16—Wytheville, George Wythe High School, #1 Maroon Way, Wytheville, VA 24382, (276) 228–3157—Renee Jones

Wednesday October 17—Bristol City, Bristol City Schools, 615 Edgemont Avenue, Bristol, TN 37620, (423) 652–9447—Facility Supervisor Jim Arnold

Thursday October 18—Chattanooga, East Ridge High School, 4320 Bennett Road, Chattanooga, TN 37412–2299, (423) 887–6200—Kim Gatewood

The public scoping meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. East Tennessee representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the draft EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

On the dates of the meetings, we will also be conducting limited site visits of the project area. Anyone interested in participating in the site visits may contact the Commission's Office of External Affairs at (202) 208–1088 for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding, known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).[6] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs (202) 208–1088 or on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the

[6] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

''CIPS'' link, select ''Docket #'' from the CIPS Menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

David P. Boergers,

Secretary.

[FR Doc. 01–25199 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, Comments, Recommendations, and Terms and Conditions

October 2, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12119–000.

c. *Date filed:* September 6, 2001.

d. *Applicant:* PowerWheel Associates.

e. *Name of Project:* PowerWheel Demonstration Project.

f. *Location:* In Kern County, California. The project would be located on Semitropic Water Storage District's (SWSD) main intake canal at Station 70+50. The man-made canal's proximate source of water where the project will be located is the California Aqueduct at Station 2157+22. The project would not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) –825(r).

h. *Applicant Contact:* Mr. Kenneth R. Broome, Managing Partner, PowerWheel Associates, 100 Rocky Creek Road, Woodside, CA 94062, (650) 529–1810.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. Deadline for filing motions to intervene, protests and comments: (November 3, 2001).

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Please include the Project Number (12119–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. Description of Project: The project would consist of a waterwheel, 7 feet in external diameter, 3½ feet in internal diameter and 14½ feet long, to be operated in a ''run-of-conduit'' mode with whatever flow is available and required to satisfy SWSD customer needs. It will have one 75-kW generating unit installed at the sloping drop structure located at Station 70+50. The average annual generation would be 328,500 kWh.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests of Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

r. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

s. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', '' COMMENTS'', '' REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS'; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be

accompanied by proof of service on all persons listed in the Service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 01–25203 Filed 10–5–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7076–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emission Compliance and Fuel Economy Information; Motorcycles and Light Duty

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Emission Compliance and Fuel Economy Information; Motorcycles and Light Duty. This ICR was formerly titled ''Emission Certification and Fuel Economy Compliance; Motorcycles, Light Duty Vehicles and Light Duty Trucks''; EPA ICR 0783.37, OMB 2060–0104, it expires December 31, 2001. EPA is also planning on including provisions currently contained in other ICR's dealing with assembly line testing, recalls and NLEV standards, OMB numbers 2060–0064, 2060–0094, 2060–0124, 2060–0345 and 2060–0425. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 10, 2001.

ADDRESSES: Interested persons may obtain a copy of the various ICRs without charge from: United States Environmental Protection Agency, Certification and Compliance Division, ATTN: Richard W. Nash, 2000 Traverwood Dr., Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Richard W Nash, 2000 Traverwood Dr., Ann Arbor, MI 48105, (734) 214–4412, E-mail: *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are passenger car, light truck and motorcycle manufacturers and importers.

Title: Emission Compliance and Fuel Economy Information; Motorcycles and Light Duty. This collection was formerly titled ''Emission Certification and Fuel Economy Compliance; Motorcycles, Light Duty Vehicles and Light Duty Trucks''; EPA ICR 0783.37, OMB 2060–0104, expiring December 31, 2001.

Abstract: Under the Clean Air Act (42 U.S.C. 7525), manufacturers and importers of passenger cars, light trucks and motorcycles must have a certificate of conformity issued by EPA covering any vehicle they intend to offer for sale. In addition, car and truck manufacturers (and importers) must also submit information and reports required by the Energy Conservation and Policy Act (15 U.S.C. 2000 *et seq.*). EPA reviews vehicle information and test data to verify that the vehicle conforms to appropriate requirements and to verify that the proper testing has been performed. Subsequent audit and enforcement actions may be taken based, in part, on the initial information submitted. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

ICR Consolidation: In addition to renewing the emission certification portion of the ICR, EPA is proposing to consolidate several related and similar ICRs dealing with specific aspects of the emission compliance process. Although EPA's various compliance activities have always relied heavily on information collected during emission certification; a limited amount of additional information is sometimes also required. Consequently, it is logical to consolidate these other collections. Further, other information collections are inherently related to the emission certification process. The ICRs proposed to be consolidated are discussed in more detail in the paragraph below.

Of necessity, test vehicles used to substantiate compliance with emission standards cannot be covered by a certificate until one has been issued. EPA has established procedures for ''exclusions and exemptions'' in 40 CFR part 85, subpart R; the information collection is approved under OMB 2060–0124, Motor Vehicle Exclusion Determination, EPA ICR 0012.11. EPA proposes to consolidate this collection with the certification ICR which it supports. EPA adopted voluntary emission standards providing a compatible system to those standards established by California and certain northeastern states; National Low Emitting Vehicle Program, NLEV. The NLEV information requirements were approved by OMB 2060–0345, EPA ICR 1761.02. However, these voluntary standards have, in effect, supplanted the regular standards and associated information collection previously approved by OMB. Incorporating these NLEV reporting burdens with the other certification provisions they have supplanted is both logical and will eliminate the very slight overstatement of burden resulting from having two duplicate approved processes when only one is used. EPA's emission certification program is the starting point for all subsequent compliance activities. Information collected during certification is used in planning those subsequent activities and answering questions that may arise. The formal title has been Motor Vehicle Emission Certification and Fuel Economy Compliance; it was approved by OMB under 2060–0104, EPA ICR 783.39. Information describing the vehicles which will be produced and test results substantiating that they will comply with applicable standards is reviewed by EPA before issuing a ''Certificate of Conformity.'' Assembly line testing, known as Selective Enforcement Audit, is chronologically the next compliance mechanism; it assures that the vehicles actually produced do in fact comply with applicable standards and regulations. Selective Enforcement Audit was formally approved by OMB under 2060–0064, that authority has since expired. Although EPA has not conducted an assembly line test recently, the Agency wishes to retain authority to do so; albeit at a very low rate, a fraction of one audit per year. The Agency believes that assembly line testing may be useful in some limited circumstances in the future and, therefore, proposes to include it in the consolidated ICR. EPA's other major compliance technique is vehicle recall which is comprised of two components. Vehicle manufacturers are required to submit certain reports; Emission Defect Information and Voluntary Emission Recall Reports for On-Highway, Light-duty Vehicles, OMB approval 2060–0425, EPA ICR 1916.01. In addition, when EPA conducts testing on in-use vehicles, manufacturers are asked to verify the construction and testing conditions; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks. This information collection is

authorized under OMB number 2060–0094, EPA ICR 0167.06. Both recall activities impose relatively minor burdens and are an extension of the information originally collected to support certification. As such, EPA proposes to include them in the consolidated ICR. Upon OMB approval of the consolidated ICR, the previously approved separate ICRs will no longer be needed.

Concurrent Rulemaking: EPA is concurrently proposing to amend certain aspects of the ICR regarding On Board Diagnostic (OBD) service information. The ICR was submitted to OMB on 01 April 2001 under EPA number 0783.41; the Notice of Proposed Rulemaking was published on June 8, 2001, 66 FR 30830. Comments on this proposal should be submitted as directed in those documents. The ICR renewal will be amended to reflect any changes in information burden that are ultimately approved by OMB.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

(v) Evaluate the effect of combining the ICRs discussed above.

Burden Statement: The total labor burden imposed by the Motor Vehicle Emission Certification and Fuel Economy Compliance program is approximately 538,192.5 hours/year. Approximately 70 respondents are regulated by this program, yielding an average burden of 7,688.5 hours/year/respondent. The annual operating and capitalized costs are $3 million and $9.7 million respectively. 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.

Dated: October 1, 2001.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–25262 Filed 10–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7076–7]

Public Listening Sessions on the Total Maximum Daily Load (TMDL) Program and Related Areas of the National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA is inviting all interested members of the public to participate in one or all of a series of five public listening sessions on the Total Maximum Daily Load (TMDL) program (section 303(d) of the Clean Water Act) and related issues in the National Pollutant Discharge Elimination System (NPDES) program (section 402 of the Clean Water Act).

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: For general information on the meetings and to register to attend one or more meetings, visit EPA's TMDL web site at: *http://www.epa.gov/owow/tmdl/meetings/.* When registering online, include your name, affiliation, address, phone number, fax number, email, and which TMDL listening session you will attend. If you are unable to register online, please fax registration information to (703) 934–1057. If you have questions about these meetings or if you want to mail in a written statement in advance of a public meeting or after a meeting, contact: Anne C. Weinberg, U.S. EPA Office of Wetlands, Oceans and Watersheds (4503F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone (202) 401–078 or email *weinberg.anne@epa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of these listening sessions is to: Improve understanding of the TMDL program; provide information about the status of the current program; get stakeholder perspectives on key issues associated with the TMDL program and related issues in the NPDES program; and identify/discuss ideas about how to address issues in the TMDL and NPDES programs. EPA will use the information received at these public listening sessions as it considers changes to the regulations which govern the TMDL program (40 CFR part 130) and related areas of the NPDES program (40 CFR parts 122, 123, and 124), with a view toward proposing modifications in mid-2002.

Four of the public TMDL listening sessions will focus on specific themes/issues including: Implementation of TMDLs Addressing Nonpoint Sources; Scope and Content of TMDLs; EPA's Role, the Pace/Schedule for Development of TMDLs, and National Pollutant Discharge Elimination System (NPDES) Permitting Pre and Post TMDLs; and Listing Impaired Waters. At each of these meetings, the public will have an opportunity to discuss TMDL interests or concerns both related and unrelated to the specific theme/issue of the meeting. At the fifth meeting in Washington, DC, EPA will summarize the input received at the first four public meetings and will provide an opportunity for additional input.

We are using a non-traditional format for these listening sessions. These listening sessions will include: A background presentation by EPA, small group sessions during which participants can choose to discuss issues associated with the theme or other topics of concern to them, and general discussions in plenary session to report the highlights and/or raise questions from the small group sessions. In addition, any person who wishes to file a written statement may do so before or after the public listening session.

Members of the public who would like to attend one or more meetings or submit a written statement, should see the information on registering for meetings and submitting written statements in the For Further Information Contact section of this notice.

Public Meeting Information

The public TMDL listening sessions will be held on the following dates,

times and locations, and will focus on the themes/issues indicated below:

1. Public TMDL Listening Session, Chicago, IL

Meeting Theme: Implementation of TMDLs Addressing Nonpoint Sources.

Topics to be discussed include: How can we ensure TMDLs are implemented? What existing technical tools, authorities/programs, and funding sources are available to foster implementation?

Date: Oct. 22–23, 2001.

Time: 1 pm–6 pm on Oct. 22, 2001, and 8 am–noon on Oct. 23, 2001.

Location: The Congress Plaza Hotel, 520 South Michigan Avenue, Chicago, IL 60605, phone: (312) 427–3800 or (800) 635–1666, web site: *http://www.congressplazahotel.com.*

2. Public TMDL Listening Session, Sacramento, CA

Meeting Theme: Scope and Content of TMDLs.

Topics to be discussed include: Are TMDLs appropriate for all impaired waters and pollutants? How can TMDLs be defined to facilitate the use of adaptive management? How can we develop TMDLs to encourage stakeholder involvement in the allocation process? How can TMDLs be defined to promote a watershed approach?

Date: Nov. 1–2, 2001.

Time: 1 pm—6 pm on Nov. 1, 2001 and 8 am—noon on Nov. 2, 2001.

Location: Doubletree Hotel Sacramento, 2001 Point West Way, Sacramento, CA 95815, phone (916) 929–8855, web site: *http://www.doubletreehotels.com.*

3. Public TMDL Listening Session, Atlanta, GA

Meeting Theme: EPA's Role, the Pace/Schedule for Development of TMDLs, and NPDES Permitting Pre and Post TMDL.

Topics to be discussed include: How can EPA most effectively support and ensure State TMDL development?; requirements for EPA action in response to States' action or inaction; schedules for development and implementation of TMDLs; NPDES permitting in impaired waters prior to the establishment of a TMDL; and implementing TMDLs in NPDES permits, including the schedule and role of States and EPA in issuing these permits.

Date: Nov. 7–8, 2001.

Time: 1 pm–6 pm on Nov. 7, 2001 and 8 am–noon on Nov. 8, 2001.

Location: Atlanta Capitol Plaza Hotel (formerly Ramada Capitol Plaza Hotel), 450 Capitol Avenue, SW., Atlanta, GA 30312, phone: (404) 591–2000 or (800) 589–7952, web site: *http://www.atlantacapitolplaza.com.*

4. Public TMDL Listening Session, Oklahoma City, OK

Meeting Theme: Listing Impaired Waters.

Topics to be discussed include: Timing: How often should the section 303(d) list be submitted to EPA (every 2, 4, or 5 years)? Scope: Should the reporting requirements for section 305(b) and section 303(d) be integrated into a single report? List Credibility: What steps should be taken to ensure credible lists of impaired waters? Data and information: What can be done to improve data and information available to support listing decisions? Public review: How can we improve public understanding of listing decisions?

Date: Nov. 15–16, 2001.

Time: 1 pm–6 pm on Nov. 15, 2001 and 8 am–noon on Nov. 16, 2001.

Location: Hilton Oklahoma City Northwest, 2945 Northwest Expressway, Oklahoma City, OK 73112, phone: (405) 848–4811 or (800) HILTONS, web site: *http://www.hilton.com.*

5. Public TMDL Listening Session, Washington, DC

Meeting Theme: All Issues.

Date: Dec. 11, 2001.

Time: 8:30 am to 5 pm on Dec. 11, 2001.

Location: Wyndham Washington, DC, 1400 M St., NW., Washington, DC 20005, phone: (202) 429–1700 or (800) WYNDHAM, web site: *http://www.wyndham.com.*

Members of the public who plan to attend any of these meetings should see information on registering for the public meetings in the **FOR FURTHER INFORMATION CONTACT** section above.

For background information on the TMDL program visit EPA's TMDL web site at: *http://www.epa.gov/owow/tmdl/* and for background information on the NPDES program visit EPA's NPDES web site at: *http://cfpub1.epa.gov/npdes/).*

Dated: October 2, 2001.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 01–25257 Filed 10–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7076–1]

Clean Water Act (CWA) 303(d): Addition of Five Waters to the State of New Jersey's 1998 Section 303(d) List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA today notices its final decision to disapprove the State of New Jersey's omission of five waters on its 1998 Clean Water Act Section 303(d) list. EPA is adding the following five waters to New Jersey's 1998 Section 303(d) list for toxic pollutant impairment: Ackerman's Creek, Berry's Creek, Birch Swamp Brook, Capoolony Creek, and Edmund's Creek.

DATES: Date of decision was September 24, 2001.

ADDRESSES: Copies of the relevant supporting documents may be obtained by writing to Ms. Rosella O'Connor, U.S. Environmental Protection Agency Region 2, 290 Broadway, 24th Floor, New York, New York 10006–1866, *oconnor.rosella@epamail.epa.gov,* or by calling (212) 637–3823.

The administrative record containing background technical information is on file and may be inspected at the U.S. EPA, Region 2 office between the hours of 8 a.m. and 5:30 p.m., Monday through Friday, except holidays. Arrangements to examine the administrative record may be made by contacting Ms. Rosella O'Connor.

FOR FURTHER INFORMATION CONTACT: Ms. Rosella O'Connor, telephone number (212) 637–3823.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Action
III. Summary of Comments Received and Agency Responses

I. Background

Section 303(d) of the Clean Water Act (CWA) and EPA's implementing regulations at 40 CFR 130.7, require states and territories to: Develop lists of water-quality limited waters still requiring Total Maximum Daily Loads (TMDLs); establish a priority ranking of these waters; identify pollutants causing their impairment; and identify waters targeted for TMDL development over the next two (2) years. TMDLs include a determination of pollutant loadings compatible with achievement of applicable state water quality standards. State 303(d) lists and TMDLs are submitted to the EPA for approval or disapproval.

Under 40 CFR 130.7(b)(1), water quality-limited segments are not required to be listed on a State's Section 303(d) list where: Effluent limitations required by the CWA; more stringent effluent limitations required by State, local, or federal authority; or, other pollution control requirements required by State, local or federal authority, are stringent enough to implement applicable water quality standards. Waters may be removed from the 303(d) list if any of the listed control actions will result in meeting water quality standards by the next listing cycle. If water quality standards are not expected to be achieved by the next listing cycle, through implementation of other required controls, it is appropriate for waters to remain on the 303(d) list to ensure that implementation of the required controls and progress towards compliance with applicable water quality standards occur.

On September 15, 1998, the State of New Jersey (''New Jersey'') submitted its 1998 CWA Section 303(d) list to EPA for review and approval. On October 8, 1998, EPA approved New Jersey's CWA Section 303(d) list. This list included approximately 1,048 water-quality limited segments. This list was challenged in a lawsuit commenced in the Federal District Court for the District of New Jersey, entitled *American Littoral Society and New Jersey Public Interest Research Group* v. *United States Environmental Protection Agency, et al.* (Civil Action No. 96–339 (MLC)). In a preliminary decision and order issued in this case in December 2000, the Court directed EPA to provide for the inclusion on New Jersey's 303(d) list the five following waters: Ackerman's Creek; Berry's Creek; Birch Swamp Brook; Capoolony Creek; and Edmund's Creek. These five waters should have been included on New Jersey's list due to impairment by toxic pollutants, but were inadvertently omitted.

By a second order dated July 19, 2001, the Court directed that:

> (EPA) shall have 60 days from the entry of this Order to submit to the **Federal Register** for publication a final notice adding Ackerman's Creek, Berry's Creek, Birch Swamp Brook, Capoolony Creek, and Edmunds Creek to the Clean Water Act section 303(d) list for the State of New Jersey. Prior to submission of that final notice to the **Federal Register**, [EPA] may submit to the **Federal Register** for publication a notice proposing the addition of those waters to the 303(d) list and may seek public comment concerning the proposed addition.

This order was entered on July 27, 2001.

In preparing its 1998 CWA Section 303(d) list, New Jersey relied upon several sources of information, including the EPA approved CWA Section 304(l) lists. Under CWA Section 304(l), States were required to submit to EPA several lists, including, pursuant to Section 304(l)(A)(i)—a list of water bodies the State does not expect to achieve State water quality standards due to discharges of toxic pollutants from point or nonpoint sources (the ''mini list''). In 1993, EPA approved New Jersey's CWA Section 304(l) lists. A notice announcing EPA's final approval of New Jersey's 304(l) lists, including New Jersey's mini list, was published in the **Federal Register** on November 2, 1993 (58 FR 58548).

The five waters that EPA is adding—Ackerman's Creek, Berry's Creek, Birch Swamp Brook, Capoolony Creek, and Edmund's Creek (sometimes referred to below as the ''five omitted waters'')—originate from New Jersey's CWA Section 304(l) mini list. With the exception of these five waters and the Singac River, discussed below, the remaining waters listed on the CWA Section 304(l) mini list were included on New Jersey's 1998 CWA Section 303(d) list.

The five omitted waters were found to be potentially impaired due to contamination from adjacent hazardous waste sites listed on the National Priority List.

During the course of the litigation in early 2001, EPA determined that a sixth water, designated by New Jersey on its mini list as the Singac River, had also been inadvertently omitted from New Jersey's 303(d) list, despite the fact that New Jersey had previously determined that it was impaired due to violations of whole effluent toxicity requirements. However, based on comments received from New Jersey during the comment period on this proposed action, EPA has determined that this water does not require listing under Section 303(d).

II. Final Action

EPA is disapproving New Jersey's failure to list the five omitted waters on its 1998 CWA Section 303(d) list, and is adding these five waters (shown in Table 1) to New Jersey's 1998 Section 303(d) list. The pollutants potentially causing impairments of the listed waters are identified in Table 1. The proposed notice included zinc as a pollutant of concern for the Birch Swamp Brook. As a result of additional information received from New Jersey during the comment period, zinc was removed from the list of pollutants of concern.

TABLE 1.—LIST OF FIVE WATERS ADDED TO NEW JERSEY'S 1998 CWA SECTION 303(D) LIST

Waterbody	Reach No.	Pollutant(s)
Ackerman's Creek	02030103	Chromium, mercury, PCBs, chlorinated benzenes.
Berry's Creek	02030103034	Mercury, other metals.
Birch Swamp Brook	02030104	Arsenic, lead, copper, PCBs.
Capoolony Creek	02030105	DDT.
Edmund's Creek	02030105	PCBs.

CWA Section 303(d)(1) and EPA's regulations at 40 CFR 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development. EPA has assigned a ranking of low priority to the five omitted waters. A low priority is appropriate because of the control actions that are currently underway for the five omitted waters, all of which have been listed due to potential contamination from adjacent hazardous waste sites. EPA expects that these waters should be restored upon implementation of the remediation plans for the sites impacting the waters. EPA believes that any TMDL that is developed for these waters will rely on the remediation plans, required under 40 CFR 300.430 for the hazardous waste sites. EPA expects that New Jersey will track the progress of remediation plans for the relevant hazardous sites and the water quality of the above five waters.

III. Summary of Comments Received and Agency Responses

EPA noticed its intent to disapprove the omission of the five omitted waters and the Singac River on August 2, 2001 (66 FR 40282). The public comment period closed on August 17, 2001. During the comment period, EPA received comments from the American Littoral Society, Delaware River Keeper, New Jersey Public Interest Group Citizen Lobby, and New Jersey. A

summary of the comments received and EPA's responses follow.

Comment (American Littoral Society, Delaware River Keeper, and New Jersey Public Interest Group Citizen Lobby): The Court in American Littoral Society and New Jersey Public Interest Research Group v. United States Environmental Protection Agency, et al. (Civil Action No. 96–339 (MLC)) ordered EPA to add ''six'' waters to New Jersey's Section 303(d) list. EPA should disapprove New Jersey's 1998 Section 303(d) list because it is lacking these waters and promulgate a 303(d) list for New Jersey that includes the ''six'' waters.

EPA Response: The Court's December 2000 and July 2001 orders addressed only the five omitted waters as follows: Ackerman's Creek; Berry's Creek; Birch Swamp Brook; Capoolony Creek; and Edmund's Creek. The action EPA is taking today adds these five waters to New Jersey Section 303(d) list, thereby satisfying the Court's orders. A sixth water, designated by New Jersey on its mini list as the Singac River, was identified by EPA in early 2001 as an additional water that EPA then believed should be added to the 303(d) list. However, based on comments received from New Jersey, EPA has determined that this water should not be listed on New Jersey's 303(d) list.[1]

Comment (New Jersey): Zinc should not be listed as a contaminant of concern for Birch Swamp Brook.

EPA Response: EPA has reviewed the Remedial Investigation Report associated with the adjacent hazardous waste site and agrees that zinc has not been identified as a pollutant of concern.

Comment (New Jersey): Surface water quality data associated with the hazardous waste site adjacent to Capoloony Creek indicate that the site has no impact on surface water quality. EPA issued a Record of Decision for the site in 1990 which states that no volatile organics or pesticides were detected in surface water and that trace amounts of inorganics were detected. Fish samples collected from the stream showed detectable levels of DDT and other site-related contaminants. Fish samples from other reaches of Capoloony Creek have shown similar levels of these contaminants. Capoloony Creek should not be added to New Jersey's 1998 Section 303(d) list.

EPA Response: Data indicate that fish samples are contaminated with DDT and other contaminants. It is not clear whether the source of these contaminants is the hazardous waste site or other unidentified sources. However, data do not indicate that designated uses and water quality standards have been achieved. Therefore, EPA disagrees that Capoloony Creek should not be listed and will include the Creek on New Jersey's 1998 Section 303(d) list. New Jersey may seek to remove Capoloony Creek from its 303(d) list at the time it is required to submit its next 303(d) list to EPA, provided, however, that New Jersey submit data and information fully justifying such a delisting.[2]

Comment (New Jersey): The Singac Brook was listed due to noncompliance with whole effluent toxicity limits in a permit issued to the Township of Wayne's Mountain View Water Pollution Control Facility. Whole effluent toxicity test results between 1998 and 2001 indicate that the permit limit was exceeded one time. Since a whole effluent toxicity test limit is in effect in the permit and the facility is expected to comply with the limit, Singac Brook should not be listed.

EPA Response: EPA concurs that the Singac Brook should not be listed on New Jersey's 1998 Section 303(d) list. This waterbody was originally identified as requiring controls for whole effluent toxicity, as a consequence of the discharge from the Township of Wayne's Mountain View Water Pollution Control Facility (the ''Wayne Mountain facility'').[3] The permit issued to the Wayne Mountain facility includes a limit for whole effluent toxicity. Under (40 CFR 130.7(b)(1)(ii)), waters for which more stringent effluent limitations required by State or local authority are in effect are not required to be listed. Therefore, pursuant to 40 CFR 130.7(b)(1)(ii), the permit is a pollution control requirement, required by New Jersey, that is sufficiently stringent to implement the applicable water quality standard, and there is no longer any basis to list the Singac Brook for whole effluent toxicity.''[4]

Dated: September 24, 2001.

William Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–25258 Filed 10–5–01; 8:45 am]

BILLING CODE 6560–50–P

[1] In its comments, New Jersey informed EPA that its original designation of this water as the Singac River was an error and that the relevant water's correct name is the Singac Brook. EPA has confirmed this, as will be discussed in more detail below, and all subsequent references to this water will be to the Singac Brook.

[2] The states are currently required to submit their next Section 303(d) list by April 1, 2002, but EPA has proposed to extend this date until October 1, 2002 (66 FR 41817, 8/9/01).

[3] As noted above (footnote 1) New Jersey originally designated this water in its mini list as the Singac River. In its comments, New Jersey indicated that this was a misnomer and that the correct name for this water was the Singac Brook. To verify this, EPA reviewed its New Jersey Pollutant Discharge Elimination System data base, which indicates that the Wayne Mountain facility discharges to the Singac Brook, rather than the Singac River. Consequently, the relevant receptor waterbody is in fact the Singac Brook.

[4] In addition to the above comments, New Jersey submitted some general policy comments, and some technical comments with specific reference to Ackerman's Creek, Berry's Creek and Edmund's Creek. These comments, however, posed no objections to the listing of these three waters, the low priority ranking assigned to them by EPA, or to the pollutants for which they were proposed to be listed. Consequently, EPA believes that there is no reason to respond to these additional comments in this **Federal Register** notice. It is EPA's intent, however, to address the issues raised by these policy and technical comments directly with New Jersey in the immediate future.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is submitting a request for review and approval of a collection of information under the emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting the collection of information to approved by October 26, 2001.

Supplementary: Information Public Law 106–398, Fire Investment and Response Enhancement (FIRE) Act, Title XVII—Assistance to Firefighters, recognized that America's fire departments provide service and protection with impact far beyond the borders of the communities that support them. In order to provide this service and protection with the effectiveness, speed, and safety that their home communities and the nation as a whole demand, many fire departments, local community and state entities will need to increase their resources, in any of several categories. PL 106–398 created a fund to support worthy proposals to address these needs. But PL 106–398 also recognized that our current understanding of the magnitude and nature of fire department needs is not well defined. Furthermore, the rationale for Federal government assistance to meet these needs is also in need of greater definition, given the normal presumption that routine fire protection is a local function, set to meet locally

defined goals and supported by local resources. Accordingly, PL 106–398, Section 1701, Sec. 33 (b) required that the Director of the Federal Emergency Management Agency (FEMA) conduct a study to define the current role and activities associated with the fire services; determine the adequacy of current levels of funding; and provide a needs assessment to identify shortfalls

Collection of Information

Title: U.S. Fire Service Needs Assessment Survey.

Type of Information Collection: New.

Abstract: Public Law 106–398, Section 1701, Sec. 33 (b) required that the Director of the Federal Emergency Management Agency (FEMA) conduct a study to define the current role and activities associated with the fire services; determine the adequacy of current levels of funding; and provide a needs assessment to identify shortfalls. America's fire departments provide service and protection with impact far beyond the borders of the communities that support them. In order to provide this service and protection with the effectiveness, speed, and safety that their home communities and the nation as a whole demand, many fire departments will need to increase their resources, in any of several categories. Current understanding of the magnitude and nature of fire department needs is not well defined. Furthermore, the rationale for Federal government assistance to meet these needs is also in need of greater definition, given the normal presumption that routine fire protection is a local function, set to meet locally defined goals and supported by local resources. FEMA will use the expertise in the United States Fire Administration (USFA), the National Fire Protection Association (NFPA) and a Technical Advisory Group (TAG) drawn from national fire service organizations to define a survey questionnaire, the subject of this notice, asking fire departments to describe their current resources and to provide such other information as will allow for proper interpretation of their responses and translate them into needs, relative to a framework of requirements developed from the same experts and beginning with the requirements embedded in existing national standards and regulations. The resultant random stratified survey of fire departments and subsequent analysis will be compiled into a report to Congress, and the report also made available to the public via the Internet, in order to serve as the informational basis for future Federal investment in the fire service.

Affected Public: Non-for-profit; Federal Government; and State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 8,958.

Estimated Cost: The estimated costs to the government will be contracted direct labor and associated overhead costs of $277,457. There would be no costs to the respondent other than the minimal direct labor cost of a single fire service worker taking a small amount of time to complete the survey and this would be applicable only to those fire departments with career employees. The majority of the respondents will be from volunteer fire departments from which no direct labor costs will be incurred. The estimate of respondent costs for those career departments is computed as follows: estimated number of surveys multiplied by the national average hourly rate of a firefighter of $18.65 multiplied by 0.33 (representing the estimated 20 minutes it takes to complete the survey) and multiply that by .25 which represents the percentage of respondents who are career (paid) personnel. Using this equation, total estimated costs to respondents of $41,770 is derived (27,148 estimated surveys × $18.65 = $506,310 × 0.33 = $167,082 × 0.25 = $41,770). The average cost per survey is $1.53. The respondents are under no obligation to complete the survey and may refuse to do so or stop at any time so the average cost to the respondent could easily not be incurred by refusing to fill out the survey.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Mark A Whitney, Fire Program Specialist, U.S. Fire Administration, (617) 984–7465, for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e:mail *muriel.Anderson@fema.gov.*

Dated: September 28, 2001.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 01–25243 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Emergency Management Exercise Reporting System (EMERS)

Type of Information Collection: Reinstatement, with change of a previously approved collection for which approval has expired.

OMB Number: 3067–0248.

Abstract: EMERS is an automated data collection software program that captures the positive and negative results of emergency management exercise and actual disaster occurrences. This data is used to analyze the capabilities of State and local governments to respond to disasters. FEMA will use this data to also determine strengths and weaknesses and actions that can be taken at the national level to improve programs. State and local governments use EMERS data to track exercises activity on an annual basis and to use the lessons learned for the development of corrective action plans, strategic planning and for State/local annual basis and to use the lessons learned for

the development of corrective action plans, strategic planning and for State/local budgeting.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 3,056.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,668.

Frequency of Response: On Occasion.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e:mail *muriel.anderson@fema.gov.*

Dated: October 1, 2001

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 01–25244 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Implementation of Coastal Barrier Resources Act.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0120.

Abstract: Section II of the Coastal Barrier Resource Act (P.L. 348) prohibits the sale of National Flood Insurance Program policies for new construction and substantial improvement of structures on undeveloped coastal barriers on or after October 1, 1983. The information collection contained in FEMA regulation 44 CFR, Section 71.4 is used by FEMA to determine that a structure is neither new construction nor a substantial improvement, and therefore is eligible for flood insurance.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-for-Profit Institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 60.

Estimated Time per Respondent: 1.5 hours.

Estimated Total Annual Burden Hours: 90 hours.

Frequency of Response: One-time during life of policy.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or email muriel.anderson@fema.gov.

Dated: September 28, 2001.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 01–25245 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1393–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1393-DR), dated September 28, 2001, and related determinations.

EFFECTIVE DATE: September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 28, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5204 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms, tornadoes and flooding associated with Tropical Storm Gabrielle on September 13–21, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Charlotte, DeSoto, Hardee, Manatee, St. Johns, Sarasota, and Flagler Counties for Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–25248 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1391–DR]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York, (FEMA–1391–DR), dated September 11, 2001, and related determinations.

EFFECTIVE DATE: September 27, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 11, 2001:

Delaware, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–25246 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1392–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1392–DR), dated September 21, 2001, and related determinations.

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5204c (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from fires and explosions on September 11, 2001, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5204c (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Categories A and B (debris removal and emergency protective measures) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act as you may deem appropriate. Federal funding for debris removal to eliminate immediate threats to public health and safety and emergency protective measures to save lives and protect public health and safety, shall remain at 100 percent Federal funding, as I previously authorized under Section 501 (b) of the Stafford Act and my declaration of September 12, 2001. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Arlington County for Individual Assistance, and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program at 100 percent Federal funding.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–25247 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the maximum amounts for Individual and Family Grants and Small Project Grants to State and local governments and private nonprofit

facilities for disasters declared on or after October 1, 2001.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5204c (the Stafford Act) prescribes that we (FEMA) must adjust annually grants made under section 411, Individual and Family Grant Program, and Small Project Grants made under section 422, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under section 411 of the Act, with respect to any single disaster, to $14,800 for all disasters declared on or after October 1, 2001.

We also give notice that we are increasing the amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, to $52,000 for all disasters declared on or after October 1, 2001.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ended in August 2001. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2001.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 01–25251 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act Systems of Records; Amendment to Existing Routine Uses

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of amendment to routine uses.

SUMMARY: In compliance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, we (FEMA) give notice of amendments to two routine uses to our existing system of records entitled, FEMA/REG–2, Disaster Recovery Assistance Files. We have clarified the language in routine uses (a) and (b) to better distinguish the two eligibility-related routine uses. We have updated the designation of system manager. We are also giving notice of the availability of previously published routine use (c), regarding hazard mitigation planning and building code enforcement.

EFFECTIVE DATES: Routine uses (a) and (b) are effective for major disasters and emergencies declared on or after September 11, 2001. Routine use (c) was effective for major disasters and emergencies declared on or after April 7, 2000. Other minor modifications to this system are effective October 9, 2001.

ADDRESSES: Rules Docket Clerk, Federal Emergency Management Agency, Office of General Counsel, room 840, 500 C Street SW., Washington, DC 20472, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Eileen Leshan, FOIA/Privacy Specialist, at (202) 646–3840, or (email) *eileen.leshan@fema.gov.*

SUPPLEMENTARY INFORMATION: We published notices of systems of records on January 5, 1987, 52 FR 324; February 3, 1987, 52 FR 3344; March 5, 1987, 52 FR 6875, September 7, 1990, 55 FR 37182; September 23, 1996, 61 FR 49777, and July 27, 1999, 64 FR 40596. We do not need to provide an altered system of records report as required by 5 U.S.C. 552a(r), because this is a minor change to the system of records.

This change is to clarify and simplify the language of two existing routine uses, (a) and (b). This amendment will not change the type or amount of information collected or released. An additional minor modification includes an update to the designation of system manager. Finally, this notice will make the public aware that, although on July 27, 1999, (Volume 64, Number 143) FEMA published notice of a new routine use (c), which allows us to disclose information from this system of records to federal, state, and local governments to help develop hazard mitigation measures for community hazard mitigation planning, and to assure building practices consistent with hazard specific building codes, standards, and ordinances, FEMA will release information under that routine use only for disasters declared on or after April 7, 2000. This is because we are required under the Privacy Act to give notice to our applicants of the purposes for which we might disclose their information, and, such notice was not provided on application forms until that date.

Dated: October 2, 2001.

Michael D. Brown,

General Counsel.

The entire text of the system of records affected by this notice and Appendixes A and AA to FEMA/REG–2 follow:

FEMA/REG–2

SYSTEM NAME:

Disaster Recovery Assistance Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

FEMA National Processing Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for disaster recovery assistance following presidentially declared major disasters or emergencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records of registration for assistance (FEMA Form 90–69, Disaster Assistance Registration/Application includes names, addresses, telephone numbers, social security numbers, insurance coverage information, household size and composition, degree of damage incurred, income information, programs to which we refer applicants for assistance, flood zones, location and height of high water level, preliminary determinations of eligibility for disaster assistance).

(b) Inspection reports (FEMA Form 90–56, Inspection Report) contain identification information, and results of surveys of damaged real and personal property and goods.

(c) Temporary housing assistance eligibility determinations (FEMA Forms 90–11 through 90–13, 90–16, 90–22, 90–24 through 90–28, 90–31, 90–33, 90–41, 90–48, 90–57, 90–68 through 90–70, 90–71, 90–75 through 90–78, 90–82, 90–86, 90–87, 90–94 through 90–97, 90–99, and 90–101). These apply to approval and disapproval of temporary housing assistance: general correspondence, complaints, appeals, and resolutions, requests for disbursement of payments, inquiries from tenants and landlords, general administrative and fiscal information, payment schedules and forms, termination notices, and information shared with the temporary housing program staff from other agencies to prevent duplication of benefits, leases, contracts, specifications

for repair of disaster damaged residences, reasons for eviction or denial of aid, sales information after tenant purchase of housing units, and status of disposition of applications of housing.

(d) Eligibility decisions from other agencies (for example, the disaster loan program administered by the Small Business Administration, and decisions of the State-administered Individual and Family Grant program) as they relate to determinations of eligibility for disaster assistance programs.

(e) State files containing related, but independently kept, records of persons who request Individual and Family Grants, and administrative files and reports FEMA requires. As to individuals, we keep the same type of information as described above under registration, inspection, and temporary housing assistance records. As to administrative and reporting requirements, we use FEMA Forms 76–27, 76–28, 76–30, 76–32, 76–34, 76–35, and 76–38. We also use State administrative planning formats.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121—5206; Reorganization Plan No. 3 of 1978.

PURPOSE(S):

To register applicants needing disaster assistance, to inspect damaged homes, to verify information provided by the applicant, to make eligibility determinations for that assistance, and to identify and implement measures to reduce future disaster damage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) We may disclose applicant information to certain agencies as necessary and as described below to prevent a duplication of efforts or a duplication of benefits in determining eligibility for disaster assistance. We may disclose only information from this system of records relevant to that agency's particular assistance program(s). The receiving agency is not permitted to change disclosed FEMA records. We may make such disclosures under the following circumstances:

(i) To another Federal agency or State government agency charged with administering disaster relief programs, and

(ii) When an applicant seeks assistance from a local government agency or voluntary agency (as defined at 44 CFR 206.2) charged under legislation or charter with administering disaster relief programs, and FEMA receives a written request from that local government or voluntary agency that includes the applicant's name, date of birth and damaged dwelling address. FEMA shall not release lists of names to local government agencies or voluntary agencies routine use (a)(ii).

(b) When eligibility, in whole or in part, for a FEMA disaster assistance program depends on benefits received or available from another source for the same purpose, we may disclose information to relevant agencies, organizations, and institutions only as necessary to obtain information in order to determine and prevent duplication of benefits (as described in section 312 of the Stafford Act).

(c) In response to a written request, we may disclose information from this system of records to Federal, State, or local government agencies charged with the implementation of hazard mitigation measures and the enforcement of hazard-specific provisions of building codes, standards, and ordinances. We may disclose only information necessary for the following purposes:

(i) For hazard mitigation planning purposes to assist States and communities in identifying high-risk areas and preparing mitigation plans that target those areas for hazard mitigation projects implemented under Federal, State or local hazard mitigation programs; and

(ii) For enforcement purposes to enable State and communities to ensure that owners repair or rebuild structures in conformance with applicable hazard-specific building codes, standards, and ordinances.

(d) Additional routine uses may include those uses identified at Nos. 1, 2, 3, 5, 6, and 8 of Appendix A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Debt Collection Act of 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interactive database; computer discs, records in file folders.

RETRIEVABILITY:

By name, address, social security number, case file numbers.

SAFEGUARDS:

Hardware and software computer security measures; paper files in locked file cabinets or rooms; buildings are secured during non-business hours by building guards.

RETENTION AND DISPOSAL:

Because of varying record schedules applicable to this system of records, we have broken down the paragraphs under the categories of records section for easy reference. Records covered by paragraphs (a) through (d) are covered by FEMA Records Schedule N1–311–86–1, Item 8b(l) and are destroyed 6 years and 3 months after the files are consolidated. Records covered by paragraph (e) are covered by FEMA Records Schedule N1–311–86–1, Item 7 and are destroyed 3 years after the disaster contract is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

We list the addresses of Regional Directors and Regional Readiness, Response and Recovery Division Chiefs of FEMA in Appendix AA; and the Division Director, Recovery Division, Readiness, Response and Recovery Directorate, 500 C Street SW., Washington, DC 20472.

NOTIFICATION PROCEDURES:

You should address Inquiries to the appropriate system manager. Written requests should be clearly marked, ''Privacy Act Request'' on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address. For personal visits, you should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORDS ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORDS PROCEDURE:

Same as notification procedure above. The letter should state clearly and concisely what information you are contesting, the reasons for contesting it, and the proposed amendment to the information that you seek. FEMA Privacy Act regulations are at 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Applicants for disaster recovery assistance; credit rating bureaus, financial institutions, insurance companies and agencies providing disaster relief.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: We have identified certain routine uses that are

applicable to many of our systems of record notices. We will list the specific routine uses applicable to an individual system of record notice under the ''Routine Use'' section of the notice itself, which will correspond to the numbering of the routine uses published below. We are publishing these uses only once in the interest of simplicity and economy, rather than repeating them in every individual system notice.

1. *Routine Use—Law Enforcement:* We may disclose as a routine use a record from any of our system of records that indicates either by itself or in combination with other information that we have, a violation or potential violation of law, whether civil, criminal or regulatory, and whether arising by general statute, or by regulation, rule or order. We may disclose these records to the appropriate agency whether Federal, State, territorial, local or foreign, or foreign agency or professional organization, responsible for enforcing, implementing, investigating, or prosecuting such violation or for implementing the statute, rule, regulation or order.

2. *Routine Use—Disclosure When Requesting Information:* We may disclose as a routine use a record from our system of records to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning hiring or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit.

3. *Routine Use—Disclosure of Requested Information:* We may disclose as a routine use a record from our system of records to a Federal agency in response to a written request in connection with hiring or retaining an employee, an investigation of an employee, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

4. *Routine Use—Grievance, Complaint, Appeal:* We may disclose as a routine use a record from our system of records to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official investigating or settling a grievance, complaint, or appeal filed by an employee. We may also disclose as a routine use a record from this system of records to the Office of Personnel Management under that agency's responsibility to evaluate Federal personnel management.

To the extent that official personnel records in our custody are covered within systems of records published by the Office of Personnel Management as government-wide records, we will consider those records as a part of that government-wide system. We may transfer as a routine use to the Office of Personnel Management under official personnel programs and activities other official personnel records covered by notices that we published and that we consider are separate systems of records.

5. *Routine Use—Congressional Inquiries:* If the individual subject of the record asks us to disclose the information, we may disclose as a routine use a record from our system of records to a Member of Congress or to a congressional staff member in response to an inquiry from the congressional office.

6. *Routine Use—Private Relief Legislation:* We may disclose as a routine use the information contained in our system of records to the Office of Management and Budget at any stage of the legislative coordination and clearance process set out in OMB Circular No. A–19.

7. *Routine Use—Disclosure to the Office of Personnel Management:* We may disclose as a routine use a record from our system of records to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

8. *Routine Use—Disclosure to National Archives and Records Administration:* We may disclose as a routine use a record from our system of records to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 12906.

9. *Routine Use—Grand Jury:* We may disclose as a routine use a record from our system of records to a grand jury agent under a Federal or State grand jury subpoena, or under a prosecution request that we release such record for introduction to a grand jury.

Appendix AA

Addresses for FEMA Regional Offices

Region I—Regional Director, FEMA, room 442, J.W. McCormack Post Office and Courthouse Building, Boston, MA 02109–4595;

Region II—Regional Director, FEMA, 26 Federal Plaza, room 1338, New York, NY 10278–0002;

Region III—Regional Director, FEMA, Liberty Square Building (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106–3316;

Region IV—Regional Director, FEMA, 3003 Chamblee-Tucker Road, Atlanta, GA 30341;

Region V—Regional Director, FEMA, 175 West Jackson Blvd., 4th Floor, Chicago, IL 60604–2698;

Region VI—Regional Director, FEMA, Federal Regional Center, 800 North Loop 288, Denton, TX 76201–3698;

Region VII—Regional Director, FEMA, 2323 Grand Boulevard, room 900, Kansas City, MO 64108–2670;

Region VIII—Regional Director, FEMA, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

[FR Doc. 01–25241 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2001.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705, or (email) madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: Readiness, Response and Recovery Policy No. 9122.1 prescribes that we (FEMA) will adjust the countywide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the countywide per capita impact indicator to $2.66 for all disasters declared on or after October 1, 2001.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ended in August 2001. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2001.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 01–25249 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Adjustment of Statewide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice that we are increasing the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2001.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and

Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: 44 CFR § 206.48 prescribes that we (FEMA) must adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the statewide per capita impact indicator to $1.07 for all disasters declared on or after October 1, 2001.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ended in August 2001. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2001.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe M. Allbaugh,

Director.

[FR Doc. 01–25250 Filed 10–5–01; 8:45 am]

BILLING CODE 6718–02–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Revision of SF 82, Agency Report of Motor Vehicle Data

AGENCY: Office of Communications, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA), Office of Governmental Policy revised the SF 82, Agency Report of Motor Vehicle Data to a fully automated system accessed through the internet.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, General Services Administration, (202) 501–2824 for access to the internet and program questions.

DATES: Effective October 9, 2001.

Dated: September 28, 2001.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 01–25228 Filed 10–5–01; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Iowa State Plan Amendment (SPA) 01–013

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 14, 2001, 10 a.m., Room 281, Richard Bolling Federal Building, 601 E. Twelfth Street, Kansas City, Missouri 64106.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by October 24, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, C1–09–13, 7500 Security Boulevard, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Iowa State Plan Amendment (SPA) 01–013. Iowa submitted Iowa SPA 01–013 on March 28, 2001. The issue is whether Iowa can limit Medicaid eligibility to members of the Balanced Budget Act of 1997 (BBA) buy-in group for the working disabled who have not attained age 65.

This amendment seeks to limit Medicaid eligibility under the optional categorically needy group at section 1902(a)(10)(A)(ii)(XIII) of the Social Security Act (the Act), to individuals under age 65. This group is more commonly known as the BBA buy-in group for the working disabled. Coverage of the group itself was approved via Iowa SPA 00–04. The SPA 01–013 seeks to add a limitation on the age of eligible individuals that was not included in SPA 00–04. For reasons explained below, the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration, disapproved SPA 01–013.

Iowa requested approval of an age limit under the BBA group because State legislation authorizing coverage of the group limits eligibility to those under the age of 65. However, the Federal statute at section 1902(a)(10)(A)(ii)(XIII) of the Act does not provide for a limit on the age of individuals who can be eligible under this group, nor does that section include any authority for states to establish such a limit. Iowa argued that, while not stated explicitly, the intent of Congress in enacting the BBA group was that eligibility under the group be limited to individuals under age 65. The State bases its argument on a reference in subsection (XIII) to section 1905(q)(2)(B) of the Act as the authority for establishing the income limit for eligibility under the BBA group. Since eligibility in general under the group established at section 1905(q) of the Act (qualified severely impaired individuals) is limited to individuals under age 65, the State believes that age limit, through the subsection (XIII) reference to section 1905(q)(2)(B), also applies to the BBA group.

However, section 1902(a)(10)(A)(ii)(XIII) does not reference section 1905(q) in its entirety, but only subsection (2)(B), and then only in the specific context of the income limit set forth in that subsection. Accepting the argument that Congress intended, in referring to subsection (2)(B), that the age limit which applies to section 1905(q) in general should apply to the BBA group, logically leads to the conclusion that all of the other requirements of section 1905(q) would apply to the BBA group as well. However, CMS believes that this is clearly not the case because Congress established separate requirements for eligibility under the BBA group, adopting section 1905(q)(2)(B) only for purposes of establishing an income limit for that group.

The CMS believes its position to be supported by Congress' action to establish two additional groups under the Ticket to Work and Work Incentives Improvement Act of 1999 through which states can elect to cover working disabled individuals under Medicaid. The statutory provisions for both groups (sections 1902(a)(10)(A)(ii)(XV) and (XVI)) specifically limit eligibility to individuals who are at least 16 but not more than 64 years of age. Had Congress intended to limit eligibility under the BBA group to individuals under age 65, it could have amended section 1902(a)(10)(A)(ii)(XV) and (XVI) specifically limiting eligibility to individuals who are at least 16 but not more than 64 years of age. Had Congress intended to limit eligibility under the BBA group to individuals under age 65, CMS believes it could have amended section 1902(a)(10)(A)(ii)(XIII) to provide such a limit.

Therefore, after consulting with the Secretary as required by 42 CFR 430.15(c), CMS informed Iowa of its decision to disapprove this amendment. The notice to Iowa announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Jessie K. Rasmussen,
Director, Iowa Department of Human Services, Hoover State Office Building, Des Moines, IA 50319–0114.

Dear Ms. Rasmussen: I am responding to your request for reconsideration of the decision to disapprove Iowa State Plan Amendment (SPA) 01–013. Iowa submitted Iowa SPA 01–013 on March 28, 2001. The issue is whether Iowa can limit Medicaid eligibility to members of the Balanced Budget Act of 1997 (BBA) buy-in group for the working disabled who have not attained age 65. This amendment seeks to limit Medicaid eligibility under the optional categorically needy group at section 1902 (a)(10)(A)(ii)(XIII) of the Social Security Act (the Act) to individuals under age 65. This group is more commonly known as the BBA buy-in group for the working disabled. Coverage of the group itself was approved via Iowa SPA 00–04. The SPA 01–013 seeks to add a limitation on the age of eligible individuals that was not included in SPA 00–04. For reasons explained below, the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration, disapproved SPA 01–013.

Iowa requested approval of an age limit under the BBA group because State legislation authorizing coverage of the group limits eligibility to those under the age of 65. However, the Federal statute at section 1902(a)(10)(A)(ii)(XIII) of the Act does not provide for a limit on the age of individuals who can be eligible under this group, nor does that section include any authority for states to establish such a limit. Iowa argued that, while not stated explicitly, the intent of Congress in enacting the BBA group was that eligibility under the group be limited to individuals under age 65. The State bases its argument on a reference in subsection (XIII) to section 1905(q)(2)(B) of the Act as the authority for establishing the income limit for eligibility under the BBA group. Since eligibility in general under the group established at section 1905(q) of the Act (qualified severely impaired individuals) is limited to individuals under age 65, the State believes that age limit, through the subsection (XIII) reference to section 1905(q)(2)(B), also applies to the BBA group.

However, section 1902(a)(10)(A)(ii)(XIII) does not reference section 1905(q) in its entirety, but only subsection (2)(B), and then only in the specific context of the income limit set forth in that subsection. Accepting the argument that Congress intended, in referring to subsection (2)(B), that the age limit which applies to section 1905(q) in general should apply to the BBA group, logically leads to the conclusion that all of the other requirements of section 1905(q) would apply to the BBA group as well. However, this is clearly not the case because Congress established separate requirements for eligibility under the BBA group, adopting section 1905(q)(2)(B) only for purposes of establishing an income limit for that group.

The CMS believes its position to be supported by Congress' action to establish two additional groups under the Ticket to Work and Work Incentives Improvement Act of 1999 through which states can elect to cover working disabled individuals under Medicaid. The statutory provisions for both groups (sections 1902(a)(10)(A)(ii)(XV) and (XVI)) specifically limit eligibility to individuals who are at least 16 but not more than 64 years of age. Had Congress intended to limit eligibility under the BBA group to individuals under age 65, it could have amended section 1902(a)(10)(A)(ii)(XV) and (XVI) specifically limiting eligibility to individuals who are at least 16 but not more than 64 years of age. Had Congress intended to limit eligibility under the BBA group to individuals under age 65, it could have amended section 1902(a)(10)(A)(ii)(XIII) to provide such a limit.

The CMS had offered Iowa an alternative that would have enabled the State to avoid covering most individuals age 65 and over under the BBA group. The State could define the group as consisting only of individuals who meet the definition of disability under the Supplemental Security Income (SSI) program. By defining the group in this way, the State would not have to cover anyone age 65 or over who did not also meet the SSI definition of disability. However, Iowa was not able to take advantage of this alternative because of the specific language of the State's enabling legislation.

Therefore, after consulting with the Secretary as required by 42 CFR 430.15(c), CMS informed Iowa of its decision to disapprove this amendment.

I am scheduling a hearing on your request for reconsideration to be held on November 14, 2001, at 10:00 a.m. in Room 281, Richard Bolling Federal Building, 601 E. Twelfth Street, Kansas City, Missouri 64106. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication, which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 30, 2001.

Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–25227 Filed 10–3–01; 1:55 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective Contractors—42 CFR Part 50, Subpart F

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed date collection projects, the Office of the Director (OD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective Contractors—42 CFR Part 50, Subpart F. *Type of Information Collection Request:* Revision of OMB No. 0925–0417, expiration date 03/31/2002. *Need and Use of Information Collections:* This is a request for OMB approval for the information collection and recordkeeping requirements contained in the final rule 42 CFR part 50 subpart F and Responsible Prospective Contractors: 45 CFR part 94. The purpose of the regulations is to promote objectivity in research by requiring institutions to establish standards which ensure that there is no reasonable expectation that the design, conduct, or reporting of research will be biased by a conflicting financial interest of an investigator. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; Business of other for-profit; Not-for-profit institutions; State, Local or Tribal Government. *Type of Respondents:* Any public or private entity or organization. The annual reporting burden is as follows: *Estimated Number of Respondents:* 42,800; *Estimated Number of Responses per Respondent:* 1.60; *Average Burden Hours per Response:* 3.40; and *Estimated Total Annual Burden hours Requested:* 232,000. The annualized costs to respondents is estimated at: $8,120,000. Operating costs and/or Maintenance Costs are $4,633.

Request for Comments

Written comments and/or suggestions from the public and affected agencies

are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Charles MacKay, Chief, Project Clearance Branch, Office of Extramural Research (OER), Office of Policy for Extramural Research Administration (OPERA), 6705 Rockledge Drive, Room 1198, Bethesda, MD 20892–7974 or call non-toll-free number (301) 435–0978 or E-mail your request including your address to: *MACKAYC@od.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 10, 2001.

Dated: September 26, 2001.

Carol Tippery,

Acting Director, OPERA, NIH.

[FR Doc. 01–25169 Filed 10–5–01; 8:45 am]

BILLING CODE 4140–01–M

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 agencies 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.

NEIBANK: Microarray for Human Eye Research

Dr. Graeme J. Wistow (NEI)
DHHS Reference No. E–107–01/0
Licensing Contact: Pradeep Ghosh; 301–496–7736 ext. 211; e-mail: *ghoshp@od.nih.gov*

Microarrays have wide applications in basic research and are used for the discovery of candidate genes as markers for disease and for therapeutic intervention. ''NEIBANK'', a new microarray research tool has been developed that allows researchers to compare expression levels of thousands of genes expressed in the eye. The technology comprises of a set of sequenced unamplified and normalized libraries derived from normal human eye tissues using a custom software, GRIST (Grouping and Identification of Sequence Tags). Using this technique, a non-redundant set of over 10,000 cDNA clones, potentially representing unique genes expressed in the human eye has been derived. This integrated technique of sequencing with bioinformatics led to the discovery of new genes and the novel splice forms of known genes. Thus, this technology can be used to examine processes of diseases, aging, normal and abnormal development in post-mortem or surgical eye samples and in cultured cell systems. Areas of particular interest for this array in eye research include, but are not limited to, retinal degeneration, age-related macular degeneration and cataract.

Intercellular Delivery of a Herpes Simplex Virus VP22 Fusion Protein From Cells Infected With Lentiviral Vectors

Dr. Zhennan Lai et al. (NINDS)
DHHS Reference No. E–295–00/0 filed 02 August 2001
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: *shinnm@od.nih.gov*

One of the current limitations to the use of gene therapy is the delivery of genes or proteins to a sufficient number of target cells in order to create a therapeutic response. It has recently been discovered that a series of virus-encoded and other regulatory proteins are able to cross biological membranes, leading to the discovery that the herpes simplex virus 1 tegument protein, VP22, could be used to direct the global delivery of therapeutic proteins intercellularly.

The NIH announces a new lentivirus double gene vector expressing recombinant VP22-fusion protein. The vector contains two separate transgenes driven by two independent promoters. A reporter gene replaced the nev region of the HIV–1 genome, and another selectable marker gene was inserted into the nef coding region. Both transgenes are simultaneously expressed in non-dividing cells such as neurons. When the gene for VP22-fusion protein is incorporated into the vector, the fusion gene product is delivered to the cytoplasm and nuclei of non-dividing mammalian cells in vitro and in vivo, and from transduced cells to neighboring (non-infected) cells.

Dated: September 28, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–25170 Filed 10–5–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Human Genome Research Institute Special Emphasis Panel.

Date: November 1, 2001.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI, 31 Center Drive, Bldg. 31, Conference Room B2B32, 9000 Rockville Pike, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–25165 Filed 10–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Human Genome Research Institute Special Emphasis Panel.

Date: November 8–9, 2001.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–25166 Filed 10–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: Training Grant and Career Development Review Committee.

Date: October 3, 2001.

Time: 8 a.m.to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street NW, Washington, DC 20004.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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 of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders C.

Date: October 18–19, 2001.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street NW, Washington, DC 20004.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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 of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.

Date: October 25–26, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn on the Hill, 415 New Jersey Avenue, Washington, DC 20001.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders A NSD–A Study Section Meeting.

Date: October 25–26, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Capitol, 550 C Street, SW, Washington, DC 20024.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosicences, National Institutes of Health, HHS)

Dated: September 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–25167 Filed 10–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: October 29–30, 2001.

Time: 8:30 a.m.to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 28, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–25168 Filed 10–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service. Interior.

ACTION: Notice; request for comments.

SUMMARY: We will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. We have included a copy of the information collection requirement in this notice. If you wish to obtain copies of the proposed information collection requirement and explanatory material, contact the Service Information Collection Officer at the address listed below.

DATES: You must submit comments on or before January 7, 2001.

ADDRESSES: Send your comments on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Room 222 ARLSQ, 1849 C Street, NW, Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, contact Rebecca A. Mullin at (703) 358–2287 or electronically to *mullin@fws.gov*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulation at 5 CFR part 1320, which implements provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recording keeping activities (see 5 CFR 1320.8(d). We plan to submit a request to OMB to renew approval of the collection of information for the Conservation Order for the Reduction of Mid Continent Light Goose populations. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies 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 Mid-continent lesser snow goose and Ross' population has nearly quadrupled—goose populations are referred to as Mid-continent light geese (MCLG). Due to high population growth rates, a decline in adult mortality, and an increase in winter survival, MCLG are now seriously injurious to their habitat and habitat important to other migratory birds, which poses a serious threat to the short and long-term health and status of migratory bird populations. The U.S. Fish and Wildlife Service (Service or ''we'') believes that MCG populations exceed long-term sustainable levels for their arctic and sub-arctic breeding habitats and the populations must be reduced. 50 CFR part 21 provides authority for the management of overabundant MCG populations. Lesser snow and Ross' geese that primarily migrate through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas and other Gulf States are referred to as the Mid-continent population of light geese (M.P.). Lesser snow and Ross' geese that primarily migrate through Montana, Wyoming, and Colorado and winter in New Mexico, northwestern Texas, and Chihuahua, Mexico are referred to as Western Central Flyway population of light geese (WCFP). Ross' geese are often mistaken for lesser snow geese due to their similar appearance. Ross' geese occur in both M.P. and the WCFP and mix extensively with lesser snow geese on both the breeding and wintering grounds M.P. and WCFP lesser snow and Ross' geese are collectively referred to as Mid-continent light geese (MCLG) because they breed, migrate, and winter in the Mid-continent or central portions of Northern America primarily in the Central and Mississippi Flyways. They are referred to as ''light'' geese due to their light coloration as opposed to ''dark'' geese such as the white-fronted or Canada Geese. In addition, we are now adding all Atlantic Flyway states to the conservation order to control greater snow geese (GSG). Similar to MCLG populations, GSG populations have increased exponentially, causing many of the same negative impacts previously outlined.

This collection of information that is required of participating State agencies under the conservation order to control MCLG and GSG populations will be used by the Service to administer this program and, particularly, in monitoring the effectiveness of control strategies. The information requested will be required to participate, and to protect migratory birds. The criteria is a statement that indicates that the State will inform and brief all participants of the requirements of these regulations and conservation order conditions that apply to the implementation of MCLG and GSG control measures. Any participant must keep records of activities carried out under the authority of this conservation order, including the number of MCLG and GSG harvested, the method by which they were harvested, and the date on which they were harvested. The State must submit an annual report summarizing activities conducted, including the date, numbers of birds taken, and methods of take on or before August 1 of each year.

Frequency of Collection: Annually

Description of Respondents: States

Total Annual Burden Hours: (see below)

Type of Report	Number of Reports Annually	Avg. Time Required Per Report (minutes)	Burden Hours
General take or Removal	24	360	720

We invite comments concerning this submission on (1) whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) The accuracy of our estimate of the burden of the collection of information; (3) Ways to

enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552 (a))

Dated: October 3, 2001.

Rebecca A. Mullin,

U.S. Fish and Wildlife Service Information Collection Officer.

[FR Doc. 01–25234 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare Comprehensive Conservation Plans and Associated Environmental Documents for the Great Dismal Swamp National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of Interior.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and environmental documents pursuant to the National Environmental Policy Act and its implementing regulations. CCPs will be prepared for the Great Dismal Swamp National Wildlife Refuge (NWR) located in Suffolk and Chesapeake, Virginia and Gates and Camden Counties, North Carolina and the Nanesmond Refuge Unit located within the City of Suffolk, Virginia. A Wilderness Review of Great Dismal Swamp NWR will also be completed concurrently in accordance with the Wilderness Act of 1964, as amended and Refuge Planning policy 602 FW Chapters 1, 2, and 3. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*): (1) To advise other agencies and the public of our intentions, and (2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Inquire at the address below for dates of planning activity and due dates for comments. The public scoping meetings will be held in January 2002 in the cities of Suffolk and Chesapeake, Virginia and also in Elizabeth City and Gatesville, North Carolina in the following locations:

January 8, 2002

Hampton Inn, 402 Halstead Boulevard, Elizabeth City, North Carolina

January 10, 2002

Performing Arts Building, Gates County High School, 088 Highway 158 West, Gatesville, North Carolina

January 22, 2002

City Council Chambers, 441 Market Street, Suffolk, Virginia

January 24, 2002

Major Hillard Public Library, Deep Creek, 824 Old George Washington Highway, Chesapeake, Virginia

ADDRESSES: Address comments, questions, and request for more information to the following: Refuge Manager, Great Dismal Swamp National Wildlife Refuge, P.O. Box 349, Suffolk, VA 23439–0349, 757–986–3706.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuges purposes. The planning process will consider many elements including habitat and wildlife management, habitat protection and acquisition, public uses, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will impact management strategies.

The Service will solicit public input via, open houses, public meetings, workshops, and written comments. Special mailings, newspaper articles, and announcements will inform people of the time and place of such opportunities for public input to the CCP. The Great Dismal Swamp National Wildlife Refuge encompasses some 109,000 acres of marshes, wooded wetlands/swamps, and open water. Comments on the protection of threatened and endangered species and migratory birds and the protection and management of their habitat will be solicited as part of the planning process. A Draft CCP and Environmental Assessment are planned for public review by December of 2002.

Review of the project will be conducted in accordance with the requirements of the national Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Mamie A. Parker,

Acting Regional Director U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 01–25191 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Implementation Plan for Falconry Take of Nestling American Peregrine Falcons in the Contiguous United States and Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice is to announce the availability of the Draft Implementation Plan for take for falconry of nestling American peregrine falcons in the contiguous United States and Alaska. The Implementation Plan is intended to assist the States in implementing the selected alternative from our May 2001 Environmental Assessment on take of nestlings. We seek public comment on the Draft Plan.

DATES: Comments on the Draft Implementation Plan are due by November 8, 2001.

ADDRESSES: The Plan is available from, and written comments about it should be submitted to, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. You can request a copy of the Plan by calling 703/358–1714. The fax number for a request or for comments is 703/358–2272. The Plan also is available on the Division of Migratory Bird Management web pages at *http://migratorybirds.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703/358–1714 or the address above.

SUPPLEMENTARY INFORMATION: The Implementation Plan provides additional details to be used by the States for implementing the alternative selected. The Plan outlines the procedures we will follow in reviewing and adjusting the allowed take of nestling American peregrine falcons in accordance with the best available information about the population.

Dated: October 1, 2001.

Kevin Adams,

Director.

[FR Doc. 01–25161 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018—AH32

Endangered and Threatened Wildlife and Plants; Determination That Designation of Critical Habitat Is Not Prudent for the Rock Gnome Lichen

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for the rock gnome lichen (*Gymnoderma lineare*) would be prudent. We have again determined that such a designation would not be prudent. The rock gnome lichen was listed as an endangered species under the Endangered Species Act of 1973, as amended (Act), on January 18, 1995. At the time the plant was listed, we determined that the designation of critical habitat was not prudent because designation would increase the degree of threat to the species and/or would not benefit the species.

We determine that the designation of critical habitat is not prudent for the rock gnome lichen because it would likely increase the threat from collection, vandalism, or habitat degradation and destruction, both direct and inadvertent.

We have revised the proposed finding to incorporate or address comments and new information received during the comment period.

DATES: The finding announced in this document was made on September 27, 2001.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Brian P. Cole, State Supervisor, (828) 258–3939, Ext. 223.

SUPPLEMENTARY INFORMATION:

Background

Taxonomy and Description

Gymnoderma lineare, first described by Evans (1947) as *Cladonia linearis* from material collected in Tennessee, is a squamulose (scale-like) lichen in the reindeer moss family. This species is the only member of its genus occurring in North America (Yoshimura and Sharp 1968). *Gymnoderma* was considered a monotypic genus for over a century, until its revision by Yoshimura and Sharp (1968). These authors reclassified Evans' (1947) *Cladonia linearis* as *Gymnoderma lineare* on the basis of its short and solid podetia (hollow upright structures) that lack symbiotic algae (algae that live cooperatively with a fungus). *Gymnoderma lineare* occurs in rather dense colonies of narrow straps (squamules). The only similar lichens are the squamulose species of the genus *Cladonia. Gymnoderma lineare* has terminal portions of the straplike individual lobes that are blue-grey on the upper surface and generally shiny-white on the lower surface; near the base they grade to black (unlike squamulose *Cladonia,* which are never blackened toward the base) (Weakley 1988, Hale 1979). Hale's (1979) description of the species reads as follows: ''Squamules dark greenish mineral grey; lower surface white to brownish toward the tips, weakly corticated; podetia lacking but small clustered apothecia common on low tips.'' Weakley (1988) further describes the species as having squamules about 1 millimeter (mm) (0.04 inches [in]) across near the tip, tapering to the blackened base, sparingly branched, and generally about 1 to 2 centimeters (cm) (0.39 to 0.79 in) long (though they can be longer or shorter, depending on environmental factors). The squamules are nearly parallel to the rock surface, but the tips curl away from the rock, approaching or reaching a perpendicular orientation to the rock surface. The fruiting bodies (apothecia) are borne at the tips of the squamules and are black (contrasting to the brown or red apothecia of *Cladonia* spp.) (Weakley 1988). The apothecia are borne singly or in clusters, usually at the tips of the squamules but occasionally along the sides; these have been found from July through September (Evans 1947, North Carolina Natural Heritage Program records 1991). The apothecia are either sessile or borne on short podetia 1 to 2 mm (0.04 to 0.08 in) in height, and the largest of these have a diameter of about 1 mm (0.04 in), with most being much smaller. The apothecia are cylindrical in shape and radial in symmetry (Evans 1947). The primary means of propagation of this lichen appears to be asexual, with colonies spreading clonally.

Distribution, Habitat, and Life History

Gymnoderma lineare (Evans) Yoshimura and Sharp is endemic (native to a particular region) to the southern Appalachian Mountains of North Carolina, Tennessee, South Carolina, and Georgia, where it occurs only in areas of high humidity, either on high-elevation cliffs that are frequently bathed in fog or in deep river gorges at lower elevations. It is primarily limited to vertical rock faces, where seepage water from forest soils above flows at (and only at) very wet times, and large stream-side boulders, where it receives a moderate amount of light but not high-intensity solar radiation. It is almost always found growing with the moss *Andreaea* in these vertical intermittent seeps. This association makes it rather easy to search for, due to the distinctive reddish-brown color of *Andreaea* that can be observed from a considerable distance (Weakley 1988). Most populations occur above 1,524 meters (5,000 feet) elevation. In Tennessee, it is apparently limited to the Great Smoky Mountains National Park (Park) and one other mountain on the North Carolina/Tennessee State line. Very little specific information is known about the life history and population biology of the rock gnome lichen. Other common species found growing with or near this species include *Huperzia selago, Stereocaulon* sp., *Scirpus cespitosus, Carex misera, Rhododendron* spp., *Saxifraga michauxii, Krigia montana, Heuchera villosa, Geum radiatum,* and sometimes *Juncus trifidus*. The high-elevation coniferous forests adjacent to the rock outcrops and cliffs most often occupied by the species are dominated by red spruce (*Picea rubens*) and Fraser fir (*Abies fraseri*).

Forty populations of *Gymnoderma lineare* have been reported historically; thirty-five remain in existence. The remaining populations are in Mitchell (two), Jackson (five), Yancey (four), Swain (one), Transylvania (four), Buncombe (four), Avery (two), Ashe (two), Haywood (one) and Rutherford (one) Counties, North Carolina; Greenville County (one), South Carolina; Rabun County (one), Georgia; and Sevier (seven) and Carter (part of this population is on the State line with Mitchell County, North Carolina) Counties, Tennessee.

Threats

Five populations of rock gnome lichen are known to have been completely extirpated. The reasons for the disappearance of the species at most of these sites are undocumented; however, one population is believed to

have been destroyed by highway construction. The explanation for the disappearance of the other four is a mystery. Among the other populations that still survive, one has been vandalized, and portions of two others are known to have been illegally collected. Although these acts of vandalism and collection did not completely eliminate the species at those latter sites, they did seriously reduce the population sizes and may well have adversely affected the species' chances of long-term survival at those places. Most of the formerly occupied sites are subjected to heavy recreational use by hikers, climbers, and sightseers, which can be highly destructive to the fragile plant communities that occupy vertical rock faces.

The majority of the high-elevation spruce-fir forests of the Southeast have suffered extensive changes and declines in extent or vigor during the past century as a result of several factors, including site deterioration due to the logging and burning practices of the early 1900s, possibly atmospheric pollution, exposure shock, and other factors not yet fully understood (Dull *et al.* 1988, White 1984). However, the greatest threat to the high-elevation Fraser fir forests, by far, is infestation by the balsam wooly adelgid (*Adelges picea* (Ratzeburg) (Homoptera, Adelgidae)). The balsam wooly adelgid is a nonnative insect pest believed to have been introduced into the Northeastern United States from Europe around 1900 (Eagar 1984). The adelgid was first detected in North Carolina on Mount Mitchell in 1957 (Hoffard *et al.* 1995), though it may have been established at that site as early as 1940. From Mount Mitchell, the adelgid spread to Fraser fir stands throughout the southern Appalachians (Eager 1984). All ages of fir trees are attacked by the adelgid, but effects are generally not lethal until the trees reach maturity, at around 30 years of age (Hoffard *et al.* 1995). Most mature Fraser firs are easily killed by the adelgid, with death occurring within 2 to 7 years of the initial infestation (Eagar 1984). The death of the fir trees and the resultant opening of the forest canopy causes the remaining trees (including the red spruce) to be more susceptible to wind and other storm damage. The adelgid is transported and spread primarily by the wind but may also be spread by contaminated nursery stock; on the fur or feathers of animals and birds; or by humans on contaminated clothes, equipment, or vehicles (Eagar 1984). All efforts to control the spread of the adelgid have failed thus far. The death of the forests above the rock faces occupied by the rock gnome lichen has resulted in locally drastic changes in microclimate, including desiccation and increased temperatures, which can prove lethal to this species.

The continued existence of this species is threatened by trampling and associated soil erosion and compaction; other forms of habitat disturbance due to heavy recreational use of some inhabited areas by hikers, climbers, and sightseers; and development for commercial recreational facilities and residential purposes. It is also threatened by collectors and vandals and is potentially threatened by logging, and possibly by air pollution. In addition, the extremely limited and restricted range of each of the rock gnome lichen populations makes them extremely vulnerable to extirpation from a single event. Currently, no one has succeeded in propagating the rock gnome lichen.

Only 7 of the remaining 35 populations cover an area larger than 2 square meters (m^2) (2.4 square yards (yd^2)). Most are 1 m^2 (9 square feet (ft^2)) or less in size. It is unknown what constitutes a genetic individual in this species, and it is possible that each of these small colonies or patches consists of only a single clone (Weakley 1988). Over the past decade several of the currently extant populations have undergone significant declines (Dr. Paula DePriest, Associate Curator in Charge of Lichen Collections, National Museum of Natural History, Smithsonian Institution, personal communication, 1992; Karin Heiman, environmental consultant, personal communication, 1992), some within as little as 1 year (Alan Smith, environmental consultant, personal communication, 1992). Although most of the remaining populations are in public ownership, they continue to be impacted by collectors, recreational use, and unknown environmental factors.

In a recent study funded cooperatively by the Service and the U.S. Forest Service (Forest Service), experts in lichenology and air pollution attempted to determine if air pollution constituted a significant threat to the rock gnome lichen, as it does to many lichen species. The study could not conclusively link documented declines with atmospheric pollutants. Heavy metal concentrations did not exceed toxic levels. However, the lowest sulfur concentrations were measured in the colonies having the best health status, and the highest concentrations were in colonies with the worst health conditions. The authors of the study warned that future increases in sulfur compound deposition might cause damage to the rock gnome lichen, especially where it occurs on substrates with low buffering capacity. The results of the study were further complicated by the discovery of parasitic algae and lichens that were found to be attacking the rock gnome lichen in several populations. The relationship between these parasitic organisms and environmental factors, such as sedimentation and the accumulation of sulfur and phosphorus, requires further study (Martin *et al.* 1996).

Previous Federal Actions

Federal Government actions on *Gymnoderma lineare* began with the 1990 publication in the **Federal Register** of a revised notice of review of plant taxa for listing as endangered or threatened species (55 FR 6184); *Gymnoderma lineare* was included in that notice as a category 2 species. Prior to 1996, a category 2 species was one that we were considering for possible addition to the *Federal List of Endangered and Threatened Wildlife and Plants* but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. We discontinued the designation of category 2 species in the February 28, 1996, Notice of Review (61 FR 7956).

Subsequent to the 1990 notice, the Service received additional information from the North Carolina Natural Heritage Program (Alan Weakley, North Carolina Natural Heritage Program, personal communication, 1991) and the Smithsonian Institution (P. DePriest, personal communication, 1992). This information and additional field data gathered by us, the North Carolina Natural Heritage Program, and the National Park Service (Park Service) (Keith Langdon and Janet Rock, Park, personal communication, 1992; Bambi Teague, Blue Ridge Parkway, personal communication, 1991) indicated that the addition of *Gymnoderma lineare* to the Federal candidate list of endangered or threatened plants was warranted. A candidate species is a species for which we have on file sufficient information to propose it for protection under the Act.

The Service approved this species for elevation to category 1 status on August 30, 1993, and proposed it for listing as endangered on December 28, 1993 (58 FR 68623). The proposal provided information on the species' range, biology, status, and threats to its continued existence. The proposal included a proposed determination that designation of critical habitat was not prudent for the species because such designation would not be beneficial and

could further threaten the rock gnome lichen. Through associated notifications, we invited comments on the proposal and factual reports or information that might contribute to the development of a final finding. We contacted and requested comments from appropriate Federal and State agencies, county governments, scientific organizations, individuals knowledgeable about the species or its habitat, and other interested parties. We published legal notices, which invited public comment, in newspapers covering the range of the rock gnome lichen. We received 15 written comments. Eleven of these expressed strong support for the proposal, as presented, without critical habitat. One commentor presented additional information without stating a position. One additional commentor took no position on the proposal but expressed a negative view toward the potential designation of critical habitat. Two commentors opposed the proposal; one stated no reason for opposition, and the other expressed the opinion that logging was not a potential threat to the lichen and that extinction is a natural process.

Following our review of all the comments and information received throughout the listing process, by final rule (60 FR 3557) dated January 18, 1995, we listed the rock gnome lichen as endangered. We addressed all the comments received throughout the listing process and incorporated changes into the final rule as appropriate. That decision included a determination that the designation of critical habitat was not prudent for the rock gnome lichen, because, after a review of all the available information, we determined that such a designation would not be beneficial to the species and that the designation of critical habitat could further threaten the lichen.

On June 30, 1999, the southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Department of the Interior challenging the not prudent critical habitat determinations for four species in North Carolina—the spruce-fir moss spider (*Microhexura montivaga*), Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), and rock gnome lichen. On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination for the rock gnome lichen and submit a new proposed prudency determination to the **Federal Register** by April 1, 2001. We also agreed to submit by that same date a new proposed critical habitat determination, if prudent. We agreed that, if upon consideration of all available information and comments, designation of critical habitat was not prudent for the rock gnome lichen, we would submit a final notice of that finding to the **Federal Register** by October 1, 2001. We also agreed that if the designation of critical habitat was prudent for the rock gnome lichen, we would send a final rule of this finding to the **Federal Register** by January 1, 2002.

On April 5, 2001, we published in the **Federal Register** (66 FR 18062) our proposed finding that critical habitat designation for the rock gnome lichen would not be prudent. On April 5, 2001, we also notified appropriate Federal and State agencies, local governments, scientific organizations, individuals knowledgeable about the species, and other interested parties and requested their comments on the proposal. A legal notice that announced the availability of the proposed finding and invited public comment was published in the following newspapers: *Mitchell News Journal,* Spruce Pine, North Carolina; *Greenville News,* Seneca, South Carolina; *Mountaineer,* Waynesville, North Carolina; *Smoky Mountain Times,* Bryson City, North Carolina; *Yancey Common Times Journal,* Burnsville, North Carolina; *Transylvania Times,* Brevard, North Carolina; *Asheville Citizen-Times,* Asheville, North Carolina; *Avery Journal,* Newland, North Carolina; *Clayton Tribune,* Clayton, Georgia; *Tennessee Star Journal,* Pigeon Forge, Tennessee; *Rutherford City News,* Rutherfordton, North Carolina; *Mountain Times,* West Jefferson, North Carolina; and the *Sylva Herald,* Sylva, North Carolina.

In the proposed finding and associated notifications, we requested that all interested parties submit factual reports or information by June 4, 2001, that might contribute to our determination and the development of the final finding.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our January 18, 1995, final rule, we determined that both situations applied to the rock gnome lichen.

We have documented evidence that collecting and other human disturbance have already detrimentally affected this species. Concern that the species would be over-collected by lichenologists led Mason Hale to state emphatically in his 1979 book, *How To Know the Lichens,* which is the standard reference for lichen identification for amateurs and professionals alike, that the rock gnome lichen ''is one of the most unusual endemic lichens in North America and should not be collected by individuals.'' Nevertheless, populations of rock gnome lichen have been decimated by scientific collectors. Dr. Paula DePriest (personal communication, 1992) observed that the type locality for rock gnome lichen was virtually wiped out by lichenologists who collected them during a field trip, in spite of the fact that this collection occurred within a national park and was not permitted. After the species was listed, another illegal collection occurred at a different location within a national park. Another population outside the Park was vandalized for unknown reasons (the lichens were scraped off the rock to form graffiti). Illegal collection and/or vandalism is difficult to document, but it is suspected as a possible cause for the precipitous declines in some of the other populations that are close to trails or roads. Some of these populations have been reduced in coverage by as much as 90 percent in a single year. A State park in South Carolina, upon discovering a small population of this species close to an existing trail, relocated the trail away from the rock face to deter potential collectors.

The Park Service, which developed the recovery plan for this species in cooperation with the Service, requested that we remove any mention of particular mountains from the recovery plan because they feared that this would give enough information to knowledgeable collectors to allow them to find the lichen and collect it. Park Service personnel believe that divulging locations or producing maps of rock gnome lichen habitat would greatly compromise their ability to protect the species within the national parks where it occurs (K. Langdon and J. Rock, Park Service, personal communication, 1999).

Three internationally recognized lichen experts are on record as being opposed to making public the specific locations of rare lichens because of the danger from collectors (P. DePriest, personal communication, 2000; J. Dey, Illinois Wesleyan University, personal communication, 2000; J. Martin, Eurouniversity, Estonia, personal communication, 2000). Dr. DePriest emphasized that, for rare lichens, the Smithsonian deliberately deletes location data from its publically disseminated database. She further related several incidents where the collecting of rare lichens damaged other species in areas within the range of the rock gnome lichen. In at least one instance, this collecting was done on a field trip led by professional lichenologists who had forewarned the participants that no collecting of rare species would be tolerated; the rarest species were collected anyway, when the field trip leaders were not looking. Dr. Juri Martin, Rector of Estonia's Eurouniversity, further emphasized the danger of making public the locations of rare lichen species. In Estonia, as well as in Italy, Switzerland, and other European countries, databases with specific location data for rare lichen species are kept in guarded locations where only a few professionals have access to them. They are never made public because of the danger of collecting. Dr. Martin emphasized that in these countries, regulations prohibiting the collection of rare species, have been ineffective; the only real protection for those lichens is the safeguarding of specific location data and maps. Nothing more specific than county or forest distribution is ever made public. Dr. Martin recommended that rock gnome lichen be included on the World Red List of Endangered Lichens. Dr. Jon Dey, eminent lichenologist at Illinois Wesleyan University, further emphasized that he believed it would be inadvisable to publish specific location data for endangered lichen species because the general public and hobbyists could, as a result, inadvertently, or even purposely, damage them. He further stated his belief that, although it might be necessary to allow legitimate professionals access to a single closely monitored population for the purposes of observation and research, even scientists should not be able to collect endangered lichens from the wild.

The Great Smoky Mountains National Park (Park) has recently undertaken an All Taxa Biodiversity Inventory. In the process of this comprehensive survey, experts on different taxa from all over the world are being brought into this half-million-acre park to inventory and document occurrences of all species within its boundaries. In the process of this ambitious inventory, several watersheds within the Park were identified by experts as having internationally significant concentrations of rare bryophytes and lichens, and the guest scientists petitioned the Park Service to formally designate these areas as lichen/bryophyte sanctuaries (K. Langdon, personal communication, 2000). The Park Service declined because of their fear of attracting collectors to the areas; not only collectors of rare species, but indiscriminate moss collectors who routinely ravage the Park and the adjacent national forests for ''log moss'' to sell in mass quantities (truck loads have been confiscated from poachers in the Park) in the commercial florist trade.

Rock gnome lichen is extremely fragile and is easily scraped off its rocky substrate; denuded habitat is not recolonized quickly, if at all. Because this species occupies such limited areas (with most of the populations being less than a square meter in size), even a single person climbing on a rock face could cause significant damage to the species and its habitat that could lead to the extirpation of an entire population. Increased visits to population locations stimulated by critical habitat designation, even without deliberate collecting, could adversely affect the species due to the associated increase in trampling of its fragile habitat. We believe that the designation of critical habitat and the required public dissemination of maps and descriptions of occupied sites could result in the demise or severe diminishment of this species. The moss collectors or poachers (referred to above) that the Park Service is trying to combat have been caught leaving the Park with dump truck loads full of moss and anything that looks like moss, including lichens, liverworts, and other bryophytes. Many species of moss and lichens are superficially similar in appearance and are similarly decorative in floral arrangements. Earlier, we mentioned that the rock gnome lichen is almost always found growing with the moss *Andreaea.* These collectors or poachers are indiscriminate, stripping everything mosslike from logs, rocks, and trees within entire coves and watersheds. This includes essentially anything they think can be sold in the commercial florist trade. The largest and best remaining populations of rock gnome lichen are located within the Park, where they are more accessible and therefore more susceptible to intentional or inadvertent collection. Therefore, the Park Service has expressed concerns that attracting moss collectors to watersheds designated as sanctuaries and occupied by the endangered lichen could result in devastating incidental collection of the listed species.

The Park Service has expressed definite concerns about any plans to designate critical habitat for the rock gnome lichen because of the collection danger to this species' tiny, vulnerable populations. In fact, legislation has recently been enacted that gives the Park Service the authority to withhold from the public any specific locality data for endangered, threatened, rare, or commercially valuable resources within a park (Pub. L. 105–391, Section 207; 16 U.S.C. 5937).

Given the very small size of most colonies and the slow growth rate of this species, extirpation of individual colonies by collecting, vandalism, and habitat degradation by curiosity seekers is likely (Weakley 1988; personal observation). Many of the populations are easily accessible, being close to trails or roads, but they are currently unadvertised and therefore mostly unnoticed by the general public. Publicity could generate an increased demand and intensify collecting pressure or facilitate opportunities for further vandalism. This species has already been subjected to excessive collecting by scientific collectors at several sites. Increased publicity and a provision of specific location information associated with critical habitat designation could result in increased collection from the remaining wild populations. Although the taking of endangered plants from land under Federal jurisdiction and reduction to possession is prohibited by the Act, the taking provisions are difficult to enforce. We believe the publication of critical habitat descriptions would make the rock gnome lichen more vulnerable to collectors and curiosity-seekers and would increase enforcement problems for the Forest Service and Park Service. Also, the populations on private land would be more vulnerable to taking, where they receive little or no protection under the Act.

Our fears of increased human threats to the species from the publication of maps of the occupied sites is based on specific experience, not on conjecture. Another federally listed North Carolina mountain plant for which critical habitat was designated was severely impacted by collectors immediately after the maps were published. This collection happened even though this plant was not previously known to be

desired by rare plant collectors and had never been offered for sale in commercial trade. Some of the collectors appeared in the local Forest Service district offices, with the critical habitat map from the local newspaper in their hands, asking directions to the site. Such incidents are extremely difficult to document. The only reason we were able to do so in this case was because, for this very rare and restricted plant, every individual was mapped. When plants vanished from our permanent plots, we were able to find the carefully covered excavations where they had been removed. Otherwise, we would have only observed a precipitous crash in the populations without knowing that the cause was directly attributable to collection, apparently stimulated by the publication of specific critical habitat maps.

Increased visits to rock gnome lichen colonies, stimulated by a critical habitat designation, even without collection of the species, could adversely affect the rock gnome lichen due to the associated increase in trampling of the fragile habitat it occupies. This might not be as serious a concern in other parts of the country where there is relatively little recreational pressure, but the Park has more visitors annually than any other National Park in the United States. Even if just a small percentage of those people visited the sites occupied by the lichen, the potential adverse effects to the species could be tremendous and irreparable.

Despite attempts by lichenologists and tissue culture experts, no one has been able to propagate the rock gnome lichen. If populations are vandalized or collected to the point of extirpation, it is not possible to restore them. Similarly, the restoration of devastated populations of other lichens has often not been successful (Science News, August 2000). We believe anything that increases the chances of losing additional populations, such as publicizing locations of remaining sites, represents an unconscionable risk to the species' chance of survival and recovery.

In addition, we believe that the designation would not provide significant benefits that would outweigh these increased risks. A majority of the remaining populations are on public land, primarily under the jurisdiction of the Forest Service and Park Service. These agencies are cooperating with us to protect the species from trampling and inappropriate collection, as well as to monitor the effects of air pollution. We are also working with the North Carolina and Tennessee Heritage Programs, the North Carolina Plant Conservation Program, and The Nature Conservancy to determine protection priorities for the remaining populations. The Nature Conservancy has recently secured a conservation easement for one of the most significant privately owned sites. We, along with all of these agencies, work to inform the public about the lichen and its importance, while at the same time ensuring the protection of the species and its habitat from potential threats. Within the Park, there is no commercial logging. Occupied sites outside the Park are almost exclusively on steep rock faces and cliffs, where no Federal projects are likely to occur. In cases where excessive degradation of the lichen's cliff habitat has resulted from recreational overuse, both the Park Service and the Forest Service have acted to close those sensitive areas to the public. No greater protection would be afforded by critical habitat designation.

The Service has always recognized the value of habitat to the conservation of endangered and threatened species and continues to work with other agencies and non-Federal land managers to accomplish the most effective protection and management of land critical to the survival of listed species. The Federal and State agencies and landowners involved in managing the habitat of this species have been informed of the species' locations and of the importance of protection. In addition, we are working with several private landowners of significant sites to protect the populations on their lands. Although we have not yet been able to definitively link population declines in the rock gnome lichen to air pollution, we remain concerned that air quality may be an important factor for this species, as it is for many other lichens. The largest and best remaining populations of the rock gnome lichen are within the Park, which is designated by the Environmental Protection Agency as a Class I Air Quality Area, where no degradation of air quality is allowed. Therefore, the designation of areas of the Park as critical habitat for this species would offer no additional protection of the species from air quality problems if these are determined to be a critical factor for this species' continued existence.

For species, like the rock gnome lichen, that have extremely small populations (most are less than 1 m^2 [approximately 9 ft^2]) and a very small, restricted range, the triggers for ''jeopardy'' and ''adverse modification'' of critical habitat under section 7 of the Act are essentially identical. Because the triggers for ''jeopardy'' and ''destruction or adverse modification'' of critical habitat both require that the Service find that a Federal action is likely to have an appreciable effect on both the survival and recovery of the species, we have determined that, because of the precarious status of the species, the small size of the surviving populations, the restricted range of the species, and the limited amount of suitable habitat available to the species, any Federal action with the potential to trigger the standard for destruction or adverse modification of critical habitat would also jeopardize the species' continued existence (the jeopardy standard without critical habitat). Therefore, no additional protection would be provided to this species through the designation of critical habitat that would not already be provided through the jeopardy standard. We acknowledge that critical habitat designation in some situations may provide some value to the species; for example, by identifying areas important for conservation. However, for the rock gnome lichen, we have weighed the potential benefits of designating critical habitat against the significant risks of doing so and find that the minor benefits of designating critical habitat do not outweigh the potential increased threats from collection, vandalism, and inadvertent habitat degradation caused by curiosity-seekers. Therefore, we have determined that the designation of critical habitat for the rock gnome lichen is not prudent.

Summary of Comments and Recommendations

We received a total of ten comments during the comment period. Written comments were received from two Federal agencies, three State agency representatives, three private individuals, and two conservation organizations. Seven of the ten commentors wrote in support of the Service's proposed finding that the designation of critical habitat would not be prudent for the rock gnome lichen. One individual and one conservation organization (the latter was the plaintiff in the above-mentioned suit against the Service) thought the Service should designate critical habitat for the lichen. One individual did not express an opinion but thought the public needed more information about the need to protect the lichen. We grouped comments of a similar nature or subject matter into broader issues. These issues and our response to each are summarized below.

Issue 1: The seven commentors that supported the Service's decision included all of the Federal and State agencies, and one private and one

conservation organization. These letters emphatically supported the Service's decision that the designation of critical habitat for the lichen would not be prudent because of the dangers from collectors, vandals, and habitat destruction caused by curiosity-seekers and believed that our proposed finding was consistent with the purposes of the Act. The head of the North Carolina Plant Conservation Program (North Carolina has almost all the remaining populations of this species) stated that his agency had been working to protect the lichen for 15 years and that:

We are strongly opposed to designation of critical habitat for rock gnome lichen. This is one of those species for which designation of critical habitat, intended to enhance protection of the species, could be expected to have the opposite effect, with disastrous consequences * * *. Based on our experience with this species we can see no benefits from designation of critical habitat. On the contrary, we believe that designation of critical habitat in this case would be dangerously irresponsible, threatening the species our agency and the State of North Carolina are trying to protect.

The botanist for the North Carolina Department of Environment and Natural Resources' Natural Heritage Program also agreed with the Service's determination that the designation of critical habitat would not be prudent for the rock gnome lichen. She further stated:

One of the populations of rock gnome lichen occurs within a state park. The Division of Parks and Recreation is opposed to public release of information on the location of rock gnome lichen on state property. Such a release could be detrimental to the population by making it more vulnerable to excess visitation, collection, or vandalism.

The Chief Ecologist for the Association for Biodiversity Information (formerly a branch of The Nature Conservancy) also supported the Service's proposed finding, stating:

I agree with and strongly support the Service's ''reproposal'' that the designation of critical habitat would have a detrimental effect on the recovery of this species * * *. I provided much of the original information on populations of and threats to this very restricted and distinctive species. Populations are small and very vulnerable to damage by collectors, a fact which Mason Hale went out of his way to make, even in his 1979 field guide. Since that time, several populations with which I am familiar have been severely impacted by collectors, who probably did not consider the damage they were causing. Furthermore the potential for actual malicious damage is very real * * *. The Service's original determination was prudent, and I commend the Service for resisting pressure to reverse that decision to a less prudent one.

The Superintendent of the Blue Ridge Parkway, National Park Service, stated:

We commend and support the decision by U.S. Fish and Wildlife Service to not designate critical habitat for the endangered rock gnome lichen (*Gymnoderma lineare*). It is our opinion that designating critical habitat does not afford additional protection to *any* federally listed species, but especially to *Gymnoderma* because of the sensitive and fragile nature of the species makes it particularly vulnerable to disturbance * * * the small area (less than 2 square meters) occupied by patches makes it more vulnerable; and the slow growth rate makes recovery from disturbance difficult, if not impossible. The greatest threat to rock gnome lichen populations in this park is trampling from hikers and rock climbers. The Blue Ridge Parkway has made significant efforts to protect populations of *Gymnoderma,* including closing fragile areas to visitor use. In addition, we are also gravely concerned about over-collecting by researchers and plant collectors * * * Publicizing critical habitat maps for *Gymnoderma* will undoubtedly make our job of protecting these populations far more difficult as collectors and curious visitors access these sites and purposefully or inadvertently trample or otherwise impact this species. We firmly believe that specific locations of rare species should never be disclosed to the general public. Indeed, the National Park Service has authority under the Thomas Bill (16 U.S.C. 5937, Section 207) to withhold from the public any specific locality data for endangered, threatened, rare, or commercially valuable resources within a park.

The botanist for the North Carolina Plant Conservation Program stated:

I strongly agree with the US Fish & Wildlife proposal not to designate critical habitat for the endangered lichen *Gymnoderma lineare* (rock gnome lichen) * * * As botanist for the North Carolina Plant Conservation Program for the last fourteen years, I have grown increasingly aware of the need to protect information on the locations of rare plant species. I have seen where obscurely located *Sedum rosea* plants had disappeared, apparently removed by an enthusiast whose desire to collect was greater than the impulse to protect. I have seen holes in the ground where Venus flytraps had recently grown. I have gotten reports of pitcher plants stolen from protected locations by unlawful, self-justifying ''rescuers.'' As Ginseng Coordinator I have many, many tales of poached ginseng. A great deal of effective work has been and is being put into the protection of endangered plant populations, without critical habitat having been designated for any of them. A designation of critical habitat offers no more protection for most endangered plant species than they have without it. Making locations a matter of readily accessible public record exposes the species to damage and exploitation by unethical collectors—I'm amazed at how many such there are, collecting for self-satisfaction or for money—or even photographers and curious botanical enthusiasts who disturb the habitat—critically—just to get close to the plant. Rock gnome lichen, specifically, grows where much of it is already protected and land managers are aware of it and its management needs. The lichen will not benefit from a designation of critical habitat. If critical habitat were to be designated and locations published, the species would be in critical danger from lichen collectors. Yes, there are lichen collectors, and there is a market for lichens. I hope the [Service] will stand firm in its determination to protect this unique species by not designating critical habitat. Rock gnome lichen deserves all the truly effective help it can get.

The Assistant Superintendent of the Great Smoky Mountains National Park (where the vast majority of the remaining populations of rock gnome lichen survive) emphatically agreed with the Service's not prudent finding, stating:

As you are aware, we have worked closely with the U.S. Fish and Wildlife Service on a number of Threatened and Endangered species issues over the years. Few issues are as important to the long-term preservation of these sensitive species as is the ability to keep their locations confidential. * * * Once the specific habitats [of rare species] become generally known, the rare species there are permanently subject to a wide array of deleterious actions including intentional taking, politically-motivated vandalism, trampling, or disturbance by the curious and well meaning. Our ability to detect illegal actions by periodic monitoring is usually cursory at best * * * Within the last year, a number of individuals of another federally listed plant in this park were intentionally vandalized/killed, even though they were within an area closed and posted to the public * * * Since there will never be enough law enforcement staff, even in the relatively well-policed national parks, to protect these species, we must rely on the confidentiality of their locations to the maximum extent possible. * * * In one incident, a population of this species [the lichen] was subject to unbridled collection for scientific specimens some years ago and has never fully recovered. It is now down to a few square inches at this particular site. We believe that illegal collecting at this ''known'' site, perhaps repeatedly, was an important factor in its decline. If critical habitat were to be designated * * * it would not be difficult for illegal collectors to discover occurrences, even if they are in the Park's backcountry. It is quite easy for a knowledgeable person to read about the species' habitat requirements and find the few points *within a delineated area* that the listed species could possibly occur. Designating CH (critical habitat) at a very broad geographic resolution defeats the purpose of publishing a map of CH and encumbers host land managing agencies with burdensome restrictions over very large areas where the species is known NOT to occur. In the 1990's, the Park received a request from a lichenologist who wished to have a site that has the rock gnome lichen designated as one of the first ''lichen reserves'' in the U.S. The Park specifically declined this request because of the greatly increased visitation

that the fragile habitat would receive. The opinion of Park biologists at that time was that although most scientists are conservation oriented, only a few collections or visits by groups over the intervening decades would be all that was necessary to cause a drastic decline. The Omnibus Parks Act of 1998, usually referred to as the ''Thomas Act,'' gives the National Park Service the ability to exempt locational information about rare, commercially valuable, or otherwise collectable species from public disclosure. Under the Thomas Act, we would not allow any specific locational information to be disclosed about this lichen for the reasons given. If the [Service] is forced to designate Critical Habitat over the objections of the National Park Service, we question the legality of this action. We would also question to what degree the two Federal agencies would be able to fully cooperate and share data in the future. The best strategy, we believe, is for the [Service] and other land management agencies to continue to work together toward recovery of these species to a point where they can be delisted. * * * While citizens have the right to know what species occur on their public lands and their status, we believe that publication of rare species locations in any form is almost never in the public interest, does not meet the Congressional mandate of the National Park Service, and is counter both to the intent of the Thomas Act and the spirit of the Endangered Species Act.

Response: The Service concurs.

Issue 2: One commentor, taking no position on critical habitat designation, expressed concern that the public needs more information about the need to protect the rock gnome lichen and that she was concerned that she had unknowingly damaged the species while rock climbing on the Blue Ridge Parkway at one of the occupied sites.

Response: The Service agrees that more public education is needed about the need to protect this and other rare lichens, and we are working to accomplish this with other agencies and organizations. There is no likelihood that the commentor damaged rock gnome lichen at this national park site, because the Service has made the Park aware of the lichen's occurrence there, and the Park has taken actions to close off the areas occupied by the lichen to recreational use.

Issue 3: Two commentors expressed the opinion that the Service's decision not to designate critical habitat for the rock gnome lichen was not in the best interest of this species. Further, the commentors believed that the Service should at least designate unoccupied areas in order to provide habitat for the species.

Response: The Endangered Species Act (Act) mandates that we analyze each species' situation individually, weighing the costs versus the benefits of designating critical habitat. While for some species it is not particularly dangerous to publish maps of specific occupied sites, for a collected species like the rock gnome lichen, the case is entirely different. Although experts in the field of tissue culture and lichenology have attempted to cultivate rock gnome lichen, it has never been successfully accomplished. Transplanting it is not possible to transplant it or otherwise establishing it in areas of currently unoccupied habitat is therefore not possible. No documentation exists of the lichen regrowing at sites where it has been completely eliminated. Therefore, the designation of unoccupied critical habitat for this species serves no useful purpose.

Issue 4: The same individual expressed the opinion that, ''arguments that designated habitat would lead to rampant collection or intentional harm of the lichen don't really hold up to close scrutiny. This is not some fabulous orchid we're talking about.''

Response: As evidenced by the numerous comments received from expert botanists and professional natural resource managers who have been trying to protect this species for the past 15 years or more, a definite threat to the lichen exists from collectors and vandals. Instances of this have been documented repeatedly, even in protected areas such as National Parks. For plants on private land, the Act offers no protection from taking, so those populations are even more vulnerable to this type of activity.

Issue 5: The same individual stated the following:

> While it is far easier and cheaper to find reasons *not* to provide protection for endangered species, it is not ethically (or morally) correct. * * * I hope you'll take appropriate action to provide habitat for the rock gnome lichen, for present and future conditions. This is a nice way of saying: Please do your job.

Response: The Service has taken considerable action, in cooperation with other agencies and landowners, to provide protection for this species on public and private land. At our recommendation, public trails have been routed away from the vicinity of the lichen, observation platforms have been built at popular sites to protect the lichen's sensitive habitat from trampling, certain rock faces have been made off-limits to climbers, and we have funded cooperative studies to determine if the lichen is suffering from the effects of air pollutants. Our law enforcement division has investigated reports of illegal collecting from Federal land. It is clear that the experts on this species, as well as the other public agencies charged with protecting it, strongly support our contention that the designation of critical habitat is not in the best interest of the rock gnome lichen and, therefore, should not be done.

Issue 6: The other one of the two commentors who did not support the Service's proposed finding contended that location information is already available to the public, citing that the location of 1 of the 35 remaining populations of this species is described in public documents.

Response: The fact that one population's whereabouts are known does not mean that it is a good idea to divulge the same information about the other 34 populations, which are not known. In fact, the Park Service recently took action to close the site of this specific population to all public visitation because of increasing declines in the population. As emphatically noted by all the public agencies above, both State and Federal, that are charged with protecting this species, as well as one private conservation organization, divulging specific location information for this species is dangerous and compromises its chances of survival and recovery in the wild.

Issue 7: The same commentors commented that the Service had not analyzed whether identifying areas as critical habitat would educate recreational users, making them more careful and less likely to harm the lichen.

Response: As noted by State and Federal agency experts above, even well-meaning people can cause irreparable damage to a species like the rock gnome lichen if they know where populations occur. Since most of the populations are less than a square meter in size and since this species grows on rocks where it can be scraped off and annihilated by a single person's boots, innocent curiosity-seekers wanting to get a closer look at the species can cause irreparable harm to it.

Issue 8: The same commentors stated that the proposal indicated that air pollution is a problem but that the Service only considered impacts on the Park in making a no-additional-benefit determination. They further stated their belief that critical habitat designation will, in fact, provide an avenue for improving air quality by forcing polluters to consider the impacts to the lichen outside the Park.

Response: The commentors apparently misunderstood the proposed finding. In it we stated that, in spite of studies we funded specifically to determine if air pollution has an effect on the lichen, to date we have not been

able to prove that a cause-and-effect relationship exists between air pollution and rock gnome lichen declines, even though this relationship has been shown for other lichens in various parts of the world. Different lichen species have different sensitivities to specific air pollutants; in fact, some European species even thrive on increased sulphur levels in the atmosphere and expand their populations in response. We fully intend to pursue further studies of this issue to try to determine the causes for lichen declines. Regardless of whether critical habitat has been designated, Federal agencies are required by the Act to evaluate the direct and indirect effects of their actions on listed species and ensure that their actions are not likely to jeopardize the continued existence of listed species. Therefore, any Federal activity that has the potential to adversely affect the rock gnome lichen is already subject to the provisions of the Act. However, as we have already stated, at present we have no specific data that indicate air pollutants are causing declines in the lichen. If in the future such data becomes available, we will work to ensure, as we always have, that any Federal agency involved honors its responsibilities under section 7 of the Act, which apply regardless of whether critical habitat is designated. Meanwhile, the Environmental Protection Agency's Class I Air Quality Area designation for the Park offers strict protection for that entire geographic area, because, under current regulations, no degradation of air quality is allowed. This stringent protection is already in place and is not contingent upon proving that listed species are being adversely affected by increasing levels of air pollution. In other parts of the lichen's range that are not designated as Class I Air Quality Areas, Federal agencies responsible for ensuring compliance with the Clean Air Act are still required to ensure that their actions (or lack thereof) are not jeopardizing the continued existence of the lichen or any other listed species, regardless of the designation of critical habitat.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we have sought the expert opinions of at least three appropriate and independent specialists regarding our proposed finding. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We sent these peer reviewers copies of the proposed finding immediately following publication in the **Federal Register**. All the peer reviewers who responded supported our proposal not to designate critical habitat, and we have incorporated their comments into this final finding (many are in the ''Summary of Comments'' section).

References Cited

A complete list of all references cited in this finding is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Nora Murdock (see **ADDRESSES** section).

Dated: September 27, 2001.

Marshall P. Jones Jr.,

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

[FR Doc. 01–24660 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Extension To Prepare a Draft Environmental Impact Statement for the Swanson River Satellites Natural Gas Project, Kenai National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (USFWS) is extending the period to prepare a draft environmental impact statement (DEIS) for the Swanson River Satellites Natural Gas project beyond the nine months prescribed in Title XI of the Alaska National Interest Lands Conservation Act (ANILCA). Preparation of the DEIS will be extended for an additional nine months to allow for the USFWS, cooperating agencies, and the right-of-way applicant to collectively identify and refine the project alternatives that will be evaluated in the DEIS.

DATES: A Notice of Availability of the DEIS is scheduled to be published July 19, 2002.

ADDRESSES: Comments regarding this notice should be directed to: Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Brian L. Anderson, (907) 786–3379.

SUPPLEMENTARY INFORMATION: On January 29, 2001, Union Oil Company of California d.b.a. Unocal filed an application with the USFWS for a right-of-way permit to construct the Swanson River Satellites Natural Gas project within the Kenai National Wildlife Refuge (KNWR). The application was also filed with the Bureau of Land Management, and the U.S. Army Corps of Engineers, both of which are cooperating agencies for the environmental review. A notice of intent to prepare an environmental impact statement for the project was published in the **Federal Register** on February 27, 2001 (66 FR 12541). Regulations implementing Title XI of ANILCA require that, when necessary, a DEIS be prepared within nine months of the date the application was filed [43 CFR 36.6 (1)]. These regulations also provide for an extension of the nine-month period for a reasonable specific time, if the lead agency determines, for good cause, that the period is insufficient [43 CFR 36.6 (2)].

As lead agency, the USFWS has determined, in consultation with the applicant, that the nine-month period is not sufficient to develop reasonable project alternatives for this large and complex project. An additional nine months will be necessary for the applicant and the cooperating federal agencies to conduct the engineering and environmental studies needed to identify project alternatives that would constitute adequate and feasible access for development of the project while protecting, to the greatest extent practicable, the resources of the KNWR.

This environmental review is being conducted in accordance with the requirements of NEPA (42 U.S.C. 4371 *et seq.*) as implemented by the Council on Environmental Quality regulations at 40 CFR 1500–1508, and the pertinent regulations of USFWS. Upon completion of the Draft EIS, a Notice of Availability will be published in the **Federal Register**.

Gary Edwards,

Acting Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 01–25162 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; FACA meeting.

SUMMARY: The Hanford Reach National Monument Federal Advisory Committee will conduct a meeting on Thursday, October 25, 2001 from 9:00 am to 4:45 pm in the Board Room in the Administration Building of the Columbia Basin College, 2600 N. 20th Ave., Pasco, Washington. The meeting is open to the public and press.

DATES: Verbal comments will be considered during the course of the meeting and written comments will be accepted that are submitted by the close of the meeting.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Officer for the Hanford Reach National Monument Federal Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument FAC; phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: During this meeting, the Hanford Reach National Monument Federal Advisory Committee will hear informational presentations regarding valid existing rights as defined by Presidential Proclamation #7319, water rights and the Vernita Bar Agreement, land withdrawal and transition from the U.S. Department of Energy and the U.S. Bureau of Land Management, South Columbia Basin Irrigation Project and the Federal Columbia River Transmission System.

Dated: September 29, 2001.

Greg Hughes,

Project Leader, Hanford Reach National Monument.

[FR Doc. 01–25192 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Counterpart International for the development of monitoring and assessment methodologies for natural resource conservation.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Byron K. Williams, U.S. Geological Survey, MS 303, 12201 Sunrise Valley Drive, Reston, VA 20192, telephone (703) 648–4260.

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the USGS requirements stipulated in Survey Manual Chapter 500.20.

Dated: September 6, 2001.

Dennis B. Fenn,

Associate Director for Biology.

[FR Doc. 01–25110 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to an Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment I to the Amended and Restarted Tribal-State Compact between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon, which was executed on August 2, 2001.

DATES: This action is effective October 9, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 19, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–25131 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact Between the Tunica-Biloxi Tribe of Louisiana and the State of Louisiana, which was executed on August 14, 2001.

DATES: This action is effective October 9, 2001.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 24, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–25124 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council Meeting.

SUMMARY: The BLM Alaska Resource Advisory Council will conduct an open meeting Monday, October 29, 2001, from 9 a.m. until 4 p.m. and Tuesday, October 30, 2001, from 8:30 a.m. until noon. The meeting will be held in the Anchorage Federal Building at 7th and

C Street in BLM offices in the fourth floor.

Primary agenda items for this meeting will include orientation for new members and an overview of the council's July 2001 North Slope field tour. The council will hear public comments Monday, October 29, 2001, from 1–2 p.m. Written comments may be mailed to BLM at the address below.

ADDRESSES: Inquiries or comments should be sent to BLM External Affairs, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, 907–271–3322, or via e-mail to *teresa_mcpherson@ak.blm.gov.*

Linda S.C. Rundell,

Associate State Director.

[FR Doc. 01–25175 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430 EU; WYW 153358]

Filing of Application for Conveyance of Federally Owned Mineral Interests; Carbon County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: BCR Company, LLC, has applied under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, 43 CFR part 2720; to purchase the Federal mineral interests in the following described land:

Sixth Principal Meridian, Wyoming

T. 16 N., R. 82 W.,
Sec. 13, SE¼, E½SW¼, NW¼SW¼, SW¼NW¼;
Sec. 14, S½SW¼;
Sec. 22, S½SE¼;
Sec. 23, E½, E½W½, SW¼SW¼;
Sec. 24, all;
Sec. 25, N½;
Sec. 26, N½, N½S½, SW¼SW¼;
Sec. 27, E½, E½SW¼, SW¼SW¼.

The above described lands contains 2,920 acres.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Realty Specialist, BLM WY State Office, 5353 Yellowstone Road, Cheyenne, WY 82009, 307–775–6115.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, April 16, 2001, whichever occurs first.

Dated: July 13, 2001.

Michael Madrid,

Chief, Branch of Fluid Minerals, Lands & Appraisal.

[FR Doc. 01–25171 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 0316901A]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW0316901A for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW0316901A effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 01–25176 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310; WYW 134709]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

September 20, 2001.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134709 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW134709 effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 01–25177 Filed 10–05–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 080–1430–HN; NMNM 102330]

Order Providing for Opening of Public Land in Eddy County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open 14,951.78 acres which were segregated for an exchange under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) as amended, to surface entry, mining, and mineral leasing. A decision has been made to not continue the exchange proposal. The land is described as follows:

New Mexico Principal Meridian	Acres
T. 20½ S., R. 22 E:	

New Mexico Principal Meridian	Acres
Sec. 33, lots 1 to 4, inclusive, S½SW¼, and SW¼SE¼ ..	255.53
Sec. 34, lots 1 to 4, inclusive, and S½S½	310.18
Sec. 35, lots 1 to 4, inclusive, and S½S½	325.09
T. 21 S., R. 22 E:	
Sec. 01, lots 1 to 4, inclusive, S½N½, and S½	640.40
Sec. 04, lots 1 to 4, inclusive, S½N½, and S½	640.32
Sec. 11, all	640.00
Sec. 12, all	640.00
Sec. 13, all	640.00
Sec. 14, E½	320.00
Sec. 15, all	640.00
Sec. 24, E½	320.00
T. 20 S., R. 23 E:	
Sec. 33, all	640.00
Sec. 35, all	640.00
T. 23 S., R. 23 E:	
Sec. 12, E½NE¼, E½NW¼, SW¼NW¼, and S½	520.00
Sec. 13, all	640.00
Sec. 22, all	640.00
Sec. 23, all	640.00
Sec. 24, all	640.00
T. 20 S., R. 24 E:	
Sec. 17, S½	320.00
Sec. 18, lots 3, 4, E½SW¼, and SE¼	318.85
T. 23 S., R. 24 E:	
Sec. 03, lots 1 to 4, inclusive, S½N½, S½	634.28
Sec. 10, all	640.00
T. 20 S., R. 25 E:	
Sec. 30, lots 1 to 4, inclusive, W½NE¼, SE¼NE¼, E½W½, and SE¼	600.32
Sec. 33, all	640.00
T. 25 S., R. 27 E:	
Sec. 04, lots 1 to 4, inclusive, S½N½, and S½	637.04
Sec. 06, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼ ..	310.91
Sec. 17, all	640.00
Sec. 18, lots 3, 4, E½, and E½SW¼	478.86
Containing 14,951.78 acres, more or less	

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Bobbe Young, BLM Carlsbad Field Office, 620 E. Greene, Carlsbad, NM 88220, (505) 234–5963.

Dated: September 11, 2001.

Leslie A. Theiss,

Carlsbad Field Manager.

[FR Doc. 01–25172 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–050–1430; NMNM 95118]

Public Land Order No. 7498; Withdrawal of Public Land for the Sawtooth Area of Critical Environmental Concern; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 116.12 acres of public land from location and entry under the United States Mining laws for a period of 25 years for the Bureau of Land Management to protect the federally listed Zuni Fleabane within the Sawtooth Area of Critical Environmental Concern.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM Socorro Field Office, 198 Neel Ave, NW, Socorro, New Mexico 87801, 505–835–0412.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect and preserve a population of Zuni Fleabane, *Erigeron rhizomatus,* and its habitat within the Sawtooth Area of Critical Environmental Concern:

New Mexico Principal Meridian

T. 1 N., R. 11 W.,

Sec. 6, lot 7, SE¼SW¼, and SW¼SE¼.

The area described contains 116.12 acres in Catron County.

2. This withdrawal will expire 25 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: August 15, 2001.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 01–25193 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–MW–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–2824–AF; HAG01–0311]

Emergency Travel Restrictions for Motorized and Mechanized Vehicles on Roads, Trails and Public Lands Within the Area Recently Burned in the Quartz Fire, Jackson County, OR

AGENCY: Bureau of Land Management, Ashland Resource Area, Medford District, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that all motorized and mechanized travel is prohibited on roads, trails, and public lands in the area recently burned in the Quartz Fire. The affected land is located southwest of Ashland, Oregon in Jackson County. The action is necessary for public safety while restoration and rehabilitation activities are being conducted and to prevent additional resource damage.

This prohibition includes the following roads and public lands:

All roads and public lands within T. 39 S., R. 2 W., Sections 34, 35, and 36; and T. 40 S., R. 2 W., Sections 2 and 3, as designated on the Map titled ''Quartz Fire Restricted Area'', prepared by the Bureau of Land Management and dated August 30, 2001.

This action is in accordance with the provisions found in 43 CFR 8364.1, which provides for closures and restrictions to protect persons, property, and public lands and resources.

EFFECTIVE DATES: The prohibition will become effective upon the publication of this notice in the **Federal Register** and will remain in effect for a period of three years unless rescinded.

SUPPLEMENTARY INFORMATION: Persons who are exempt from the prohibition include (1) any federal, state, or local officers engaged in fire, emergency and law enforcement activities; (2) BLM employees and contractors engaged in official duties; (3) persons authorized to travel on designated routes by the Ashland Resource Area Field Manager.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a); 43 CFR 8364.1 and 43 CFR 8360–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1000.00 or imprisoned for no more than 12 months or both. Such violations may also be subject to the enhanced fines provided in 18 U.S.C. 3571.

ADDRESSES: Field Office Manager, Ashland Field Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: John Samuelson, (541) 618–2313.

Dated: September 5, 2001.

Richard J. Drehobl,

Field Manager, Ashland Resource Area.

[FR Doc. 01–25173 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–01–1060–JJ]

Notice of Intent to Remove Wild Horses

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Wild, Free Roaming Horse and Burro Act, as amended (Pub. 92–195), provides, among other things, that excess wild horses shall be removed from public lands.

The Bureau of Land Management plans to continue removal operations according to the following schedule. Beginning approximately October 15, 2001, and continuing through November 15, 2001, remove approximately 450 horses from the I–80 North area and the Stewart Creek herd management area, 180 horses from the Little Colorado herd management area, and 275 horses from the White Mountain herd management area. Dates and numbers are approximate depending on weather and soil conditions and other factors unforseen at this time. BLM plans to remove approximately 905 horses from public lands according to the above schedule. Environmental documents and decision documents pertaining to these actions may be viewed at *http://www.wy.blm.gov/currentnews/wildhorses/WILDHORSEADOPTION.HTML* or copies may be obtained by writing to the Bureau of Land Management at the address below.

DATES: October 15 through November 15, 2001.

FOR FURTHER INFORMATION CONTACT: State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003–1828. Phone: (307) 775–6001.

Dated: September 24, 2001.

Alan R. Pierson,

State Director.

[FR Doc. 01–25174 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Environmental Statements; Notice of Intent; Castillo de San Marcos National Monument, FL

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement for the General Management Plan for Castillo de San Marcos National Monument, St. Augustine, Florida.

SUMMARY: The National Park Service will prepare an Environmental Impact Statement on the General Management Plan for Castillo de San Marcos National Monument. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the National Monument. This General Management Plan and Environmental Impact Statement are being prepared in response to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning guidance for National Park Service units that became effective May 27, 1998. The National Park Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Castillo de San Marcos. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at Castillo de San Marcos are encouraged. The comment period for each of these meetings will be announced at the meetings and will be published on the Castillo de San Marcos General Management Plan web site at *http://www.nps.gov/casa.*

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by contacting the National Park Service Southeast Regional Office, Division of Planning and Compliance. This information will also be published on the General Management Plan web site for Castillo de San Marcos.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Castillo de San Marcos National Monument, 1 South Castillo Drive, St. Augustine, Florida, 32084. Telephone 904–829–6506, ext. 221.

FOR FURTHER INFORMATION CONTACT: Superintendent, Castillo de San Marcos National Monument, 1 South Castillo Drive, St. Augustine, Florida, 32084. Telephone 904–829–6506, ext. 221.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan Amendment and Environmental Impact Statement 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.

Due to public disclosure requirements, the National Park Service, if requested, is required to make the names and addresses of those who submit written comments public. Anonymous comments will not be considered. However, individual respondents may request that we withhold their names and addresses from the public record. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for the Environmental Impact Statement is Jerry Belson, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW, 1924 Building, Atlanta, Georgia 30303.

Dated: August 6, 2001.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 01–25141 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this

notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona, and Tohono O'odham Nation of Arizona.

In 1902, human remains representing a minimum of one individual were collected by Dr. Ales Hrdlicka from southern Arizona, while Dr. Hrdlicka was a member of the Hyde Expedition, sponsored by the American Museum of Natural History. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on the American Museum of Natural History's catalog entry describing the remains as ''Papago.'' Geographic location is consistent with the postcontact territory of the Tohono O'odham, who are represented by the Tohono O'odham Nation of Arizona and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona. The presence of desiccated soft tissue and bone stained by copper or brass suggests a postcontact date for this burial.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona, and Tohono O'odham Nation of Arizona.This notice has been sent to officials of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona, and Tohono O'odham Nation of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before November 8, 2001. Repatriation of the human remains to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona, and Tohono O'odham Nation of Arizona may begin after that date if no additional claimants come forward.

Dated: August 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25147 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

At an unknown date, human remains representing a minimum of one individual were collected by an unknown person from Ransom County, ND. The American Museum of Natural History received these remains from a Mr. Smith in 1959 and accessioned them as a gift in 1964. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on the American Museum of Natural History's catalog description, which refers to the remains as ''Probably Cheyenne.'' The remains originate from within the postcontact territory of the Cheyenne.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

This notice has been sent to officials of the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before November 8, 2001. Repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma and Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana may begin after that date if no additional claimants come forward.

Dated: August 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25148 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act

(NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Elko Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

At an unknown date, human remains representing a minimum of one individual were collected by R.W. Sears from the mouth of the Snake River, WA. The American Museum of Natural History has no information regarding subsequent transfers of these remains until it acquired them as a purchase from the Giffort brothers in 1896. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on the American Museum of Natural History's catalog description, which refers to the remains as ''Shoshone.''

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Elko Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

This notice has been sent to officials of the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Elko Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before November 8, 2001. Repatriation of the human remains to the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Elko Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Northwestern Band of Shoshoni Nation of Utah (Washakie); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Wells Indian Colony Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the

Yomba Reservation, Nevada may begin after that date if no additional claimants come forward.

Dated: August 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25149 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.

In 1902, human remains representing a minimum of three individuals were collected by Dr. Ales Hrdlicka from the vicinity of Sacaton, Pinal County, AZ, while Dr. Hrdlicka was a member of the Hyde Expedition, sponsored by the American Museum of Natural History. No known individuals were identified. The two associated funerary objects are fragments of cloth.

These individuals have been identified as Native American based on the American Museum of Natural History's catalog entry describing the remains as ''Pima women.'' Geographic location is consistent with the postcontact territory of the Pima, who are represented by the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona. The presence of perishable materials with one and desiccated soft tissue with the other suggests a postcontact date for these burials.

In 1902, human remains representing a minimum of one individual were collected by Dr. Ales Hrdlicka from a cave in the vicinity of Sacaton, Pinal County, AZ, while Dr. Hrdlicka was a member of the Hyde Expedition, sponsored by the American Museum of Natural History. No known individual was identified. The two associated funerary objects are a pair of metal spurs.

This individual has been identified as Native American based on the American Museum of Natural History's catalog entry describing the remains as a ''Pima ... medicine man.'' Geographic location is consistent with the postcontact territory of the Pima, who are represented by the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona. The presence of metal spurs and desiccated soft tissue suggests a postcontact date for this burial.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of four individuals of Native American ancestry. Officials of the American Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.

This notice has been sent to officials of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before November 8, 2001. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; and Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona may begin after that date if no additional claimants come forward.

Dated: August 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25150 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Minnesota Indian Affairs Council, Bemidji, MN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the

museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Minnesota Indian Affairs Council professional staff in consultation with representatives of White Earth Band of Ojibwe, Minnesota Chippewa Tribe, Minnesota.

In 1932, human remains representing two individuals were collected from the Jacobs (Trigg) Farm site (21-OT-4), Ottertail County, MN, during an archeological excavation conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The four associated funerary objects are fragments of clothes, fragments of buttons, a knife, and birchbark.

Based on the location of the burials and associated funerary objects, these individuals have been determined to be Native American from the historic period. Based on the associated funerary objects and geographic location, these individuals have been identified as Ojibwe. Because this location is within the historic territory of the White Earth Band of Ojibwe, Minnesota Chippewa Tribe, Minnesota, the preponderance of evidence indicates cultural affiliation with the White Earth Band of Ojibwe, Minnesota Chippewa Tribe, Minnesota.

Based on the above-mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council also have determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the White Earth Band of Ojibwe, Minnesota Chippewa Tribe, Minnesota.

This notice has been sent to officials of the White Earth Band of Ojibwe, Minnesota Chippewa Tribe, Minnesota; and the Minnesota Chippewa Tribe, Minnesota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Avenue, Bemidji, MN 56601, telephone (218) 755-3825, before November 8, 2001. Repatriation of the human remains and associated funerary objects to the White Earth Band of Ojibwe, Minnesota Chippewa Tribe, Minnesota may begin after that date if no additional claimants come forward.

Dated: July 17, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25145 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Correction--Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Nebraska State Historical Society, Lincoln, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the number of associated funerary objects reported in the Notice of Inventory Completion published September 18, 1997 (**Federal Register** document 97-24824, pages 49026-49027).

The fifth paragraph of the 1997 notice summarizes the recovery of Native American individuals and associated funerary objects from the Leary site (25RH1) during archeological excavations by Nebraska State Historical Society archeologists in 1936 and 1965. In 2000, one ceramic sherd associated with the burials from the Leary site was discovered at the Nebraska State Historical Society in a box that had been mislabeled. As a result of this discovery, the number of associated funerary objects from the Leary site is corrected by substituting ''**302 associated funerary objects**'' for ''301 associated funerary objects'' in the fifth paragraph of the 1997 notice and by substituting ''**343 objects**'' for ''342 objects'' in the seventh paragraph of the 1997 notice.

Dated: August 6, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25155 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Nebraska State Historical Society, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Nebraska State Historical Society, Lincoln, NE, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 731 cultural items are 656 shell wampum beads and 75 glass beads.

In 1924, a collection containing 656 shell wampum beads and 75 glass beads labeled ''Leary Site Burials'' was donated to the Nebraska State Historical Society. In 2000 and 2001, the cultural items were located in the collections of the Nebraska State Historical Society, where they had been either previously missing or mislabeled. The cultural items derive from the Leary site (25RH1), a village and cemetery complex that is associated with the Oneota culture on the basis of oral tradition, archeological investigations, ethnohistory, and physical anthropology. The present-day representatives of the Oneota culture are the Iowa Tribe of Kansas and Nebraska;

Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and Kaw Nation of Oklahoma.

Nebraska State Historical Society conducted excavations at the Leary village and cemetery complex in 1936 and 1965, and recovered human remains and associated funerary objects. Thirty individuals and 301 associated funerary objects recovered by Nebraska State Historical Society at the Leary site were reported in a Notice of Inventory Completion published in the Federal Register on September 18, 1997, and were repatriated to the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and Kaw Nation of Oklahoma. The museum does not have evidence that there is an association between the 731 cultural items that are reported in this notice and the human remains from the burials that were excavated by the Nebraska State Historical Society in 1936 and 1965.

Based on the above-mentioned information, officials of the Nebraska State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(2), the 731 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Nebraska State Historical Society also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and Kaw Nation of Oklahoma.

This notice has been sent to officials of the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and Kaw Nation of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these 731 unassociated funerary objects should contact Rob Bozell, Associate Director, Nebraska State Historical Society, 1500 R Street, P.O. Box 82554, Lincoln, NE 68501-2554, telephone (402) 471-4789, before November 8, 2001. Repatriation of the unassociated funerary objects to the Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and Kaw Nation of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 8, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01-25156 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

The cultural items are 1 shell gorget, 22 shells, 2 shell ornaments, and 1 ground stone.

In 1929, a cultural item from Stalling's Island Mound, Columbia County, GA, was acquired by the Peabody Museum of Archaeology and Ethnology. The object, one shell gorget, was collected during a 1928-29 expedition sponsored by the Peabody Museum of Archaeology and Ethnology and led by Cornelius B. and Harriet S. Cosgrove with William Claflin.

Based on the style and typology of the gorget, it dates to the Hollywood phase of the Late Mississippian period (A.D. 1250-1450). This gorget is the type specimen of the ''Claflin style'' gorget, which is associated with the late prehistoric Mississippian Southeastern Ceremonial Complex (circa A.D. 1400-1500). The burial context indicates that the burial was of a Native American. The Peabody Museum of Archaeology and Ethnology does not have possession or control of the human remains from this site. Oral traditions as well as ethnohistoric and archeological documentation support Stalling's Island Mound as being within the aboriginal and historical homelands of the Creek, Miccosukee, and Seminole peoples during the Hollywood phase of the Late Mississippian period. With the abandonment of the Stalling's Island settlement just prior to European contact, the population transferred to three distinct tribal towns on the mainland, Coweta, Hitchiti, and Kashita. The Hitchiti are recognized bands among the Miccosukee and Seminole today, and the towns were distinct entities within the Creek, Miccosukee, and Seminole peoples until recent times. These peoples are represented today by the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

Between 1906 and 1929, 22 shells, 2 shell ornaments, and 1 ground stone were collected from Stalling's Island Mound, Columbia County, GA, by William Claflin. In 1985, the William Claflin Collection was donated to the Peabody Museum. Museum documentation indicates that these cultural items were recovered with human remains and that the human remains were either interred inside, or were associated with, ceramic vessels.

Based on the ceramic style of the vessels that were associated with these cultural items, the items date to the Hollywood phase of the Late Mississippian period (A.D. 1250-1450). The burial context indicates that the burial was of a Native American. The Peabody Museum of Archaeology and Ethnology does not have possession or control of the human remains from these burials. Oral traditions as well as ethnohistoric and archeological documentation support Stalling's Island Mound as being within the aboriginal and historical homelands of Creek, Miccosukee, and Seminole peoples during the Hollywood Phase of the Late Mississippian period. With the abandonment of the Stalling's Island settlement just prior to European contact, the population transferred to three distinct tribal towns on the mainland, Coweta, Hitchiti, and Kashita. The Hitchiti are recognized bands among the Miccosukee and Seminole today, and the towns were distinct entities within the Creek, Miccosukee, and Seminole peoples until

recent times. These peoples are represented today by the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 26 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Creek, Miccosukee, and Seminole peoples, who are represented by the following federally recognized groups: Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

This notice has been sent to officials of the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 8, 2001. Repatriation of the cultural items to the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 18, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25142 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

In 1929, human remains representing two individuals from Stalling's Island Mound, Columbia County, GA, were acquired by the Peabody Museum of Archaeology and Ethnology. These human remains were collected during a 1928-29 expedition sponsored by the Peabody Museum of Archaeology and Ethnology and led by Cornelius B. and Harriet S. Cosgrove with William Claflin. No known individuals were identified. No associated funerary objects are present.

This interment disturbed a previous burial, which contained a carved shell gorget that dates to the Hollywood phase of the Late Mississippian period (A.D. 1250-1450). Because this interment disturbed the previous burial, it is reasonably assumed that these human remains date to the Late Mississippian period (A.D. 1250-1450) or Protohistoric period (A.D. 1450-1650) and that the individuals are Native American. Oral traditions as well as ethnohistoric and archeological documentation support Stalling's Island Mound as being within the aboriginal and historical homelands of the Creek, Miccosukkee, and Seminole peoples during the Hollywood phase of the Mississippian period. With the abandonment of the Stalling's Island settlement just prior to European contact, the population transferred to three distinct tribal towns on the mainland, Coweta, Hitchiti, and Kashita. The Hitchiti are recognized bands among the Miccosukee and Seminole today, and the towns were distinct entities within the Creek, Miccosukee, and Seminole peoples until recent times. These peoples are represented today by the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

In 1929, cultural items from Stalling's Island Mound, Columbia County, GA, were acquired by the Peabody Museum of Archaeology and Ethnology. These objects, one large vessel with complicated stamped decorations and one plain bowl, were collected during a 1928-29 expedition sponsored by the Peabody Museum of Archaeology and Ethnology and led by Cornelius B. and Harriet S. Cosgrove with William Claflin.

Based on ceramic style, the vessels are dated to the Hollywood phase of the Late Mississippian period (A.D. 1250-1450). The vessels have been identified as associated funerary objects as defined in 43 CFR 10.2 (d)(2)(i) because, in

museum documentation, the vessels are described as an urn burial and therefore were made to contain human remains. The burial context indicates that the burial was of a Native American. The Peabody Museum of Archaeology and Ethnology does not have possession or control of the human remains from this burial. Oral traditions as well as ethnohistoric and archeological documentation support Stalling's Island Mound as being within the aboriginal and historical homelands of Creek, Seminole, and Miccosukee people during the Hollywood phase of the Late Mississippian period. With the abandonment of the Stalling's Island settlement just prior to European contact, the population transferred to three distinct tribal towns on the mainland, Coweta, Hitchiti, and Kashita. The Hitchiti are recognized bands among the Miccosukee and Seminole today, and the towns were distinct entities within the Creek, Miccosukee, and Seminole peoples until recent times. These peoples are represented today by the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

In 1985, cultural items from Stalling's Island Mound, Columbia County, GA, were donated to the Peabody Museum of Archaeology and Ethnology as part of the William Claflin Collection. These objects, a fragmentary vessel (represented by two sherds) with complicated stamped decorations and one plain bowl, were collected during a 1928-29 expedition sponsored by the Peabody Museum of Archaeology and Ethnology and led by Cornelius B. and Harriet S. Cosgrove with William Claflin.

Based on ceramic style, the vessels are dated to the Hollywood phase of the Late Mississippian period (A.D. 1250-1450). The vessels have been identified as associated funerary objects as defined in 43 CFR 10.2 (d)(2)(i) because, in museum documentation, the vessels are described as an urn burial and therefore were made to contain human remains. The burial context indicates that the burial was of a Native American. The Peabody Museum of Archaeology and Ethnology does not have possession or control of the human remains from this burial. Oral traditions as well as ethnohistoric and archeological documentation support Stalling's Island Mound as being within the aboriginal and historical homelands of Creek, Seminole, and Miccosukee peoples during the Hollywood phase of the Late Mississippian period. With the abandonment of the Stalling's Island settlement just prior to European contact, the population transferred to three distinct tribal towns on the mainland, Coweta, Hitchiti, and Kashita. The Hitchiti are recognized bands among the Miccosukee and Seminole today, and the towns were distinct entities within the Creek, Miccosukee, and Seminole peoples until recent times. These peoples are represented today by the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (d)(2)(i), the four objects listed above are reasonably believed to have been made to contain human remains. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Creek, Miccosukee, and Seminole peoples, who are represented by the following federally recognized groups: Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town.

This notice has been sent to officials of the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 8, 2001. Repatriation of the human remains and associated funerary objects to the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town may begin after that date if no additional claimants come forward.

Dated: July 18, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25143 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible

for the determinations within this notice.

A detailed assessment of human remains and associated funerary objects was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with officials from the Tunica-Biloxi Indian Tribe of Louisiana.

In 1972, human remains representing four individuals were collected from the Trudeau site in West Feliciana Parish, LA, by Jeffrey P. Brain as part of the Lower Mississippi Survey expedition. The Lower Mississippi Survey was a project of Harvard University faculty in 1972. No known individuals were identified. No associated funerary objects are present.

The Trudeau site is known to have been the primary village and cemetery area of Tunica people from 1731 through 1764, based on Native American ceramics, glass beads, and European objects recovered from the site. Historical, ethnohistorical, and oral historical evidence summarized by Mr. Brain in his publication, Tunica Archaeology, support that the present-day descendants of the 18th-century Tunica are the Tunica-Biloxi Indian Tribe of Louisiana.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Tunica-Biloxi Indian Tribe of Louisiana.

This notice has been sent to officials of the Tunica-Biloxi Indian Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before November 8, 2001. Repatriation of the human remains to the Tunica-Biloxi Indian Tribe of Louisiana may begin after that date if no other additional claimants come forward.

Dated: July 18, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25144 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA that meet the definition of ≥unassociated funerary object≥ under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

Two thousand one hundered sixteen cultural items are ceramic sherds, complete ceramic vessels, and partial ceramic vessels.

In 1911-1912, Clarence B. Moore recovered these 2,116 cultural items from the mound on Haley Place, Miller County, AR. In 1912, Mr. Moore donated these cultural items to the Peabody Museum of Archaeology and Ethnology.

Museum documentation indicates that these cultural items were associated with burials. The Peabody Museum of Archaeology and Ethnology is not in possession or control of any human remains from these burials. Based on ceramic style, these cultural items date to the Haley Phase of the Caddo II or Early Caddo (C.E. 1200-1400) period. Archeological and historical evidence indicates that the Great Bend region of Arkansas was occupied continuously from the Early Caddo or Caddo II (C.E. 1200-1400) through the Late Caddo or Caddo IV (C.E. 500-1650) periods, and into the protohistoric period. Historical evidence, including the Teran map of C.E. 1691-1692, indicates that the Great Bend region was occupied by the Kadohadacho Caddo during the historic period, and that this group emerged from precontact Caddoan culture. The present-day Indian tribe culturally affiliated with the Kadohadcho Confederacy is the Caddo Indian Tribe of Oklahoma.

Seventeen cultural items are ceramic sherds and ceramic vessels.

In 1911-1912, Clarence B. Moore recovered these 17 cultural items from the mound on McClure Place, Miller County, AR. In 1912, Mr. Moore donated these cultural items to the Peabody Museum of Archaeology and Ethnology.

Museum documentation indicates that these cultural items were associated with burials. The Peabody Museum of Archaeology and Ethnology is not in possession or control of any human remains from these burials. Based on ceramic style, these cultural items date to the Belcher Phase of the Caddo IV or Late Caddo (C.E. 1500-1650) period. Archeological and historical evidence indicates that the Great Bend region was occupied continuously from the Early Caddo or Caddo II (C.E. 1200-1400) through the Late Caddo or Caddo IV (C.E. 1500-1650) periods and into the protohistoric period. Historical evidence, including the Teran map of C.E. 1691-1692, indicates that the Great Bend region was occupied by the Kadohadacho Caddo during the historic period, and that this group emerged from precontact Caddoan culture. The present-day Indian tribe culturally affiliated with the Kadohadcho Confederacy is the Caddo Indian Tribe of Oklahoma.

Two hundred ninety-two cultural items are ceramic sherds and partial vessels.

In 1911-1912, Clarence B. Moore recovered these 292 cultural items from the mound, L.A. Foster's Place, Miller County, AR. In 1912, Mr. Moore donated these cultural items to the Peabody Museum of Archaeology and Ethnology.

Museum documentation indicates that these cultural items were associated with burials. The Peabody Museum of Archaeology and Ethnology is not in possession or control of any human remains from these burials. Based on ceramic style, these cultural items date to the Belcher Phase of the Caddo IV or Late Caddo (C.E. 1500-1650) period. Archeological and historical evidence indicates that the Great Bend region in Arkansas was occupied continuously from the Early Caddo or Caddo II (C.E. 1200-1400) through the Late Caddo or Caddo IV (C.E. 1500-1650) periods, and into the protohistoric period. Historical evidence, including the Teran map of

C.E. 1691-1692, indicates that the Great Bend region was occupied by the Kadohadacho Caddo during the historic period, and that this group emerged from precontact Caddoan culture. The present-day Indian tribe culturally affiliated with the Kadohadcho Confederacy is the Caddo Indian Tribe of Oklahoma.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 2,425 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 8, 2001. Repatriation of these unassociated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 12, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25146 Filed 01–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

In 1868, human remains representing one individual were collected by Professor J.D. Whitney from Hot Creek Valley, Nye County, NV. In 1868, these human remains were gifted to the Peabody Museum of Archaeology and Ethnology by Dr. Whitney. No known individual was identified. No associated funerary objects are present.

Museum documentation identifies this individual as ''Digger,'' a term used historically to represent Western Shoshone people. The attribution of such a specific term to the human remains indicates that the interment postdates sustained contact between indigenous groups and Europeans beginning in the 18th century. The human remains were from an area commonly considered to be traditional Western Shoshone territory during the historic period. Oral traditions and historical evidence support the cultural affiliation to present-day Indian tribes representing Western Shoshone people.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

This notice has been sent to officials of the Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of

Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 8, 2001. Repatriation of the human remains to the Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Reno-Sparks Indian Colony, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Winnemucca Indian Colony of Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada may begin after that date if no additional claimants come forward.

Dated: July 30, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25152 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute- Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone -Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Between 1844 and 1866, human remains representing one individual were collected from an old battlefield near Austin, Lander County, NV, by Dr. C.T. Jackson, a collector for the James C. White Collection. These human remains were sold by the James C. White Collection to the Boston Society of Natural History, Boston, MA. In 1916, the Boston Society of Natural History donated these human remains to the Peabody Museum of Archaeology and Ethnology. No known individual was identified. No associated funerary objects are present.

Museum documentation identifies this individual as ''Paiute.'' Osteological information suggests that this individual most likely dates from the prothistoric to early historic periods. The human remains were collected from an area commonly considered to be traditional Paiute and Shoshone territory during those periods. While these human remains were identified as Paiute, consultation with representatives of Paiute and Shoshone tribes indicates that this individual should be culturally affiliated to tribes representing both Paiute and Shoshone peoples because the region was occupied and used by both Paiute and Shoshone during the protohistoric and historic periods. Consultation evidence also shows that these tribes were often misidentified during the time that these human remains were collected. Oral traditions and historical evidence support the cultural affiliation to Paiute and Shoshone people, represented by the present-day tribes of Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork

Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute- Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute- Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone -Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada.

This notice has been sent to officials of Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Bridgeport Paiute Indian Colony of California; Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Cedarville Rancheria, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; Paiute-Shoshone Indian of the Bishop Community of the Bishop Colony, California; Paiute- Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone -Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before November 8, 2001. Repatriation of the human remains to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: August 8, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25153 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Mohegan Indian Tribe of Connecticut, Narragansett Indian Tribe of Rhode Island, Wabanaki Tribes of Maine Intertribal Repatriation Committee (representing the Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe, Pleasant Point Reservation of the Passamaquoddy Tribe, and Penobscot Tribe of Maine), Wampanoag Confederation (representing the Wampanoag Tribe of Gay Head [Aquinnah], Mashpee Wampanoag Indian Tribe [a nonfederally recognized Indian group], and Assonet Band of the Wampanoag Nation [a nonfederally recognized Indian group]), Abenaki Nation of Missisquoi (a nonfederally recognized Indian group), and Abenaki Nation of New Hampshire (a nonfederally recognized Indian group).

The Peabody Museum of Archaeology and Ethnology has determined that the human remains reported in this notice cannot be affiliated with an Indian tribe as defined in NAGPRA, 43 CFR 10.2 (b)(2), and are considered culturally unidentifiable. Until final promulgation of Section 10.11 of NAGPRA regulations, the Native American Graves Protection and Repatriation Review Committee is responsible for recommending to the Secretary of the Interior specific actions for the disposition of culturally unidentifiable human remains, according to NAGPRA, 43 CFR 10.10 (g). In April 1999, the Peabody Museum of Archaeology and Ethnology proposed to repatriate 30 culturally unidentifiable human remains to the Western Abenaki, represented by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and to the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group. The proposal was considered by the review committee at its May 1999 meeting.

The review committee recommended disposition of the human remains to the Abenaki Nation of Missisquoi and the Abenaki Nation of New Hampshire contingent upon the museum's meeting four requirements. A February 7, 2000, letter from the National Park Service to the Peabody Museum of Archaeology and Ethnology asked that the museum would distribute the inventory of culturally unidentifiable human remains to the Wabanaki Tribes of Maine Intertribal Repatriation Committee and the Wampanoag Confederation; document the Wabanaki Tribes of Maine Intertribal Repatriation Committee's and the Wampanoag Confederation's concurrence with the proposed disposition; publish a notice of inventory completion in the Federal Register; and consider documentation compiled as part of the inventory process as public information, and available for education and scientific uses. The Peabody Museum of Archeology and Ethnology documented in a January 11, 2001, letter to the review committee that three of the requirements had been met, noting that the fourth requirement would be met with the publication of this Notice of Inventory Completion. A July 11, 2001, letter from the Assistant Director, Cultural Resources Stewardship and Partnerships confirmed that, with publication of this notice, the four requirements of the February 7, 2000, letter will have been met.

In 1876, human remains representing one individual were donated to the Peabody Museum by N. Cressy. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were recovered from historic Fort Dummer, south of Brattleboro, VT. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of Vermont is the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (6000-4000 B.P.) through the Historic period (post-500 B.P.). Based upon the fact that no human remains are known from this area prior to the Late Archaic period, these human remains are likely to date between the Late Archaic and Historic periods. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

In 1877, human remains representing one individual were donated to the Peabody Museum of Archaeology and Ethnology by the Museum of Comparative Zoology, Harvard University. No known individual was identified. Although a copper bead was recovered with the remains, the museum is not currently in possession of the bead, nor does the museum know the bead's location.

Museum documentation indicates that the human remains were recovered from ''Highgate'' in Vermont, which could refer to the town, the falls, or the archeological site, all near Lake Champlain. A copper bead associated with the interment and the presence of copper staining on the human remains indicate that this interment most likely dates to the Historic period (post-500 B.P.). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of Vermont is the aboriginal and historic homeland of the Western Abenaki, from at least the Late Archaic period (6000-4000 B.P.) through the Historic period (post-500 B.P.). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

In 1897, human remains representing one individual were donated to the Peabody Museum of Archaeology and Ethnology by Dr. J. A. Keown, of Lynn, MA. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were recovered 2 miles from Hinsdale, NH, in 1893. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (6000-

4000 B.P.) through the Historic period (post-500 B.P.). Based upon the fact that no human remains are known from this area prior to the Late Archaic period, these human remains are likely to date between the Late Archaic and Historic periods. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

In 1901, human remains representing 19 individuals were donated to the Peabody Museum of Archaeology and Ethnology by A.L. Dakin. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were recovered from around the shore of Fresh Pond and Lake Musquatanakus, in Brookline, NH. Four of the human remains were recovered by workmen while building an ice house on the shore of Fresh Pond. The other 15 human remains were excavated from the shore of Lake Musquatanakus by A.L. Dakin and C.C. Willoughby of the Peabody Museum of Archaeology and Ethnology in 1901. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (6000-4000 B.P.) through the Historic period (post-500 B.P.). Based upon the fact that no human remains are known from this area prior to the Late Archaic period, these human remains are likely to date between the Late Archaic and Historic periods. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

In 1919, human remains representing one individual were donated to the Peabody Museum of Archaeology and Ethnology by F.H. Manning. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were recovered from Amoskeag Falls along the Merrimack River, in Manchester, NH. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (6000-4000 B.P.) through the Historic period (post-500 B.P.). Based upon the fact that no human remains are known from this area prior to the Late Archaic period, these human remains are likely to date between the Late Archaic and Historic periods. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

In 1934, human remains representing six individuals were donated to the Peabody Museum of Archaeology and Ethnology by Philip Dana Orcutt. No known individuals were identified. Associated funerary objects are two pieces of wood and an iron nail, but because disposition of funerary objects associated with culturally unidentifiable human remains is not governed by NAGPRA, associated funerary objects are not among the cultural items included in this notice.

Museum documentation indicates that the human remains were recovered from a known burial ground dating to the Historic period (post-500 B.P.) in Effingham, NH. Osteological characteristics of the human remains indicate that the individuals are of Native American ancestry. The interment pattern and the presence of copper staining on human remains indicate that the burial dates to the Historic period (post-500 B.P.). Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (6000-4000 B.P.) through the Historic period (post-500 B.P.). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

In 1959, human remains representing one individual were permanently loaned to the Peabody Museum of Archaeology and Ethnology by the Warren Anatomical Museum, Harvard University. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the human remains were recovered from ''Merrimack'' in New Hampshire. It is not clear whether this refers to the town of Merrimac, the Merrimack River, or the greater Merrimack Valley; museum documentation implies that ''Merrimack'' refers to the river. Archeological, historical, and ethnographic sources, along with oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (6000-4000 B.P.) through the Historic period (post-500 B.P.). Based upon the fact that no human remains are known from this area prior to the Late Archaic period, these human remains are likely to date between the Late Archaic and Historic periods. The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 30 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship shared group identity that can be reasonably traced between these Native American human remains and the Western Abenaki, who are represented by the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group.

This notice has been sent to the Abenaki Nation of Missisquoi, a nonfederally recognized Indian group, and the Abenaki Nation of New Hampshire, a nonfederally recognized Indian group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496-3702, before November 8, 2001. Repatriation of the human remains to the Abenaki Nation of Missisquoi and the Abenaki Nation of New Hampshire may begin after that date if no additional claimants come forward.

Dated: August 3, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25154 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, Department of the Army, Fort Stewart, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, Department of the Army, Fort Stewart, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Fort Stewart; United States Army Corps of Engineers, St. Louis District professional staff; and staff from Bregman and Company, Bethesda, MD, in consultation with representatives of the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

In 1980–81, human remains representing one individual were recovered from the backdirt of a looter's trench at the Lewis Mound and Village site (9BN39), Bryan County, GA, by archeologists of Professional Analysts, Inc., who were conducting a survey. The site is on the lands of the Fort Stewart military reservation. No known individual was identified. The one associated funerary object is a plain, sand-tempered pottery sherd.

The remains and object were found near a trench which had partially exposed a cremation burial in the Lewis Mound. The trench was probably dug in 1979–80, and was filled in at the time of its discovery. Only the remains and the sherd found in the backdirt were collected. The Lewis Mound is believed to be associated with the Savannah phase (A.D. 1150–1325) of the Middle Mississippian period occupation of the Lewis Mound and Village site. Although the Lewis Mound cannot be unequivocally associated with the Savannah phase occupation at this multicomponent site, the intensity of settlement at the site during this time and comparison with other Savannah phase mounds in the region indicate a likely relationship.

Both the Savannah and Irene (Late Mississippian) phases are found at Fort Stewart. Initial research suggests that at the time of European contact, the Guale occupied an area in the close vicinity of what is now Fort Stewart. Guale material culture is thought to be a direct development from the precontact, Late Mississippian Irene phase (A.D. 1325–1530).

During the late 16th and 17th centuries, the Guale were moved to Spanish missions in Florida and southern Georgia, where they merged with the Yamasee. Throughout the late 17th and early 18th centuries, the Yamasee moved back and forth between the English in South Carolina and the Spanish at St. Augustine, FL, through the area that is now Fort Stewart. The Yamasee War of 1715 resulted in the fragmentation of the Yamasee with some members' joining the Creek while others went to Florida or were shipped as slaves to Mexico and Cuba.

The Seminoles are believed to be descendants of the Upper and Lower Creek who migrated to Florida in the 1700s to escape European domination. Research indicates that Guale/Yamasee political and cultural identity has been absorbed by the Creeks and Seminoles, and has not been maintained as distinct into contemporary times.

Based on the above-mentioned information, officials of Fort Stewart have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of Fort Stewart also have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Fort Stewart have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary object and the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma.

This notice has been sent to officials of the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Ms. Jennifer Grover, Consulting Archeologist, Bregman and Company, Inc., Directorate of Public Works, Environmental Branch, 1557 Frank Cochran Drive, Fort Stewart, GA 31314–4926, telephone (912) 767–3359, before November 8, 2001. Repatriation of the human remains and associated funerary object to the Alabama-Quassarte Tribal Town, Oklahoma; Kialegee Tribal Town, Oklahoma; Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Thlopthlocco Tribal Town, Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 25, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01;–25151 Filed 10–5–01; 8:45am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Yosemite National Park, Yosemite, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Yosemite National Park, Yosemite, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

A detailed inventory and assessment of the human remains and associated funerary objects has been made by professional staff of the National Park Service in consultation with lineal descendants and representatives of Bridgeport Paiute Indian Colony of California and the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California. The National Park Service also consulted with representatives of American Indian Council of Mariposa County and the Mono Lake Indian Community, two non-Federally recognized Indian groups.

In 1954, human remains representing one individual were recovered from a site in the Yosemite Valley during legally authorized excavations. The human remains consist of four teeth: one molar, one premolar, and two incisors. The rest of the human remains were left in place at the time of excavation. The 176 associated funerary objects are 1 U.S. half dollar coin dated 1870, 8 buttons, 2 metal thimbles (1 containing what appears to be bird feathers and skin), 1 metal tobacco container lid, 26 iron nails, 4 fragments of a Japanese Kutani porcelain plate, 7 fragments from a lead jar seal, 1 pair of ladies scissors, 1 padlock, 10 pieces of red ochre, 8 haliotis sp. necklace pendants, 1 shell bead, 5 shell fragments, 9 obsidian tool fragments, 73 pieces of obsidian debitage, 1 piece of green glass with possible edge modification, 5 unidentified ungulate long bones, 2 pebbles, 7 stones, and 4 rocks. An unknown number of wood and charcoal fragments were also recovered.

Consultations with Native American representatives at the time of the excavation identified the human remains as those of Kosano, also known as Joaquin Sam, a northern Paiute from either the Bridgeport or Mono Lake communities. Kosano is known to have died in the Yosemite Valley and was buried around 1875. Subsequent consultation has identified several individuals who can trace their ancestry directly and without interruption to Kosano, including Paul Williams (great grandson), Elaine Lundy (great granddaughter), and Janice Lundy Mendez (great-great granddaughter).

Based on the above mentioned information, the superintendent of Yosemite National Park has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. The superintendent of Yosemite National Park also has determined that, pursuant to 43 CFR 10.2 (d)(2), the 176 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, the superintendent of Yosemite National Park has determined that, pursuant to 43 CFR 10.2 (b)(1), Paul Williams, Elaine Lundy, and Janice Lundy Mendez can trace their ancestry directly and without interruption by means of the traditional kinship system of the Paiute people to Kosano.

This notice has been sent to officials of the Bridgeport Paiute Indian Colony of California and the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California. The notice has also been sent to officials of the American Indian Council of Mariposa County and the Mono Lake Indian Community, two non-Federally recognized Indian groups. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David A. Mihalic, Superintendent, Yosemite National Park, P.O. Box 577, Yosemite, CA 95389, telephone (209) 372-0201, before November 8, 2001. Repatriation of the human remains and associated funerary objects to Paul Williams, Elaine Lundy, and Janice Lundy Mendez may begin after that date if no additional claimants come forward.

Dated: July 9, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25159 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of the Interior, National Park Service, Jean Lafitte National Historical Park and Preserve, New Orleans, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Jean Lafitte National Historical Park and Preserve, New Orleans, LA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the National Park Service unit that has control or possession of these Native American human remains. The Assistant Director, Cultural Resources Stewardship and Partnerships is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with representatives of the Alabama-Coushatta Tribes of Texas; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica-Biloxi Indian Tribe of Louisiana.

In 1981, human remains representing one individual were collected from a small shell midden/burial mound site along the banks of Bayou des Familles, in the Barataria Preserve unit of Jean Lafitte National Historical Park and Preserve. The human remains were collected during an archeological site survey project conducted by the University of New Orleans. No known individual was identified. The 74 associated funerary objects are 21 fragments of a Baytown Plain ceramic vessel, 39 shells, and 13 animal bones. Based on the ceramics and the site layout, these human remains and associated funerary objects are likely to date to the Mississippian period (A.D. 1200-1600).

Archeological evidence does not indicate any major population shifts in

the Barataria Basin area during the Mississippian period, which is corroborated by linguistic analyses. Historical records indicate that in 1543 Luis Moscoso de Alvardo, a member of the Hernando de Soto expedition, encountered the Indian tribes along the lower Mississippi River near the Barataria site that have been tentatively identified as the Chawasha, Washa, or Quinapisa. The Chawasha and Washa people were identified as living in the area as late as 1738. The declining population of both tribes was probably absorbed by the Chitimacha. Representatives of the Chitimacha Tribe of Louisiana indicate that they consider the Barataria Basin area as part of their homeland. The Quinapisa are not known to be associated with any present-day Federally recognized Indian tribe.

Though the primary area of Biloxi settlement prior to 1700 was probably along the Mississippi Sound to the east, Pierre Le Moyne Iberville and other French explorers and colonists encountered the Biloxi along the lower Mississippi River and used them as guides in the late 17th century. By the early 1700s, Louis Antoine Juchereau de St. Denis had induced the Biloxi to relocate their settlements to Louisiana, between New Orleans and Lake Pontchartain.

At the same time, the Tunica had settled as far south as the area of Baton Rouge, LA. In 1779, Spanish authorities granted land to the Tunica near Marksville, LA. Through intermarriage, the Tunica absorbed some of the Biloxi. The Tunica-Biloxi Indian Tribe of Louisiana was acknowledged by the Department of the Interior in 1980.

The Chitimacha, Chawasha, Washa, and Tunica languages are in the Gulf language grouping. The Biloxi language is a member of the unrelated Siouan language family.

Based on the above-mentioned information, the superintendent of Jean Lafitte National Historical Park and Preserve has determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. The superintendent of Jean Lafitte National Historical Park and Preserve has determined that, pursuant to 43 CFR 10.2 (d)(2), the 74 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The superintendent of Jean Lafitte National Historical Park and Preserve also has determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Chitimacha Tribe of Louisiana and Tunica-Biloxi Indian Tribe of Louisiana.

This notice has been sent to officials of the Alabama-Coushatta Tribes of Texas; Alabama-Quassarte Tribal Town, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica-Biloxi Indian Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, LA 70130-1142, telephone (504) 589-3882, before November 8, 2001. Repatriation of the human remains and associated funerary objects to the Chitimacha Tribe of Louisiana and Tunica-Biloxi Indian Tribe of Louisiana may begin after that date if no additional claimants come forward.

Dated: June 29, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25160 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology professional staff in consultation with representatives of the U.S. Department of the Interior, Bureau of Indian Affairs; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1933, human remains representing two individuals (catalog numbers DU6002 and DU6180) were recovered from San Luis, Costilla County, CO, by Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology. No known individuals were identified. No associated funerary objects are present.

In 1938, human remains representing one individual (catalog number DU1995.1.7a-b) were recovered in or near Great Sand Dunes National Monument and Preserve, Alamosa and Saguache Counties, CO, by Theodore Sowers, a graduate of the University of Denver. In 1995, Mr. Sowers' daughters donated the remains to the museum so that they could be repatriated. Officials of the U.S. Department of the Interior, National Park Service, Great Sand Dunes National Monument and Preserve, have determined that the provenience is insufficient to decide

that these remains came from Federal land and that the University of Denver Department of Anthropology and Museum of Anthropology is responsible for these remains. No known individual was identified. No associated funerary objects are present.

In 1981, human remains representing one individual (catalog number DU CO Y:6:15) were recovered from site 5AL523, Alamosa County, CO, by Dr. Jonathan Haas, a member of the University of Denver Department of Anthropology. The remains were exposed in a road cut on the Bunker Ranch near the Great Sand Dunes National Monument. No known individual was identified. No associated funerary objects are present.

In 1950, human remains representing one individual (catalog number DU CO X:16:12) were recovered from site 5CN26, Conejos County, CO, by an unknown individual. Mercedes Ortiz reported the site although it is not clear if she removed the remains and took them to the museum. No known individual was identified. The eight associated funerary objects are seven Black-on-White sherds and one chipped stone.

Black-on-White pottery indicates this site is ancestral Puebloan. The scientific literature provides significant evidence of cultural affiliation between ancestral Puebloan culture and the Pueblos of today. Representatives of the Hopi Tribe of Arizona, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, Zuni Tribe, and Navajo Nation provided written and oral testimony confirming cultural affiliation of Puebloan peoples with ancestral Puebloan culture.

In 1933, human remains representing two individuals (catalog number DU CO V:9:GEA) were recovered from a site at the edge of McElmo Canyon, Montezuma County, CO, by Faye Conklin, a graduate of the University of Denver. Ms. Conklin gave the remains to Dr. E.B. Renaud, of the University of Denver Department of Anthropology. No known individuals were identified. The 50 associated funerary objects are 1 Black-on-White pottery bowl, 1 Black-on-White pottery bowl fragment, 1 Black-on-White pottery jar fragment, 25 Black-on-White sherds, 3 redware sherds, 1 nonhuman bone, 4 nonhuman bone fragments, 1 piece of wood, 8 pieces of cordage, 3 beans, and 2 corn kernels.

Black-on-White pottery indicates this site is ancestral Puebloan. The scientific literature provides significant evidence of cultural affiliation between ancestral Puebloan culture and the Pueblos of today. Representatives of the Hopi Tribe of Arizona, Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, Zuni Tribe, and Navajo Nation provided written and oral testimony confirming cultural affiliation of Puebloan peoples with ancestral Puebloan culture.

At an unknown date, human remains representing one individual (catalog numbers DU6015 and DU6066) were collected from Dove Creek, Dolores County, CO, by an unknown individual. In 1943, the remains were found in the office of Lee A. Brown, a U.S. Department of Agriculture, Forest Service employee who had been transferred to Washington, D.C. At that time, Dr. E.B. Renaud, of the University of Denver Department of Anthropology, was asked to examine the remains; subsequently the remains were donated to the museum by Fred R. Johnson, who had found the remains in Mr. Brown's office. No known individual was identified. No associated funerary objects are present.

In 1978, human remains representing one individual (catalog number DU UT W:10:2) were recovered from a site in Butler Wash, south of Bluff, San Juan County, UT, by Mimi Kiser, a former University of Denver archeology student, who donated the remains to the museum. No known individual was identified. The 47 associated funerary objects are 1 nonhuman tooth, 1 grass seed, 1 piece of woven cotton fabric, 3 pieces of knotted cordage with what appears to be feathers, 9 cordage fragments, 4 hoops of fiber, 24 knotted fibers, 1 lot of knotted fiber, and 3 unidentified organic items.

Southwestern Colorado and southeastern Utah have been identified as the ancestral territory of the Hopi, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Ysleta Del Sur Pueblo, Zuni Tribe, Skull Valley Ute, Southern Ute, Uintah and Ouray Ute, and Ute Mountain Ute. Consultation evidence also indicates affiliation with the Navajo and Jicarilla Apache as well as the Hopi, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Ysleta Del Sur Pueblo, Zuni Tribe, Skull Valley Ute, Southern Ute, Uintah and Ouray Ute, and Ute Mountain Ute.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of nine individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 105 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the U.S. Department of Interior, Bureau of Indian Affairs; Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of

Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S-146, Denver, CO 80208–2406, e-mail jbernste@du.edu, telephone (303) 871–2543, before November 8, 2001. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: July 20, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25140 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO, and in the Control of the U.S. Department of Agriculture, San Juan National Forest, Durango, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO, and in the control of the U.S. Department of Agriculture, San Juan National Forest, Durango, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Denver Department of Anthropology and Museum of Anthropology and San Juan National Forest professional staff in consultation with representatives of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Between 1921 and 1924, human remains representing a minimum of two individuals were recovered from a site near Chimney Rock, Archuleta County, CO, by a team led by J.A. Jeancon, curator of archeology at the Colorado State Museum. Other members of the team included Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology, Frank H.H. Roberts, of the University of Denver, and his brother Henry B. Roberts. No known individuals were identified. The nine associated funerary objects are one grey ceramic jar with weathered black designs, seven nonhuman bones, and one lot of plant fiber.

The recovery site is part of the San Juan National Forest. The human remains were found in the jar, which had been placed in a cist in a pithouse on Stollsteimer Mesa, at the junction of the Piedra River and Stollsteimer Creek. The pithouse was on the western side of the mesa, above the river. The site is near the Chimney Rock site (5AA245) which dates to the Pueblo II (A.D. 800–1125) period. There is a connection between the remains listed in this notice and Chimney Rock. The research of Jeancon, Roberts, and recent investigators has firmly established that the ceramic/architectural sites in the Piedra River drainage in the vicinity of Chimney Rock are Ancestral Puebloan (Anasazi) in nature and are generally contemporaneous with the occupations at Chimney Rock.

The area around Chimney Rock is referred to as the Piedra-Pagosa Region and the Piedra District, and has been identified as the ancestral territory of the Hopi, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Ysleta Del Sur

Pueblo, Zuni Tribe, Skull Valley Ute, Southern Ute, Uintah and Ouray Ute, and Ute Mountain Ute. The scientific literature provides significant evidence of cultural affiliation between Ancestral Puebloan culture and the Pueblos of today. Representatives of the Hopi Tribe of Arizona, the Pueblo of Acoma, the Pueblo of Isleta, the Pueblo of Jemez, the Zuni Tribe of Arizona, and the Navajo Nation provided written and oral testimony confirming the cultural affiliation of contemporary Puebloan peoples with Ancestral Puebloan culture. Consultation evidence also indicates affiliation with the Navajo and Jicarilla Apache as well as the Hopi, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Ysleta Del Sur Pueblo, Zuni Tribe, Skull Valley Ute, Southern Ute, Uintah and Ouray Ute, and Ute Mountain Ute.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology and San Juan National Forest have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology and San Juan National Forest also have determined that, pursuant to 43 CFR 10.2 (d)(2), the nine objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology and San Juan National Forest have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California; Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Calvin N. Joyner, Forest Supervisor, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, telephone (970) 247–4874, or Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, e-mail jbernste@du.edu, telephone (303) 871–2543, before November 8, 2001. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Skull Valley Band of Goshute Indians of Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may begin after that date if no additional claimants come forward.

Dated: August 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25157 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the

museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Denver Department of Anthropology and Museum of Anthropology professional staff and a contract physical anthropologist in consultation with the U.S. Department of Defense, Department of the Army, Army Corps of Engineers, Omaha District; U.S. Department of the Interior, Bureau of Indian Affairs; and representatives of the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Pawnee Nation of Oklahoma; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

At an unknown date, human remains representing one individual were recovered from an unknown location either on the Crow Creek Reservation, Buffalo County, SD, or near Mitchell, Davison County, SD. Dr. E.B. Renaud, founder of the University of Denver Department of Anthropology, most likely obtained these remains from an unknown South Dakota resident and brought them to the university for study. The remains were never cited in his reports and were not formally accessioned into the museum collection. No known individual was identified. The 107 associated funerary objects are 92 sherds (56 plain, 2 marked, and 34 incised, stamped, or cord-marked), 1 ceramic tube fragment, 1 projectile point, 10 chipped stone flakes, and 3 shell fragments.

Two handwritten notes accompany the remains. One says ''Fortified Indian Village Prehistoric Pawnee Strong(?) near Mitchell South Dakota(?).'' The other note says ''Fortified Prehistoric Indian Village, Prehistoric Pawnee Strong(?) Crow Creek (Crow Reservation) North of Chamberlain, S. Dakota.'' Both the Bureau of Indian Affairs and the U.S. Army Corps of Engineers determined that there is no evidence that either Federal agency has control over these human remains and associated funerary objects.

The territory surrounding the Missouri River in southeastern South Dakota has been identified as the ancestral territory of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara) and the Pawnee. The notes that accompany the remains, associated funerary objects, and consultation evidence also indicate a cultural affiliation between these human remains and associated funerary objects and the Three Affiliated Tribes and Pawnee.

Roger Echo-Hawk, a Pawnee historian, provided oral testimony confirming the cultural affiliation between the Arikara and Pawnee. Both tribes speak Caddoan languages, whose cultural roots are traced to the prehistoric mound-building societies of the lower Mississippi River valley. The Arikara were culturally related to the Pawnee, from whom they broke away and moved gradually northward along the Missouri River between the Cheyenne River in South Dakota and Fort Berthold in North Dakota, becoming the northernmost Caddoan tribe.

Archeologists have attributed a number of village sites near Crow Creek to the Arikara and Mandan, and a large well-known village near Mitchell is a attributed to the Mandan. There are at least two Arikara archeological sites in the area mentioned in the notes that accompany the remains, the Crow Creek site (39BF11), a fortified village, and the Mitchell site (39DV2), a village with outer fortification ditches and lodges.

Based on the above-mentioned information, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Denver Department of Anthropology and Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 107 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Denver Department of Anthropology and Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pawnee Nation of Oklahoma, and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

This notice has been sent to officials of the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Pawnee Nation of Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; U.S. Army Corps of Engineers, Omaha District; and Bureau of Indian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jan I. Bernstein, Collections Manager and NAGPRA Coordinator, University of Denver Department of Anthropology and Museum of Anthropology, 2000 Asbury, Sturm Hall S–146, Denver, CO 80208–2406, e-mail jbernste@du.edu, telephone (303) 871–2543, before November 8, 2001. Repatriation of the human remains and associated funerary objects to the Pawnee Nation of Oklahoma, and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may begin after that date if no additional claimants come forward.

Dated: August 15, 2001.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 01–25158 Filed 10–5–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs; Meeting

ACTION: Notice of closed meeting.

DATE: November 1, 2001.

PLACE: Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The purpose of the Commission for the Review of FBI Security Programs will be to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of out internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 01–25195 Filed 10–5–01; 8:45 am]

BILLING CODE OA92–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that on September 19, 2001, proposed consent decrees in the case captioned *United States* v. *Cohen, et al.*, Civil Action No. 96 C 7801 (N.D. Ill.), were lodged with the United States District Court for the Northern District of Illinois. The proposed consent decrees relate to the Standard Scrap Metal/Chicago International Exporting Site located at 4004–4020 South Wentworth and 4000–4027 South Wells Streets in Chicago, Illinois. The proposed consent decrees would resolve civil claims of the United States for recovery of past response costs under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9607, against Northern Indiana Public Service Company (''NIPSCO'') and Tri-State Metal Company (''Tri-State''). The proposed consent decree with NIPSCO would require NIPSCO to pay the United States $1.6 million in partial reimbursement of past response costs. The proposed consent decree with Tri-State would require Tri-State to pay the United States $25,000 in partial reimbursement of past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cohen, et al.*, Civil Action No. 96 C 7801 (N.D. Ill.), and DOJ Reference No. 90–11–3–1414A.

The proposed consent decrees may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, 219 South Dearborn St., Chicago, Illinois, 60604; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Copies of the proposed consent decrees may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting copies, please refer to the above-referenced case and DOJ Refereence Number and enclose a check for $3.75 for the NIPSCO Consent Decree (15 pages at 25 cents per page reproduction cost), and $3.75 for the Tri-State Consent Decree (15 pages at 25 cents per page reproduction cost) made payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–25194 Filed 10–5–01; 8:45 am]

BILLING CODE 4410–15–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 extension of Notice of Controversion of Right to Compensation (LS–207).

DATES: Written comments must be submitted to the office listed in the addressee section below within December 10, 2001.

ADDRESSEES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LSWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Pursuant to section 14(d) of the Act, if an employer controverts the right to compensation, he shall file with the district director in the affected compensation district on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted. The LS–207 is used for this purpose.

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 the approval of the extension of this information collection in order to carry out its responsibility to meet the statutory requirements to ensure payment of compensation or death benefits under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Controversion of Right to Compensation.

OMB Number: 1215–0023.

Agency Number: LS–207.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.
Total Respondents: 900.
Total Annual responses: 18,900.
Time per Response: 15 minutes.
Estimated Total Burden Hours: 4,725.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $7,418.25.

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: September 7, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 01–25233 Filed 10–5–01; 8:45 am]

BILLING CODE 4510–27–P

LEGAL SERVICES CORPORATION

Notice of Availability of 2002 Competitive Grant Funds for Service Area WI–2, WI–5, MWI and NWI–1 in Wisconsin

AGENCY: Legal Services Corporation.

ACTION: Solicitation of Proposals for the provision of Civil legal Services for service areas WI–2, WI–5, MWI and NWI–1 in Wisconsin.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces that it is reopening competition for 2002 competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in the Basic Field-General, Basic Field-Migrant and Basic Field-Native American service areas in Wisconsin. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2002 are not known, although it is anticipated that the funding amount will be similar to calendar year 2001 funding. LSC has canceled the competition and rejected all previous bids for Wisconsin service areas WI–5, NWI–1 and MWI.

DATES: Request for Proposals (RFP) are available from *www.ain.lsc.gov.* A Notice of Intent to Compete is due by 5 p.m. ET, October 26, 2001. Grant proposals must be received at LSC offices by 5 p.m. ET, November 16, 2001.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Jennifer Bateman, Grants Coordinator, Office of Program Performance, (202) 336–8835.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available at *www.ain.lsc.gov.*

Dated: October 2, 2001.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 01–25178 Filed 10–5–01; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 7, 2001, the National Science Foundation published a notice in the Federal Register of a permit applications received. Permits were issued on September 12, 2001 and September 13, 2001 respectively to:

Rudolf S. Scheltema—Permit No. 2002–006

Gary Miller—Permit No. 2002–005

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–25226 Filed 10–5–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–10, ASLBP No. 02–793–01–MLA]

International Uranium (USA) Corp.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: International Uranium (USA) Corporation, White Mesa Uranium Mill (Source Material License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns September 24, 2001 hearing requests submitted by the Utah Chapter of the Sierra Club, the City of Moab, and John Darke, respectively. The three requests were filed in response to a request from International Uranium (USA) Corporation (IUSA) to amend its source material license for its Blanding, Utah White Mesa Uranium Mill to receive and process alternate feed materials from the Maywood, New Jersey Formerly Utilized Sites Remedial Action Program site. The notice of receipt of the amendment and opportunity for a hearing was published in the **Federal Register** on August 23, 2001 (66 FR 44384).

The Presiding Officer in this proceeding is Administrative Judge Ivan Smith. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Smith and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Ivan Smith, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Issued at Rockville, Maryland, this 1st day of October 2001.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 01–25189 Filed 10–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8767; License No. SUC–1380]

Removal of the Lake City Army Ammunition Plant From the Site Decommissioning Management Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of removal from the site decommissioning management plan.

This notice is to inform the public that the United States Nuclear Regulatory Commission (NRC) is removing the Lake City Army Ammunition Plant (LCAAP) from the Site Decommissioning Management Plan (SDMP). The SDMP is a program, created by the Commission, to ensure that the NRC focuses special attention on certain sites to ensure timely decommissioning of those sites. LCAAP is one of the sites included in the SDMP.

LCAAP is located in Independence, Missouri. The U.S. Department of the Army (the licensee) is the holder of NRC Materials License SUC–1380, which covers a number of facilities including LCAAP. LCAAP is a facility that was used for the production and testing of munitions containing depleted uranium (DU). LCAAP, in addition to being included in NRC's SDMP, is also included in the U.S. Environmental Protection Agency's (EPA's) Superfund Program, the National Contingency Plan.

The licensee recently completed remediation of both the LCAAP 600-Yard Bullet Catcher and the DU contaminated portion of Building 3A. Remediation of the remaining DU contaminated areas will not be completed for a number of years because of both Resource Conservation and Recovery Act related issues and the continuing use of the LCAAP firing range. EPA, the Missouri Department of Natural Resources (MDNR), NRC, and the licensee agreed that DU remediation for the remaining portions of LCAAP could be regulated under the provisions of Comprehensive Environmental Response, Compensation, and Liability Act, the LCAAP Federal Facility Agreement, and Executive Order 12580. Both EPA and MDNR will provide regulatory oversight of the DU remediation during this period. NRC Material License SUC–1380 will continue to cover LCAAP until DU contamination is remediated. Once a determination is made that the remainder of the DU contamination has been remediated, NRC will review the documentation supporting that determination. In addition, NRC may perform a confirmatory survey. Once NRC agrees with that determination, NRC will remove LCAAP from NRC Materials License SUC–1380. Based on the agreement between the agencies and successful remediation of both the LCAAP 600-Yard Bullet Catcher and Building 3A, NRC has determined that LCAAP no longer requires the special attention associated with the SDMP. Therefore, LCAAP is being removed from the SDMP.

Dated at Rockville, Maryland, this 1st day of October 2001.

For the Nuclear Regulatory Commission.

Stewart Brown,

Facilities Decommissioning Section, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–25187 Filed 10–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1077 (which should be mentioned in all correspondence concerning this draft guide), is ''Guidelines for Environmental Qualification of Microprocessor-Based Equipment Important to Safety in Nuclear Power Plants.'' This draft guide is being developed to provide guidance to licensees and applicants on methods acceptable to the NRC staff for evaluating the environmental qualification procedures for microprocessor-based equipment that is important to safety for service in nuclear power plants.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by December 14, 2001.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *cag@nrc.gov.* For information about the draft guide and the related documents, contact Ms. C. Antonescu at (301)415–6792; e-mail *cea1@nrc.gov.*

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email *pdr@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *distribution@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and

Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25th day of September 2001.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 01–25188 Filed 10–5–01; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Request for Comments on an Outline for Discussion: Concepts for Postal Transformation

AGENCY: Postal Service.

ACTION: Request for comments.

SUMMARY: At the request of Congress and the Comptroller General, the Postal Service is preparing a comprehensive plan for the structural transformation of the postal system to meet the challenges of serving the American public through the remainder of this decade. The Comprehensive Transformation Plan will be presented to Congress and the General Accounting Office on December 31, 2001. As an interim step, the Postal Service has issued a paper entitled *An Outline for Discussion: Concepts for Postal Transformation.* This *Outline for Discussion* describes the framework and process that we are using to prepare the plan. We invite comments and suggestions from all interested parties to help us to complete a plan that serves the public interest and advances public engagement in shaping the future of America's postal system.

DATES: Comments must be received by November 1, 2001.

ADDRESSES: Those responding are encouraged to email their comments to *transformation@email.usps.gov.* Those wishing to send written comments should mail them to Julie S. Moore, Executive Director, Office of Transformation, Strategic Planning, Room 4011, United States Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC 20260–1520.

FOR FURTHER INFORMATION CONTACT: Paul Van Coverden (202) 268–8130.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2001, David M. Walker, Comptroller General of the United States, advised the House of Representatives Committee on Government Reform that the Postal Service ''faces major challenges that collectively call for a structural transformation if it is to remain viable in the 21st century.'' He called on the Postal Service, in conjunction with all stakeholders, to prepare a comprehensive plan identifying ''the actions needed to address the Service's financial, operational, and human capital challenges and establish a time frame and specify key milestones for achieving positive results.'' On April 24, 2001, Mr. Bernard L. Ungar, Director, Physical Infrastructure Issues, U.S. General Accounting Office, wrote to former Postmaster General William J. Henderson formally recommending that the Postal Service develop such a comprehensive plan. On June 14, 2001, following Mr. Walker's testimony before the Senate Committee on Governmental Affairs on May 15, 2001, the chair and ranking members of the committee and its Postal Oversight Subcommittee wrote to Postmaster General John E. Potter endorsing the Comptroller General's recommendation and asking for the plan by the end of calendar year 2001. On July 25, 2001, Postmaster General Potter advised Congress that the Postal Service agreed to prepare a Comprehensive Transformation Plan, as requested.

Outline for Discussion: Concepts for Postal Transformation

As an interim step in the process, on September 30, 2001, the Postal Service provided to Congress and the Comptroller General a paper entitled *Outline for Discussion: Concepts for Postal Transformation.* This paper is available on the Postal Service's public Web site at *www.usps.com/strategicdirection* or at *www.usps.com* keyword: transformation. The *Outline for Discussion* describes in greater detail the background and purpose of the Comprehensive Transformation Plan and the process that the Postal Service is using to develop the plan, including extensive outreach to interested stakeholders. After preliminary, informal discussion with many of those who have taken part in the public debate over postal reform in recent years, the *Outline for Discussion* frames the guiding question on the table as follows: *To best serve the needs of the American people and the American economy in the 21st century, what should America's postal system look like (or transform to) by year 2010?*

The *Outline for Discussion* describes the fundamental obstacle faced by the current postal system that is a clash between service and economics. As a nation, how can we best structure our postal system in the years ahead so that we pay what we are willing to pay for as much service as we can get?

The Postal Service has a mission to serve every address in a growing nation. Its networks, with associated costs, are constantly expanding to accommodate new deliveries, adding new facilities and delivery routes roughly equivalent to those for a city the size of Chicago, year after year. Until recently, during a long period of strong economic expansion in the United States, the Postal Service benefited from growing mail volumes, with increasing postage revenue sufficient to pay for the expanding network, and kept postage rates in line with inflation. Over the past year, though, as the economy has slowed, mail volume and revenue have also suffered. The Postal Service has improved its productivity during this period at an unprecedented rate, but lacks many of the tools that private businesses have to deal with financial setbacks. In particular, its service responsibilities prevent abandoning unprofitable locations or new addresses.

To break even, the Postal Service currently must earn, on average, about $1.85 per delivery address every day to cover the entire cost of the postal system. The *Outline for Discussion* explains that this figure may well rise by one third to $2.46 by 2010. If the robust pattern of mail volume growth in past years should return, then this may not be a problem. But changes in competition and technology suggest that, while a system for delivery of hard-copy mail will still be important, the volume of mail in the system may not grow enough in the future to keep pace with the growth in infrastructure required to serve an ever-growing number of addresses.

By all indications, success in 21st century markets will belong to those nimble enough to adjust rapidly and continuously, to keep pace with advancing technology and changes in business methods and customer demand. Yet the Postal Service today is organized under an aging statutory framework designed to favor and protect the status quo and to route all change through slow, deliberative processes seeking a high level of consensus among disparate interests.

Solicitation of Comments

The United States Postal Service solicits comments on the *Outline for Discussion* that is posted on the Postal Service's Strategic Direction web page at: *www.usps.com/strategicdirection* or at *www.usps.com* keyword: transformation.

Comments would be welcome on the following core question:

- *To best serve the needs of the American people and the American*

economy in the 21st century, what should America's postal system be like (or transform to) in the next decade?

Reponses to the following specific questions would also be appreciated:

• *Should that system provide ''universal service'' and what should that entail?*

Traditional concepts of universal service in the United States have included a number of characteristics including delivery scope and standards, access to Post Offices, uniform pricing, product offerings, and security services. Should all of these features continue to be a part of postal services? For example, should the Postal Service deliver to every neighborhood every day? Should delivery frequency be reduced for low mail volume neighborhoods? Should retail service to nearly 40,000 outlets continue? Should alternative delivery methods be encouraged?

• *What should the ''core'' services of the future Postal Service be?*

Some observers such as the Comptroller General have challenged the Postal Service to define its core service more rigorously. What comparative advantages does the publicly owned Postal Service (versus other providers) bring to the mailing industry? What services should be left to the marketplace and to private competitors, and what services should be provided by the national postal system?

• *How should the nation structure a future postal system to be as productive and efficient as possible and while ensuring that consumers pay only what they wish to pay for as much service as they can afford?*

The design of the operations of the future postal network has many variables. Often improvement in productivity and efficiency through cost-cutting can come at a cost to improved service. Which values are most important? Should maintenance of affordable pricing be more important than improving service? Or the reverse? What level of productivity and efficiency will guarantee that the cost of postal services is low but that service remains high? Should there be more rigorous automation standards as there are in other countries? What should the characteristics of the future postal operations network be?

• *Can the Postal Service continue to provide universal service under the current financial arrangements if volume slows or declines significantly? Are there other financing mechanisms needed?*

The critical threat to the current economic model is thought by many observers to be connected to volume decline. How should the Postal Service seek to finance its operations in the event that volume does decline? Should the future Postal Service seek support through the appropriation of tax revenues? Should the universal services be narrowed? Are there other financing mechanisms that should be explored even without potential volume declines? Should the Postal Service be granted more freedom in financing investments?

• *What steps should be taken today to anticipate the human capital requirements of the future postal system in a manner that embodies core values of respect, dignity, and diversity while providing incentives to encourage continuous service improvement?*

How should the balance be struck between individual values and improving the efficiency of the postal system? Is there a trade-off today? What investments should be made in attracting, training, managing, and providing incentives to people to build the future postal system? Should incentives be tied to performance? Is the collective bargaining process, as it is structured today, going to serve the needs of the future Postal Service? Should salary caps be removed? Where should the priorities be?

• *Is it possible to design a government postal system in the United States that operates more commercially and still serves important social objectives including universal coverage?*

How might the Postal Service offer competitive products? If the private sector is offering similar services, should the publicly owned Postal Service enter markets where it would compete with the private providers? There are both advantages and disadvantages for a public agency offering services in competitive markets. Is the playing field uneven in favor of the public- or private-sector service provider?

• *How would a privately owned postal entity or entities perform against public expectations for postal services? Are there other models that may do a better job for the American people?*

A number of key postal policy voices in recent years have called for the privatization of the Postal Service. Is this desirable? Would a corporatized Postal Service be able to be more productive? To provide better service? To grow the mailing business for the postal industry? Or are there other models of fundamental structural reform that should be considered? Should the postal system be franchised out to private-sector providers? Should fundamental structural reform retain the continuity of the infrastructure that exists today?

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–25278 Filed 10–3–01; 2:29 pm]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal

(1) *Collection title*: Report of Medicaid State Office on Beneficiary's Buy-In Status.

(2) *Form(s) submitted*: RL–380–F.

(3) *OMB Number*: 3220–0185.

(4) *Expiration date of current OMB clearance*: 12/31/2001.

(5) *Type of request*: Extension of a currently approved collection.

(6) *Respondents*: State, Local or Tribal government.

(7) *Estimated annual number of respondents*: 600.

(8) *Total annual responses*: 600.

(9) *Total annual reporting hours*: 100.

(10) *Collection description*: Under the Railroad Retirement Act, the Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 01–25196 Filed 10–5–01; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44890; File No. SR–Amex–2001–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the American Stock Exchange LLC Relating to the Temporary Amendment of Exchange Rule 220

October 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 1, 2001, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On October 1, 2001, the Amex file Amendment No. 1 to the proposed rule change.[3] On October 1, 2001, the Amex filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, has been filed by the Amex as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[5] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 220 on a ten business-day pilot basis to permit members to use personal cellular telephones on a temporary basis so long as service is limited on Exchange provided telephones as a result of damage sustained to the Exchange due to the attacks on the World Trade Center on September 11, 2001.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange completely replaced the original proposed rule change it filed with the Commission.

[4] In Amendment No. 2, the Exchange clarified the procedures under Rule 220T when a Floor broker receives incoming calls on his or her cellular telephone and the caller wishes to give an order, as opposed to when a Floor broker initiates an outgoing call on his or her cellular telephone. *See infra* note 5.

[5] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's telecommunications facilities, along with those of virtually every business enterprise in the western half of downtown New York, sustained serious damage as the result of the attacks on the World Trade Center on September 11, 2001. Amex staff is working diligently with their primary telecommunications services providers and their members firms to restore these facilities to full operational status on Monday, October 1, 2001, when the Amex anticipates that trading will resume on the Exchange's Trading Floor at 86 Trinity Place. It is likely, however, that the repairs will not be fully completed, and full telephone communication for all of our Floor members will not be restored, by the open on October 1. The Exchange, accordingly, is seeking to suspend on a ten-business-day, pilot-program basis the current prohibition in Amex Rule 220 on the use by members (*i.e.,* specialists, registered traders, and Floor brokers) of personal cellular telephones in the event that service is limited on the Exchange's telephone system when trading resumes on the Amex. The use by members of personal cellular telephones would be subject to the following conditions:

- A member must have (1) tested his or her Exchange provided telephones and found significant limitations on service, and (2) furnished a written statement to the Exchange to that effect;
- A member may not use a personal cellular telephone once full service is restored to the member's or member organization's Exchange telephone systems;
- A member must maintain his or her cellular telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records;
- A Floor broker may only receive orders at the trading post during outgoing calls initiated by the broker;[6] and
- Except as provided in Rule 220T, all other requirements applicable to the use of Exchange provided telephones by members shall apply to the use by members of personal cellular telephones.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change, as amended, is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

[6] *See supra* note 4. If a broker were to receive an incoming call on his or her cellular telephone, and the caller wished to give the broker an order for a security traded at the post where the broker was standing, the broker would have to step-out of the crowd prior to accepting the order. In contrast, if a broker were to receive an incoming call on his or her cellular telephone, and the caller wished to give the broker an order for a security traded at some other location on the Floor, the broker would not be required to leave the crowd where he or she was standing in order to receive the order. The proposed rule also would permit a broker to initiate an outgoing call on a cellular telephone and (1) accept an order for a security traded at the post where he or she was standing without leaving the trading crowd, or (2) accept an order for a security traded at some other location on the Floor.

[7] The rules of the Exchange continue to prohibit individuals who are not properly qualified to take public orders for securities (*i.e.,* non-Series 7 member or member firm employees) from interacting with the public. Surveillance of such telephone usage will be accomplished through the record-maintenance requirements of Rule 220T, which requires members to maintain cellular telephone records for at least one year and give the Exchange the authority to inspect such records. Telephone Conversation between William Floyd-Jones, Assistant General Counsel, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission (October 1, 2001).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the production of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally requires that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change; however, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time period. The Amex seeks to have the Commission waive the five-day notice. The Commission finds good cause to waive the five-day notice because the Exchange's staff discussed with Commission staff the possibility of permitting members to use personal cellular on a temporary basis prior to filing this proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex seeks to have the proposed rule change, as amended, become operative immediately. The Commission notes that the proposed rule change, as amended, is a direct result of exigencies created by the September 11, 2001 attacks on the World Trade Center; as such, the Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of October 1, 2001.[12]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–2001–82 and should be submitted by October 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–25128 Filed 10–5–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44891; File No. SR–CBOE–2001–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Extension of the Rapid Opening System Pilot Program

October 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for one year the pilot program established in Rule 6.2A, Rapid Opening System, which governs the operation of, and the eligibility to participate in, the Exchange's Rapid Opening System (''ROS pilot''). The text of the proposed rule change follows. Deleted text is bracketed. New text is italicized.

Rapid Opening System

Rule 6.2A

(a)–(c) No change.

(d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until [September 30, 2001] *September 30, 2002* on a pilot basis.

Interpretations and Policies

.01–.02 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the ROS pilot program for one year or until such time as the Commission has approved ROS on a permanent basis, whichever occurs first.[3] The ROS pilot is currently set to expire on September 30, 2001.[4] ROS is a system developed by the Exchange to open an entire options class, all series, as a single event, based on a single underlying value. ROS provides the Exchange the ability to automate the opening of its various option classes, thereby avoiding the lengthier opening rotations that can occur under circumstances when there is a large influx of orders entered before or during the opening rotation.

The Exchange believes that ROS has operated successfully over the past two and one-half years and without any problems. On that basis, the Exchange believes that a one-year extension of the ROS pilot is warranted. The extension of the pilot period will allow the Exchange to continue to provide the substantial benefits of ROS while the Exchange prepares its proposal for permanent approval of ROS.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[7] and Rule 19b–4(f)(6)[8] thereunder, because the proposal: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative prior to 30 days after the date of the filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b–4(f)(6).[9]

As stated above, a proposed rule change filed under rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative no later than September 30, 2001. The immediate effectiveness of the proposed rule change will allow ROS pilot to continue in effect without interruption.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons.[12] First, the proposed rule change merely extends the expiration date of the ROS pilot from September 30, 2001, to September 30, 2002. Second, an extension would allow the Exchange to continue to offer ROS without interruption, while the Exchange prepares its proposal seeking permanent approval of the ROS pilot. And lastly, the ROS pilot was the subject of prior notice and comment when it was first proposed.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change becomes operative immediately upon the date of filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2001–52 and should be submitted by October 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–25127 Filed 10–5–01; 8:45 am]

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[3] The Exchange is only requesting an extension of the ROS pilot in this filing. The Exchange is currently preparing a separate proposal for permanent approval of ROS.

[4] The Commission initially approved the ROS pilot on February 9, 1999. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The Commission subsequently extended the ROS pilot. *See* Securities Exchange Act Release No. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000); and Securities Exchange Act Release No. 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000).

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(13).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44894; File No. SR–MSRB–2001–06)

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

October 2, 2001.

On August 17, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] a proposed rule change to establish an informational service relating to the reports of sales and purchases provided by Rule G–14. The proposed rule change will create a Daily Comprehensive Report from transaction information supplied under Rule G–14.

The proposed rule change was published for the comment in the **Federal Register** on August 31, 2001.[3] The Commission received no comments on the proposal. This order approves the proposal.

In its current form, Rule G–14 requires dealers to report essentially all inter-dealer and customer transactions in municipal securities to the MSRB by midnight of the trade date. In May 2001, the MSRB announced its plan to begin reporting trades in ''real time'' by mid-2003.[4] The dissemination of a Daily Comprehensive Report is the MSRB's next step towards an increase in market transparency.

The MSRB's proposed Daily Comprehensive Report is comprised of the information reported by brokers, dealers and municipal securities dealers, which provides a detailed report of municipal securities transactions effected during a single day. The trade data supplied in the proposed Daily Comprehensive Report shall be similar to that currently supplied in the monthly Comprehensive Transaction Report except that the information is to be available daily. For each trade, the proposed Daily Comprehensive Report will show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and, if any, the dealer-reported yield of the transaction. Each transaction shall be categorized as: a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade. Each day's report shall include the transactions effected two weeks previously. The proposed Daily Comprehensive Report is to be available through a subscription service with electronic delivery by File Transfer Protocol (FTP) via the Internet.

The MSRB shall establish an annual subscription fee for access to the Daily Comprehensive Report in the amount of $2,000. The proposed annual fee is structured approximately to defray the Board's costs for production of daily data sets, operation of telecommunication lines, and subscription maintenance.[5] Prior to formalizing a subscription, MSRB shall make a single day's transactional data available to prospective users without charge, so that they may determine whether they wish to subscribe.

The Commission believes the proposed rule change to Rule G–14 is consistent with the protection of investors and the public interest on account that it facilitates the MSRB's long-standing policy to increase price transparency in the municipal securities market. Both MSRB and the Commission believe the proposed Daily Comprehensive Report provides a mechanism to disseminate comprehensive and contemporaneous pricing data with the intent to promote just and equitable principles of trade and foster an open market in municipal securities. Additionally, the Commission believes that the proposed rule change will not impose any burden on competition, since it equally applies to all brokers, dealers and municipal securities dealers.

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that govern the MSRB.[6] The Commission finds that the proposed rule change meets this standard. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act,[7] which requires, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. MSRB–2001–06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–25238 Filed 10–5–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–44735 (August 22, 2001), 66 FR 46045.

[4] *See* ''Real-Time Reporting of Municipal Securities Transactions,'' *MSRB Reports,* Vol. 21, No. 2 (July 2001) at 31–36.

[5] The subscription fee for the current monthly report is also $2,000 annually. Subscribers to the monthly report who prefer the fresher data of the proposed Daily Comprehensive Report will have the option to switch subscriptions to the latter.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–4(b)(2)(C).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44893; File No. SR–Phlx–2001–85]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Elimination of Equity Option Transaction Charges for Facilitation Transactions

October 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees, and charges to eliminate its equity option transaction

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

charges for certain off-floor member organizations engaging in facilitation transactions.[3] Facilitation transactions by off-floor member firms designated as ''firm/proprietary''[4] for purposes of the Summary of Equity Option Charges portion of the Exchange's schedule of dues, fees, and charges,[5] would not be subject to the Equity Option Transaction Charge.

The equity option transaction charge will continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently imposes a transaction charge on equity options transactions executed on the Exchange. The charges vary depending on whether the transaction involves a member organization,[7] Registered Options Trader (''ROT''), or specialist. Previously, equity option transaction charges were also imposed on customer executions, but on August 31, 2000, the Exchange eliminated all equity option transaction charges for customer executions.[8] Other exchanges also eliminated similar customer equity option fees.[9]

The Exchange believes that the elimination of the equity option transaction charge[10] in facilitation transactions by off-floor member firms designated as ''firm/proprietary'' would encourage member firms engaging in facilitation transactions to send such orders to the Exchange, thereby adding order flow to and increasing liquidity on the Exchange.

The Exchange believes that, absent the equity option transaction charge, member firms would be more inclined to facilitate customer orders on the Exchange, thereby attracting additional order flow and promoting a more liquid market.

The equity option transaction charge will continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4)[12] and 6(b)(5),[13] in particular, in that the Exchange believes that proposed rule change is designed to perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, to promote just and equitable principles of trade, and to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other Exchange participants.[14] The Exchange believes that the proposed elimination of the equity option transactions by off-floor member firms designated as ''firm/proprietary'' should foster liquidity in the Exchange's markets, and enable the Exchange to remain competitive as a marketplace by attracting additional order flow in options traded on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder. At any time within 60 days of August 31, 2001, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[3] A facilitation transaction occurs when a Floor Broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. A Floor Broker engaging in a facilitation transaction must announce that he/she holds an order subject to facilitation prior to the execution, and must market the floor ticket for the public customer's order with the legible ''F.'' *See* Exchange Rule 1064(b).

[4] A ''firm/proprietary'' transaction charge applies to orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its revenues from commissions and principal transactions with customers. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

[5] Equity Option Charges are comprised of the Option Comparison Charge, Option Transaction Charge, Option Floor Brokerage Assessment and the Floor Brokerage Transaction Fee.

[6] For example, lists and trades options overlying the Nasdaq-100 Index Tracking Stock℠ (''QQQ℠''). The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Frank N. Genco, Attorney Advisor, Division of Market Regulation, Commission, September 26, 2001 (''Telephone conversation with Phlx, September 26, 2001'').

[8] *See* Securities Exchange Act Release No. 43343 (September 26, 2000), 65 FR 59243 (October 4, 2000).

[9] *See* Securities Exchange Act Release Nos. 42676 (April 13, 2000), 65 FR 21223 (April 20, 2000); 42850 (May 30, 2000), 65 FR 36187 (June 7, 2000); and 43115 (August 3, 2000), 65 FR 49280 (August 11, 2000). *See also* Securities Exchange Act Release No. 43020 (July 10, 2000), 65 FR 44558 (July 18, 2000).

[10] The current charge applicable to accounts designated as ''firm/proprietary'' for transactions in equity options is $.08 per contract.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

[14] Telephone conversation with Phlx, September 26, 2001.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–85 and should be submitted by October 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–25239 Filed 10–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44892; File No. SR–Phlx–2001–83)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Credits for Options Specialist Shortfall Fees

October 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2001, the Phildelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx currently imposes a ''shortfall fee'' of $0.35 per contract upon a specialist in a ''Top 120 Option'' for each contract in which trading on the Exchange for a month's time period falls below 10% of the total monthly contract volume in that option nationwide (''10% volume threshold'').[3] The Exchange proposes to amend its schedule of dues, fees, and charges to provide for an options specialist to earn a credit of $0.35 per contract toward previously imposed ''shortfall fees'' in eligible issues for each contract traded in excess of the 10% volume threshold during a subsequent monthly time period commencing September 1, 2001. Such a credit may be applied against shortfall fees imposed within the preceding six months for the same issue, provided that, in the month the deficit occurred, the issue traded in excess of ten million contracts nationwide.[4]

Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

OPTIONS SPECIALIST 10% DEFICIT (Shortfall) FEE CREDIT

A credit of $0.35 per contract may be earned by options specialists for all contracts traded in excess of the 10% volume threshold in eligible issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed ''shortfall fees'' for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide a credit earning opportunity, under specified circumstances, for options specialists in Top 120 Options when trading in their issues falls below the 10% volume threshold in one month, and exceeds the threshold in a subsequent month.

This proposal recognizes the difficulty in attracting order flow in an intensely competitive trading environment and provides further incentive to maximize performance in attracting order flow in such issues to the Exchange. Credits may be earned offsetting previously imposed shortfall fees only to the extend they may be owed, due, or paid within the previous six months, and solely in eligible issues.[5]

While the proposed credit is potentially a zero sum financial measure for the eligible issues over the previous six month period, the Phlx believes that it is important to recognize that it will be perceived as a more competitive factor in the marketplace, as the performance in excess of the 10% volume threshold reflects positively on the abilities of the Exchange, its option specialists, and registered options traders to compete for and draw order flow.

The Exchange believes it is necessary to continue to attract order flow to the Exchange in order to remain competitive. The Phlx believes that the proposed credit earning opportunity should further encourage options specialists to vigorously compete for order flow, which not only enhances the specialist's role, but also provides potential additional revenues to the Exchange. Moreover, the Exchange expects the specialists efforts to exceed the 10% volume threshold should contribute the deeper, more liquid markets and tighter spreads, thereby enhancing competition and important auction market principles.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,[6] in general, and furthers the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 56363 (August 29, 2000). A Top 120 Option is defined as an option that was one of the top 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month and which was listed after January 1, 1997.

[4] Nationwide trading figures are based on the national monthly contract volume reflected by the Options Clearing Corporation. Telephone conversation between Murray L. Ross, Secretary, Phlx, and Frank N. Genco, Attorney Advisor, Division of Market Regulation (''Division''), Commission, September 28, 2001.

[5] Telephone conversation between Murray L. Ross, Secretary, Phlx; and Ira L. Brandriss, Special Counsel, Division, Commission, and Frank N. Genco, Attorney Advisor, Division, Commission, September 21, 2001.

[6] 15 U.S.C. 78f.

objectives of Sections 6(b)(4)[7] and 6(b)(5),[8] in particular, in that the Exchange believes that the proposed rule change is an equitable allocation of reasonable fees among the Exchange's members, as the amount credited is solely against previously imposed fees in a particular issue meeting certain eligibility criteria. The Phlx also believes that the credit is intended to promote just and equitable principles of trade and protect investors and the public interest by attracting more order flow to the Exchange, which should result in increased liquidity and tighter markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Reviewed From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder. At any time within 60 days of August 31, 2001, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–83 and should be submitted by October 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–25240 Filed 10–5–01; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request and Emergency Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. National Study of Health and Activity (NSHA)—0960–0609. The Social Security Administration is sponsoring the NSHA to serve as the cornerstone of SSA's future disability policy development and research agenda. NSHA is a national disability study that consists of gathering information from interviews, medical examinations and medical records to be used to make simulated Disability Determination Service disability decisions. A pilot study was conducted in 2000 and revisions were made to the study instruments and procedures based on the analysis of the pilot data. To test the usability of the revisions, a pretest of the survey instruments and procedures is necessary prior to beginning the main study.

This pretest will be conducted on volunteers obtained from SSA disability rolls and nondisabled individuals recruited from the community. Pretesting activities will encompass all components of the study including screening, interviewing, medical examinations, collection of medical records, and assembling a folder of all data for the study's simulated disability decision process. A major goal of the proposed pretest is to improve the content of the disability determination folder. Once the results from this pretest are available, the NSHA instruments and procedures will be further refined for the dress rehearsal and main study.

SSA will screen up to 400 individuals to obtain 140 volunteers to participate in activities (2) through (5) below. SSA will contact approximately 420 health care providers to obtain the medical records of the volunteers (item (6) below). The public reporting burden is as follows:

Information Collection Activity	Number of respondents	Frequency of response	Average hours per response	Estimated annual burden
(1) Recruitment screening	400	1	.17	68
(2) Household screener	140	1	.33	46

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

Information Collection Activity	Number of respondents	Frequency of response	Average hours per response	Estimated annual burden
(3) Sample person interview	140	1	1.5	210
(4) Respondent medical exam information	140	1	2	280
(5) Comments on pretest materials	140	1	.25	35
(6) Collecting medical evidence of record from healthcare provider	420	1	.5	210
Total				849

2. Request for Hearing—0960–0269. The information collected on Form HA–501 is used by the Social Security Administration (SSA) to process a request for hearing on an unfavorable determination of entitlement or eligibility for benefits administered by SSA. The respondents are individuals whose claims for benefits are denied and who request a hearing on the denial.

Number of Respondents: 556,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 92,667 hours.

3. Request for Review of Hearing Decision/Order—0960–0277. The information collected on form HA–520 is needed to afford claimants their statutory right under the Social Security Act to request review of a hearing decision. The data will be used to determine the course of action appropriate to resolve each issue. The respondents are claimants denied or dissatisfied with a decision made regarding their claim.

Number of Respondents: 80,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 13,333 hours.

4. Disability Determination And Transmittal—0960–0437. The information collected on Form SSA–831-U3/C3 is used by SSA to document the State agency determination as to whether an individual who applies for disability benefits is eligible for those benefits based on his/her alleged disability. SSA also uses the form for program management and evaluation. The respondents are State Disability Determination Services (DDS) adjudicating Title II and Title XVI Disability claims.

Number of Respondents: 2,860,859.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 715,215 hours.

Cessation or Continuance of Disability or Blindness Determination—0960–0443. The information on Form SSA–832–U3/C3 is used by SSA to document determinations as to whether an individual's disability benefits should be terminated or continued on the basis of his/her impairment. The respondents are State DDS employees adjudicating Title XVI Disability claims.

Number of Respondents: 600,758.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 300,379 hours.

5. Cessation Or Continuance Of Disability Or Blindness Determination And Transmittal—0960–0442. The information on Form SSA–833-U3/C3 is used by SSA to make determinations of whether individuals receiving title II disability benefits should continue to be unable to engage in substantial gainful activity and are still eligible to receive benefits. The respondents are State DDS employees.

Number of Respondents: 466,124.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 233,062 hours.

6. Modified Benefit Formula Questionnaire—0960–0395. The information collected on Form SSA–150 is needed by SSA to determine the correct formula to use in computing Social Security benefits for someone who also receives benefits from employment not covered by Social Security. The respondents consist of claimants for Social Security benefits who are also entitled to benefits not covered by Social Security.

Number of Respondents: 90,000.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Average Burden: 12,000 hours.

II. Agency Information Collection Activities: Emergency Consideration Request SSA is requesting emergency consideration under 20 CFR 1320.13 (a) (2) (iii) from OMB by October 25, 2001, of the information collections listed below.

1. State Agency Ticket Assignment Form, SSA–1365, State Vocational Rehabilitation Ticket to Work Information Sheet, SSA–1366 and Individual Work Plans (IWP) Information Sheet, SSA–1367–0960–NEW.

Background

Public Law (Pub. L.) 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, creates a new Ticket to Work (TTW) program for providing work access services to SSA beneficiaries. The new program requires SSA to monitor the services provided under the Law. SSA has developed three data collection forms that request service provider and beneficiary information that is essential to SSA's administration of this new program. Employment networks (ENs) providing TTW services under contracts with SSA are required to submit to SSA the information listed in form SSA–1367. State vocational rehabilitation agencies (VRAs) that provide services to SSA beneficiaries under either the traditional VR reimbursement mechanism or the new Ticket to Work program are required to submit to SSA the information listed in forms SSA–1365 and SSA–1366. SSA does not require that ENs or VRAs use forms SSA–1366 and SSA–1367 *per se,* but does require that any alternative forms submitted in place of these SSA forms include the SSA listed information at a minimum. VRAs are required to submit from SSA–1365 in all cases as a means of assigning Tickets to VRAs.

a. State Agency Ticket Assignment Form-SSA–1365. The information collected on this form will be used by SSA's contracted Program Manager (PM) to perform the task of assigning beneficiaries' tickets and monitoring the use of tickets under the Ticket to Work and Self-Sufficiency Program. The State VRA answers the questions and the beneficiary reviews the data and if in agreement will sign the form acknowledging their Ticket assignment.

The respondents are State VR agencies.

Number of Respondents: 21.

Frequency of Response: 4,048 annually per respondent.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 4,250 hours.

b. State Vocational Rehabilitation Ticket to Work Information Sheet-SSA–1366. The information collected on Form SSA–1366 will be used by SSA's contracted PM when a State VRA elects to participate in the Program as an EN. In this case, form SSA–1366, when combined with the SSA–1365, is intended to meet the minimum information requirements for IWPs and to monitor the appropriateness of the IWPs as required under the Pub. L. 106–107. The respondents are VRAs acting as ENs under the Ticket to Work Program.

Number of Respondents: 21.

Frequency of Response: 132 annually per respondent.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 92 hours.

Please Note: The Ticket to Work Program is being implemented in stages. The above represents the initial phase of the program with 13 participating states that include 21 State VR agencies. As the program continues to be phased in, each initial program year will result in a larger number of new tickets for the participating State VRs because existing clients will also be brought into the program.

c. Individual Work Plans (IWP) Information Sheet-SSA–1367. The information collected on Form SSA–1367 will be used to monitor the appropriateness of IWPs that have been assigned to ENs under the Ticket To Work Act. The respondents are ENs under the ticket to work program.

Number of Respondents: 31,450.

Frequency of Response: 1 annually per respondent.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 1,573 hours.

Dated: Octobert 2, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01–25303 Filed 10–5–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3807]

Universal Postal Union Reform Initiatives

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Tuesday, November 6, 2001, to provide an update on reform initiatives at the Universal Postal Union (UPU).

The briefing will be held from 2 p.m. until approximately 4 p.m., on November 6, in Room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

The briefing will provide information on the results of the proposals of the High-Level Group on the Future Development of the UPU, and the consideration of those proposals by the UPU Council of Administration. Information will also be provided about a current study of the remail provisions of Article 43 of the UPU Convention and other significant UPU-related issues. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should, no later than noon on November 5, 2001, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–1044. This request applies to both government and non-government individuals.

All attendees must use the main entrance of the Department of State at 22nd and C Streets, NW. Please note that under current security restrictions, C Street is closed to vehicular traffic between 21st and 23rd Streets. Taxis may leave passengers at 21st and C Streets, 23rd and C Streets, or 22nd Street and Constitution Avenue. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647–1044 or via email at *boyerna@state.gov.*

Dated: September 28, 2001.

Margaret C. Jones,

Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 01–25274 Filed 10–5–01; 8:45 am]

BILLING CODE 4710–19–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–239]

WTO Dispute Settlement Proceeding Brought by Brazil Pertaining to Certain Measures Regarding Antidumping Methodology

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on September 21, 2001, the United States received from Brazil a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) pertaining to certain measures regarding antidumping methodology as applied by the U.S. Department of Commerce (DOC). Brazil alleges that:

- Current U.S. methodology pursuant to which the DOC applies a *de minimis* standard of 0.5 percent in ''sunset'' reviews is inconsistent with Articles 5, 11 and 18 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement, or ADA), insofar as these provisions allegedly require a 2 percent *de minimis* standard to be applied to both investigations and reviews; and
- The DOC's practice of ''zeroing'', when calculating the dumping margin, is disallowed under Articles 2 and 9 of the ADA, as interpreted in a prior case by a panel and the Appellate Body, in reviews as well as in investigations.

USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 20, 2001 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Brazil Antidumping Dispute. Telephone (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Katharine J. Mueller, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–0317.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C.

3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Brazil

Section 213 of the URAA (amending section 733(b)(3) of the Tariff Act of 1930) provides, in accordance with Article 5.8 of the ADA, that, for purposes of antidumping investigations, a dumping margin less than or equal to 2 percent is *de minimis*. However, § 351.106(c) of the DOC's regulation, 19 CFR 351.106(c), applies a 0.5 percent *de minimis* standard in the case of ''sunset'' reviews, which are conducted for purposes of determining whether an antidumping duty order should be revoked. Brazil claims that the DOC *de minimis* standard for reviews is inconsistent with the ADA because, according to Brazil, a 2 percent standard must be used in both investigations and reviews.

Brazil also argues that the United States practice of ''zeroing,'' according to which negative dumping margins are counted as ''zero'' in both investigations and reviews, is inconsistent with the principle of fair comparison set out in Article 2 of the ADA. Brazil points out that the panel in European Communities—Anti-Dumping on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, concluded that ''zeroing'' is inconsistent with the ADA, and that this finding was affirmed by the Appellate Body, WT/DS141/AB/R.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked, ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the pane; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–239, Brazil Antidumping Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 01–25277 Filed 10–5–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–78]

Petitions for Exemption; Summary of 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 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. 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.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchana—Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, 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 October 3, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No: FAA–2001–10637.

Petitioner: Fullerton Municipal Airport and Eagle Flight.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J.

Description of Relief Sought/Disposition: To permit Fullerton Municipal Airport and Eagle Flight to conduct local sightseeing flights at Fullerton Municipal Airport, Fullerton, California, for Eagle Flight 15 during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 09/27/2001, Exemption No. 7630

Docket No.: FAA–2001–9982.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR §25.785(b).

Description of Relief Sought/Disposition: To permit Cessna to equip Cessna Model 608 Sovereign airplanes that were manufactured before January 1, 2004, with multiple-occupancy side-facing seats that are not designed to include the general occupant protection requirements of §25.785(b).

Partial Grant, 09/07/2001, Exemption No. 7625

Docket No.: FAA–2001–10166.

Petitioner: Country Flying Education, Inc.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit CFR to conduct local sightseeing flights at Necedah Airport, Necadah, Wisconsin, for the annual Open House during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 09/27/2001, Exemption No. 7629

Docket No.: FAA–2001–10165.

Petitioner: North Jersey Chapter of the Ninety-Nines, Inc.

Section of 14 CFR Affected: 14 CFR 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit the Ninety-Nines to conduct local sightseeing flights in the vicinity of Lincoln Part, New Jersey, for its Pennies-a Pound event during October 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 09/27/2001, Exemption No. 7628

[FR Doc. 01–25297 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–77]

Petitions for Exemption; Summary of Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition 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 disposition of certain petitions previously received. The purpose of this notice is to improve the public 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 petitions or its final disposition.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, 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 October 3, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10597.

Petitioner: Oskaloosa AirCharter L.L.C.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Oakaloosa to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 09/19/2001, Exemption No. 7624

Docket No.: FAA–2001–9519 (previously Docket No. 581).

Petitioner: U.S. Air Force.

Section of 14 CFR Affected: 14 CFR 91.159.

Description of Relief Sought/ Disposition: To permit USAF to conduct hurricane reconnaissance flight without maintaining the appropriate cruising altitudes as prescribed by that section of 14 CFR that governs operations for flights conducted under visual flight rules.

Grant, 09/21/2001, Exemption No. 131I

Docket No.: FAA–2001–10450.

Petitioner: Historical Aviation Organization of Logan County.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit HAOLC to conduct local sightseeing flights at Bellefontaine Municipal Airport for Air Fest 2001 during September 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 09/21/2001, Exemption No. 7627

Docket No.: FAA–2001–10289 (previously Docket No. 27180).

Petitioner: EVA Airways Corporation.

Section of 14 CFR Affected: 14 CFR 61.77(a) and (b) and 63.23(a) and (b).

Description of Relief Sought/ Disposition: To permit the issuance of U.S. special purpose pilot authorizations and U.S. special purpose flight engineer certificates to airmen employed by EVA without those airmen meeting the requirements to hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation, provided the airmen hold appropriate certificates issued by Taiwan's Civil Aeronautics Administration.

Grant, 09/21/2001, Exemption No. 6689C

[FR Doc. 01–25298 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Georgetown County Airport, Georgetown, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. section 47153(c), notice is being given that the FAA is considering a request from the Georgetown County Airport Commission to waive the requirement that a 5.0-acre parcel of surplus property, located at the Georgetown County Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before November 8, 2001.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Anthony L. Cochran, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to A.J. Rigby, Chairman of the Georgetown County Airport commission at the following address: 302 Sundial Drive, P.O. Box 3757, Pawley's Island, SC 29585.

FOR FURTHER INFORMATION CONTACT: Anthony Cochran, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7144. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Georgetown County Airport Commission to release 5.0 acres of surplus property at the Georgetown County Airport. The property will be purchased to construct a manufacturing plant. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above

under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Georgetown County Airport Commission.

Issued in Atlanta, Georgia on September 25, 2001.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 01–25295 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The FAA will hold the meeting on October 24 and 25, 2001, from 8:00 a.m. to 5 p.m. each day.

ADDRESSES: FAA, Bessie Coleman Center, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: The ATSRAC will meet at the FAA headquarters in Washington, DC at the address shown under the ADDRESS heading in this notice. The meeting agenda will include the following topics:

- Enhanced Airworthiness Program for Airplane Systems (EAPAS) status report.
- ATSRAC Working Groups' coordination process.
- Status reports of ATSRAC Working Groups' activities.
- Status of previous ATSRAC recommendations.
- Engine manufacturer presentation on aircraft wiring.

The meeting is opened to the public, but attendance will be limited to the availability of meeting room space. The FAA will make the following services available if you request them by October 12, 2001:

- Teleconferencing.
- Sign and oral interpretation.
- A listening device.

Individuals using the teleconferencing service and calling from outside the Washington, DC metropolitan area will be responsible for paying long distance charges. To arrange for any of the above services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee at any time by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will be considered if time permits.

Issued in Washington, DC, on October 2, 2001.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. 01–25269 Filed 10–05–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held October 24–25, 2001, starting at 8:30 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; 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 195 meeting. The agenda will include:

- October 24:
- Opening Plenary Session (Welcome and Introductory Remarks, Acceptance of Agenda)
- Working Group 1, Aircraft Cockpit Weather Display
- Progress of Change 1 to DO–267
- Results of FAA Radar Weather Intensity Terms and Boundaries User's Meeting
- Ad Hoc Group: Review of Product Registry Guidance Draft Document
- Discussion of Flight Information Service (FIS) Registry of Products
- Continued Plenary Session (Review of Summary Minutes, Discussion of Change 1 structure to DO–267)
- October 25:
- Discussion of Notices to Airmen (NOTAMS) and Digital Automatic Terminal Information Service (D–ATIS) Product Definition
- Discussion of ICAO Meteorological Information Data Link Study Group Meeting
- Report from Working Group 1 Activities
- Report from Ad Hoc Group
- Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

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 September 27, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–25294 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bemidji/Beltrami County Airport, Bemidji, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bemidji/Beltrami County Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the

Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 8, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Philip C. Shealy, Airport Manager, Bemidji/Beltrami County Airport at the following address: 317 4th Street NW., Bemidji, MN 56601–3116. Air carriers and foreign air carriers may submit copies of written comments previously provided to Bemidji/Beltrami County Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, (612) 713–4350. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bemidji/Beltrami County Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 18, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by Bemidji/Beltrami County Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 15, 2002.

The following is a brief overview of the application.

PFC application number: 01–02–C–00–BJI.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2002.

Proposed charge expiration date: August 1, 2003.

Total estimated PFC revenue: $201,952.00.

Brief description of proposed projects: Acquire airport rescue and fire fighting vehicle; Improve terminal; Replace runway and taxiway lighting cables; Deer fence phase I; Expand auto parking lot; Improve boundary fence; Seal coat parking lot; Install terminal security; PFC Application, Rehabilitate apron; Update master plan; and Replace snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers and Commuters or Small Certificated Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bemidji/Beltrami County Airport.

Issued in Des Plaines, Illinois on September 26, 2001.

Barbara J. Jordan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 01–25296 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impacts Statement: Erie County, NY

AGENCY: Federal Highway Administration (FHWA), Buffalo-Fort Erie Public Bridge Authority.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the environmental impact statement for an earlier project entitled ''Rehabilitation or Reconstruction of the Peace Bridge U.S. Plaza and Connecting Roadways in the City of Buffalo, Erie County, New York'' will not be progressed. Instead, an environmental impact statement will be prepared for a new and expanded project entitled ''Capacity Improvements to the Peach Bridge, Plazas and Connecting Roadways in the Town of Fort Erie and City of Buffalo, Ontario Province—Canada and New York State—United States'' respectively.

FOR FURTHER INFORMATION CONTACT: Douglas P. Conlan, District Engineer, Federal Highway Administration, Leo O'Brien Federal Building 7th Floor, Albany, New York 12207, Telephone: (518) 431–4125 extension 225, or Brian O. Rowback, Regional Director, New York State Department of Transportation, 125 Main Street, Buffalo, New York 14203, Telephone: (716) 847–3238, or Clifford T. Elwood, Capital Projects Manager, Buffalo and Fort Erie Public Bridge Authority, Peace Bridge Plaza, Buffalo, New York 14213, Telephone: (716) 884–6752 extension 234.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation and Buffalo-Fort Erie Public Bridge Authority, will prepare an environmental impact statement (EIS) on a proposal for increasing capacity at the Peace Bridge crossing between the United States and Canada. The proposed improvements would include widening, building a second bridge or replacement of the existing Niagara River bridge, reconfiguration and/or reconstruction of toll and inspection plazas and re-alignment and/or reconstruction of connecting roadways. Improvements to the bridge are considered necessary to provide for existing and projected traffic demand. The plazas and connecting roadways require improvement because the current layout/locations cause operational conflicts between pedestrian, passenger car and tractor-trailer movements.

Alternatives under consideration include (1) taking no action; (2) widening the existing bridge; (3) building a second bridge on an alignment north or south of existing; (4) constructing bridge on new location. Each alternative would include plaza layout options and either re-aligned or new connecting roadways to the arterial system.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping process will be followed for this project. This process will include public and agency meetings to be scheduled for multiple locations. In addition, public hearings will be held. The draft EIS will be available for public and agency review and comment prior to these public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action can be directed to the FHWA at the address provided above.

(Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315, 23 CFR 771.123.

Issued on: September 20, 2001.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 01–25104 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Napa and Solano Counties, CA

AGENCY: Federal Highway Administration (FHWA); DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Napa and Solano Counties, California.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Wong, Acting Team Leader, Project Delivery Team, Federal Highway Administration, 980 9th Street, Sacramento, California 95814–2724, Telephone: (916) 498–5042.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) for a proposal to convert an existing two-lane conventional highway into a four-lane divided expressway from the intersection with state Route 29 south of the City of Napa (Napa County) to a point 0.3 kilometer (0.2 mile) west of Interstate 80 in the City of Fairfield (Solano County). The existing highway, State Route 12, is a major east-west link in the interregional road system of the northern Bay Area. The section of highway under consideration is 9.5 kilometers (5.9 miles) long.

FHWA considers it necessary to increase capacity of this highway to provide for existing and projected traffic demand. The existing facility currently operates at full capacity during commute hours and other high-demand hours. By the year 2025, peak period volume is expected to double.

Alternatives currently under consideration are: (1) taking no action; (2) construct a parallel alignment north of the existing roadway to be used for westbound traffic and correct the existing roadway alignment and use it for eastbound traffic; (3) construct a parallel alignment south of the existing roadway to be used for eastbound traffic and correct the existing roadway alignment and use it for westbound traffic; and (4) construct AN alignment that closely follows the existing alignment, with the additional roadway constructed to the north in some sections and the south in some sections, depending on the terrain. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies and to private organizations and citizens who have previously expressed or are known to be interested in this proposal. Public scoping meetings will be held in Napa County and in Solano County in October and November 2001. Public notice will be given of the time and place of the scoping meetings. After the draft EIS has been completed, a public hearing will be held. The draft EIS will be available for public and agency review before the public hearing, and public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action is addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 20, 2001.

Dennis A. Scovill,

Team Leader, Planning, Finance, Environment, and Right-of-Way, Sacramento, California.

[FR Doc. 01–25109 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Tucker County, WV

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Revised notice of intent.

SUMMARY: On May 2, 2000, the FHWA issued an NOI to advise the public that a Supplemental Environmental Impact Statement (SEIS) would be prepared for the Blackwater Avoidance area of the Thomas-to-Davis portion of the Parsons-to-Davis project of the proposed Appalachian Corridor H highway in Tucker County, West Virginia. This purpose of this revised NOI is to advise the public that the limits of the study area for the SEIS will be expanded to include the entire Parsons-to-Davis project. Expansion of the study area is required due to new information obtained during Endangered Species Act, Section 7 consultation regarding a federally listed, endangered species; the Northern Flying Squirrel (Glaucomys sabrinus fuscus).

FOR FURTHER INFORMATION CONTACT: Henry E. Compton, Division Environmental Coordinator, Federal Highway Administration, West Virginia Division, Geary Plaza, Suite 200, 700 Washington Street East, Charleston, West Virginia, 25301, Telephone: (304) 347–5268

SUPPLEMENTARY INFORMATION: In accordance with a court approved settlement agreement, the FHWA published an NOI on May 2, 2000, that indicated the FHWA, in cooperation with the West Virginia Department of Transportation (WVDOT), would prepare an SEIS to examine one or more potential alignment shifts for the Thomas-to-Davis portion of the Parsons-to-Davis project of the proposed Appalachian Corridor H highway in Tucker County, West Virginia. A Record of Decision (ROD) for the entire Appalachian Corridor H highway (FHWA–WV–EIS–92–01–F) from Aggregates to the WV/VA state line, a distance of approximately 100 miles, was approved on August 2, 1996.

During Endangered Species Act, Section 7 consultation with the United States Fish and Wildlife Service, populations of the federally listed, endangered, Northern Flying Squirrel (Glaucomys sabrinus fuscus) were found within the current study limits of the Parsons-to-Davis project. Due to this discovery, it was determined that in order to review a full range of potential alignments that may avoid the newly discovered populations, the study limits of the SEIS must be expanded to include the entire Parsons-to-Davis project.

The proposed Parsons-to-Davis project will provide a divided four-lane, partially controlled access highway on new location for a distance of approximately 9 miles. The purpose of this project is to provide safe and efficient travel between population centers in Tucker County (Parsons Area and Thomas/Davis Area), while also contributing to the completion of Corridor H in West Virginia.

Alternates under consideration in the SEIS will be: (1) The no-action alternative, (2) the preferred alternative that was approved in the 1996 ROD, and (2) one or more alternatives that avoid the Blackwater Area, as identified in Exhibit 4 of the court approved Corridor H Settlement Agreement. Based on

preliminary studies, it is expected that the avoidance alternatives considered in the SEIS will include one or more alignments that would shift the project to the north, resulting in additional connections to US 219, WV Route 32, and WV Route 93 in the vicinity of the towns of Thomas and Davis.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in this proposal.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 27, 2001.

Henry E. Compton,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 01–25112 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Finger Lakes Railway Corporation

[Docket Number FRA–2001–10215]

The Finger Lakes Railway Corporation seeks a waiver of compliance from the requirements of the Safety Glazing Standards-Passenger Car, 49 CFR 223.15, which requires all windows be FRA certified Glazing and a minimum of four emergency windows. The petitioner requests the waiver for four cars recently purchased from Via Rail Canada, Inc. The coaches were built between 1954 and 1956, and were equipped with tempered glazing which met the Canadian glazing requirements. The coaches would be utilized in charter service in the rural Finger Lakes Region of New York State. Finger Lakes Railway Corporation anticipates the charter trips to be 15 to 20 miles in length and operated at a speed not to exceed 15 miles per-hour.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–10215) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by 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.*

Issued in Washington, DC on October 2, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–25221 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Little Kanawha River Railroad Corporation

[Docket Number FRA–2001–10669]

Marietta Industrial Enterprises, Inc, of Marietta, OH, has petitioned on behalf of the Little Kanawha River Rail (LKRR) for a permanent waiver of compliance for one locomotive from the requirements of the Locomotive Safety Standards, 49 CFR Part 229.23, which requires the time interval between periodic inspections not exceed 92 days. The petitioner indicates that the locomotive is used in switching service over a 2.5 mile short line at a speed not to exceed 10 mph. They state that the locomotive is used an average of 29 hours a week and would like to extend the 92 day periodic requirement to 184 days.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–10669) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1–401, Washington, DC. 20590. Communications received within 45 days of the date of this notice will be considered by 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.*

Issued in Washington, DC. on October 2, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–25223 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Michigan State Trust for Railway Preservation, Inc.

[Docket Number FRA–2001–10255]

The Michigan State Trust for Railway Preservation, Inc. seeks a waiver of compliance with the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a one thousand four hundred seventy-two service day inspection (49 CFR 230.17) performed prior to being allowed to operate under the requirements. The Michigan State Trust for Railway Preservation, Inc. seeks this waiver for one locomotive number 1225, which had the flue tubes replaced and was returned to service August 5, 1995, fifty-one days prior to the cut off date published in the requirements.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2001–10255) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by 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.*

Issued in Washington, DC on October 2, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–25222 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

The Minnesota Transportation Museum, Inc.

[Docket Number FRA–2001–10213]

The Minnesota Transportation Museum, Inc, of St. Paul, MN, has petitioned for a waiver of compliance for one locomotive identified as ''Anderson Windows 3110'' from the requirements of the Safety Glazing Standards-Locomotive, 49 CFR Part 223.11, which requires that other then yard locomotives, locomotives manufactured prior to July 1, 1980, must be equipped with certified glazing in all locations of cab windows. The subject locomotive is reported to be a Electro-Motive Division SW–1 built in 1949. The locomotive is used in tourist service over the Wisconsin Central and the Union Pacific Railroad in rural east-central Minnesota and north-west Wisconsin.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2001–10213) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC. 20590. Communications received within 45 days of the date of this notice will be considered by 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 (9:00 a.m.–5:00 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.

Issued in Washington, DC. on October 2, 2001.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 01–25220 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–10278]

Temporary Cessation of Sounding of Locomotive Horn—Coon Rapids, MN

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of interim final order and request for comments.

SUMMARY: FRA is issuing an Interim Final Order in which The Burlington Northern and Santa Fe Railway Company is ordered to temporarily cease the sounding of locomotive horns at specific crossings within the City of Coon Rapids, Minnesota. As provided by statute, the Secretary of Transportation, and by delegation, the Federal Railroad Administrator, in order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail crossings, may, in connection with demonstration of proposed new supplementary safety measures, order a railroad to temporarily cease the sounding of locomotive horns at such crossings.

DATES: Written comments must be received by November 8, 2001. Comments received after that date will be considered to the extent possible without incurring additional delay.

ADDRESSES: Written comments concerning these proceedings should identify the appropriate docket number (e.g. Docket No. FRA–2001–10278) and must be submitted to the Docket Clerk, DOT Docket Management System (DMS), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All written communications concerning these proceedings are available for examination during regular business hours (9 am–5 pm) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. You may submit comments online through the DMS at *http://dmses.dot.gov/submit.* All documents in the public docket are also available for inspection and downloading at the DMS web site at *http://dms.dot.gov.* Internet users may also reach the Office of the Federal Register's home page at *http://www.nara.gov.fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

FOR FURTHER INFORMATION CONTACT: Ron Ries, Staff Director, Highway Rail Crossing and Trespasser Programs, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202–493–6285); or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6061 (e-mail address: mark.tessler@fra.dot.gov) .

SUPPLEMENTARY INFORMATION:

Background

Section 20153 of Title 49 of the United States Code authorizes the Secretary of Transportation (and by delegation of the Secretary of Transportation, the Federal Railroad Administrator) to prescribe regulations requiring that locomotive horns be sounded while each train is approaching and entering upon each public highway-rail grade crossing. The statute also permits the Secretary to exempt from the requirement to sound the locomotive horn any category of rail operations or categories of highway-rail grade crossings for which supplementary safety measures fully compensate for the absence of the warning provided by the horn. Section 20153(e)(1) states that ''In order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail grade crossings, the Secretary may, in connection with demonstration of proposed new supplementary safety measures, order railroad carriers operating over one or more crossings to cease temporarily the sounding of locomotive horns at such crossings. Any such measures shall have been subject to testing and evaluation and deemed necessary by the Secretary prior to actual use in lieu of the locomotive horn.''

FRA has been requested by representatives of the City of Coon Rapids, Minnesota, to order the Burlington Northern Santa Fe Railroad Company (BNSF) to temporarily cease the sounding of locomotive horns at three crossings in the city in order to demonstrate new and innovative engineering solutions to prevent motorists from entering onto highway-rail grade crossings equipped with fully functioning gated grade crossing warning devices. The crossings which are the subject of this Order are located at 121 St. Street (DOT Inventory No. 061574G), Northdale Boulevard, (DOT Inventory No. 061573A) and Egret Boulevard (DOT Inventory No. 061570E). The Minnesota Commissioner of Transportation has approved the quiet zone demonstration project for these crossings. FRA is prepared to order cessation of routine sounding of locomotive horns at the specified public highway grade crossings.

In order to institute this demonstration project as soon as possible, FRA is issuing this order on an interim basis. Upon compliance with the provisions contained in the order, BNSF will be required to cease sounding of the locomotive horn at the crossings under the terms of this order. FRA will revise the order, rescind it, or issue a final order without change, depending on information contained in any comments received.

FRA has evaluated the proposed actions in accordance with its procedures for ensuring full consideration of the environmental impact of FRA action, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and the DOT Order 5610.1c (Procedures for Considering Environmental Impacts). It has been determined that the proposed actions will have a beneficial impact on the environment by the cessation of the sounding of locomotive horns.

This action has been evaluated in accordance with existing regulatory policies and procedures and is considered to be non-significant under DOT policies and procedures (44 FR 11304). This action will not have an impact on a substantial number of small entities.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. Inasmuch as implementation of this order is, by its own terms, dependent on the request of the City of Coon Rapids that such order be issued, and the purpose of the order is to enable effectuation of a quiet zone demonstration project established by the Minnesota Commissioner of Transportation, all appropriate prior consultation with state and local officials has taken place.

Public Participation

Interested parties are invited to participate in this proceeding by submitting to the Docket Clerk at the address listed above written data, views, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify the Docket Clerk, in writing, before the end of the comment period and specify the basis for their request.

Interim Final Order

Based on the above, FRA issues the following order:

U.S. Department of Transportation
Federal Railroad Administration

Interim Final Order to Temporarily Cease Sounding of Locomotive Horns

I find that:

1. The City of Coon Rapids, Minnesota, (City) in conjunction with The Burlington Northern and Santa Fe Railway Company (BNSF) and the Minnesota Commissioner of Transportation, and in consultation with the Federal Railroad Administration (FRA), has instituted a demonstration of new and innovative engineering solutions to prevent motorists from entering the public highway-rail grade crossings at 121 St. Street (DOT Inventory No. 061574G), Northdale Boulevard (DOT Inventory No. 061573A) and Egret Boulevard (DOT Inventory No. 061570E) (collectively ''crossings'').

2. As part of the demonstration, and preliminary to the temporary cessation of the sounding of locomotive horns at the crossing, the City has tested various configurations of mountable median curbs equipped with channelization devices. As configured for the principal phases of the demonstration, these curbs are of different dimensions in height and length than arrangements

previously evaluated. The maintainability of curbs, roadways, and highly visible delineators pose issues of interest for policy development.

3. The demonstration project has been designed with three distinct phases. ''Phase 1'' entails studying driver behavior at the subject crossings without medians and with locomotive horns routinely sounded. ''Phase 2'' of the project includes studying driver behavior at those crossings with medians installed but with locomotive horns routinely sounded. ''Phase 3'' of the project includes studying driver behavior at the crossings with medians installed and routine sounding of locomotive horns prohibited. As an integral part of this demonstration, the City has gathered data during Phases 1 and 2 concerning base line safety risk and the impact on risk of installing these proposed new supplementary safety measures. Data concerning responses to the automated warning system by motor vehicle drivers was gathered by means of video monitoring of driver behavior.

4. All engineering improvements comprising the demonstration have been tested and evaluated and are deemed necessary in lieu of the locomotive horn.

5. City officials have expressed a strong interest in establishing quiet zones at these crossings, which are placed within a segment of railroad exceeding one-half mile in length, making establishment of a quiet zone clearly practicable.

6. Issuance of this order will assist the FRA in gathering information and data useful to development of innovative supplementary safety devices.

7. At the request of the City and the FRA, the BNSF has fully cooperated in the exploration of options for safety improvements at the crossings but considers that the company is not able to unilaterally cease use of the train horn at the crossings, absent issuance of this order.

Accordingly, pursuant to 49 U.S.C. 20153(e)(1), and in order to promote the quiet of the City, and to promote the development of innovative safety measures at highway-rail crossings, *I hereby order* the BNSF, during the term of this order and in accordance with its provisions, to cease the routine sounding of locomotive horns on approach to and at the above crossings during the period known as Phase 3 of the ''Pilot Project Train Whistle Ban, City of Coon Rapids, Inc.'' approved by the Minnesota Commissioner of Transportation on March 20, 2001 and beginning on such date as the City may determine, subject to the following conditions:

(a) Once every crossing configuration including all signage, median design, and delineator design and spacing is approved by the Minnesota Commissioner of Transportation and every crossing is so configured, the City, through an authorized officer, shall inform BNSF in writing that the routine sounding of the locomotive horn shall cease pursuant to the terms of this order and shall serve such notice on the BNSF with a copy sent to the Associate Administrator for Safety, FRA, at least 14 days prior to the date on which cessation is planned;

(b) All highway-rail grade crossing warning devices installed at the crossing shall operate properly and in accordance with the provisions of 49 CFR Part 234. In the event of a warning system malfunction as defined in 49 CFR 234.5, an engineer operating a train through the crossing is not responsible for sounding the locomotive horn until he or she has been informed of the warning system malfunction;

(c) Advance warning signs, as approved by the Minnesota Commissioner of Transportation, and in conformance with the Manual on Uniform Traffic Control Devices issued by the Federal Highway Administration, shall be posted and maintained by the City advising motorists that locomotive horns will not be sounded;

(d) In accordance with the above Minnesota Commissioner of Transportation approval of March 20, 2001, the City shall maintain and monitor videotapes of each crossing and submit appropriate reports to the Minnesota Department of Transportation; and

(e) The City, in consultation with the FRA Regional Administrator, Region 4, shall be responsible for further data collection to determine the long-term effect on motorist behavior of the new engineering improvements at these crossings combined with cessation of routine use of locomotive horns.

Unless rescinded by the FRA Associate Administrator for Safety at an earlier date, this order is in effect until the effective date of a final rule issued pursuant to 49 U.S.C. 20153, provided that the Associate Administrator for Safety determines that data developed during the initial demonstration period confirms the effectiveness of the subject engineering improvements and periodic monitoring continues to confirm this effectiveness.

Nothing in this order is intended to prohibit an engineer from sounding the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage. This order does not require that such warnings be provided nor does it impose a legal duty to sound the locomotive horn in such situations.

Nothing in this order excuses compliance with sections 214.339, 234.105, 234.106, and 234.107 of title 49, Code of Federal Regulations, concerning use of the locomotive horn under circumstances therein described. Nothing in this order is intended to prohibit an engineer from sounding the locomotive horn or whistle to provide necessary communication with other trains and train crew members if other means of communication are unavailable.

Issued in Washington, DC, on September 28, 2001.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 01–25105 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10763]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALBORADA.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before November 8, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10763. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: ALBORADA. Owner: Jay and Katherine K. Light.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length of the vessel is 36.2 feet, breadth is 11.2 feet, depth is 6 feet. Net tonnage is 10, gross is 12.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''It is my intention to operate a sailing charter service, most primarily, but not limited to, day-sailing charters (the proverbial ''Three-Hour-Cruise'') on the Southwest Florida Gulf coast, based in Fort Myers Beach. I intend to be licensed as an ''Operator of an Uninspected Passenger Vessel, therefore limited to six passengers.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1979. Place of construction: Kaohsiung, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''At this time, there is no other similar legal operation in that region.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''I can't imagine that granting this waiver would have any impact whatsoever on any US shipyard.''

Dated: October 3, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–25266 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10765]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WANDERLUST.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before November 8, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10765. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: WANDERLUST. *Owner:* Karen and Matt Seekatz.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''LOA–41ft; Beam-13.7; Gross Tons-20; Net Tons-16.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

We intend to provide cruising charters for no more than 12 passengers.

Our geographic region of intended operation and trade will be our home port of Valdez, Alaska and Prince William Sound. Our primary focus will be cruising, whale watching, kayak tours, and hunting party transports and/or overnight accommodations.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1979. *Place of construction:* Taiwan by ROCS Marine, Koehsiung.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This will have virtually no impact on other vessels operating in and around Valdez as they are commercial fishing vessels and sport fishing charters. By the very nature of ''WanderLust's'' construction, we couldn't possibly jeopardize either of these industries. The distance to good fishing grounds prevents us from entering into competition with the local sport fishing charters. It is 90 miles to the Gulf of Alaska. It takes them 3 hours to get there and it takes us over 8. We would not draw the same level of interest as their clientele for the purpose of sport fishing.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This will have absolutely no negative impact on U.S. shipyards. Once granted coastwise privileges, U.S. shipyards will benefit from repair work.

Additionally, to build a 41 foot vessel for the purposes we request would be too expensive in relation to return on investment. Only an existing, older and less expensive vessel can be justified in this type of endeavor.''

Dated: October 3, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–25267 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2001–10764]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BREAK' N WIND.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before November 8, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10764. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: BREAK' N WIND. *Owner:* Errol Travers.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''36 Feet, 7 Net ton''.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Commercial Chartering'' ''New Bedford, Fairhaven MA Buzzards Bay area.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1981. *Place of construction:* Can't document.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''There will be no adverse effect on other US built vessels since there currently are no Sailboat Charting in existence in this area.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''There will be no adverse impact on any US vessel builders or ship yards, since my vessel is using US shipyards for repairs and dockage.''

Dated: October 3, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–25268 Filed 10–5–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Senior Executive Service Combined Performance Review Board (PRB)

AGENCY: Treasury Department.

ACTION: Notice of Members of Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Bureau of Engraving and Printing, the Financial Management Service, the U.S. Mint and the Bureau of the Public Debt. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the four bureaus, except for executives below the Assistant Commissioner level in the

Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

COMPOSITION OF COMBINED PRB: The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

PRIMARY MEMBERS: Jay M. Weinstein, Associate Director for Policy and Management & CFO, Mint; Debra L. Hines, Assistant Commissioner (Public Debt Accounting), PD; Joel C. Taub, Associate Director (Management), E&P; Larry D. Stout, Assistant Commissioner, Federal Finance, FMS.

ALTERNATE MEMBERS: David Pickens, Associate Director for Numismatics, Mint; Frederick A. Pyatt, Assistant Commissioner (Office of Investor Services), PD; Gregory D. Carper, Associate Director (Chief Financial Officer), E&P; Scott Johnson, Assistant Commissioner, Management & CFO, FMS.

DATES: Membership is effective on October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Joel C. Taub, Associate Director (Management), Bureau of Engraving and Printing, 14th and C Sts., Washington, DC 20228, (202) 874–2040.

This notice does not meet the Department's criteria for significant regulations.

Joel C. Taub,

Associate Director (Management), Bureau of Engraving and Printing.

[FR Doc. 01–25186 Filed 10–5–01; 8:45 am]

BILLING CODE 4840–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 01–22]

Preemption Opinion

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's opinion of whether Federal law preempts certain provisions of the West Virginia Insurance Sales Consumer Protection Act (West Virginia Act or Act). The OCC has determined that Federal law preempts some, but not all, provisions of the West Virginia Act.

FOR FURTHER INFORMATION CONTACT: Mark Tenhundfeld, Assistant Director, or Mary Ann Nash, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION: On June 2, 2000, the OCC published in the **Federal Register** notice of a request from the West Virginia Bankers Association (Requester) for the OCC's opinion concerning whether section 104 of the Gramm-Leach-Bliley Act (GLBA) preempts certain provisions of the West Virginia Act. See Notice of Request for Preemption Determination, 65 FR 35420 (June 2, 2000) (Notice). The OCC is publishing its response to the request as an appendix to this notice.

In the Notice, the OCC requested public comment on whether Federal law preempts the provisions of the West Virginia Act that the Requester had identified. In response, the OCC received 67 comments from 63 commenters. A number of commenters, including banks and the West Virginia banking trade association, thought that some or all of the provisions in question were preempted. Other commenters opposed preemption, generally asserting that provisions of the West Virginia Act fell within the safe harbor provisions of GLBA or did not prevent or significantly interfere with the ability of a financial institution to engage in any insurance sales, solicitation, or crossmarketing activity.

For the reasons described in the preemption opinion, the OCC has concluded that Federal law preempts some, but not all, of the provisions of the West Virginia Act. In particular, it is the OCC's opinion that Federal law *does not preempt* the following provisions of the West Virginia Act with respect to national banks:

- The Act's prohibition against requiring or implying that the purchase of an insurance product from a financial institution is required as a condition of a loan;
- The Act's provision prohibiting a financial institution from offering an insurance product in combination with other products unless all of the products are available separately; and
- The Act's requirement that, where insurance is required as a condition of obtaining a loan, the insurance and credit transactions be completed independently and through separate documents.

We also conclude that the following provision of the Act *is preempted only in part:*

- With respect to the Act's disclosure requirements, we conclude that the provisions prescribing the content of the disclosures that a financial institution is required to make in connection with the solicitation of an insurance product, and the requirement that a financial institution that sells insurance obtain a written acknowledgment, in a separate document, from its insurance customer that certain disclosures were provided are not preempted; but that the Act's provisions regarding the manner and timing of certain required disclosures are preempted.

Finally, it is our opinion that Federal law does preempt the following provisions of the West Virginia Act with respect to national banks:

- The Act's provisions requiring financial institutions to use separate employees for insurance solicitations;
- The Act's restrictions on the timing of bank employees' referral or solicitation of insurance business from customers who have loan applications pending with the bank;
- The Act's restrictions on sharing with bank affiliates information acquired by a financial institution in the course of a loan transaction to solicit or offer insurance; and
- The Act's requirement that financial institutions segregate the place of solicitation or sale of insurance so that it is readily distinguishable as separate and distinct from the deposit-taking *and* lending areas.

The analysis used to reach these conclusions and the reasons for each conclusion are described in detail in our reply to the Requester.

Dated: September 24, 2001,

John D. Hawke, Jr.,

Comptroller of the Currency.

Attachment

September 24, 2001
Sandra Murphy, Esq.,
Bowles Rice McDavid Graff & Love,
600 Quarrier St.,
Charleston, West Virginia 25301.

Dear Ms. Murphy: This letter replies to your request, on behalf of the West Virginia Bankers Association, for the opinion of the Office of the Comptroller of the Currency (OCC) concerning whether certain provisions of the West Virginia Insurance Sales Consumer Protection Act (the West Virginia Act) [1] apply to national banks.

For the reasons described in detail in this letter, we have concluded that Federal law preempts some, but not all, of the provisions of the West Virginia Act that you have asked us to review. In particular, it is our opinion that Federal law does not preempt the

[1] The provisions of the West Virginia Act that you have asked us to review are codified at W. Va. Code §§ 33–11A–6, 33–11A–8 to –11, and 33–11A–13 and –14 (2000). For the sake of simplicity, this letter usually refer to these provisions by section number only. Thus, for example, we refer to § 33–11A–6 as ''section 6.''

following provisions of the West Virginia Act with respect to national banks:

• the Act's prohibition, in section 8(a), against requiring or implying that the purchase of an insurance product from a financial institution is required as a condition of a loan;

• the Act's provision, in section 8(b), prohibiting a financial institution from offering an insurance product in combination with other products unless all of the products are available separately; and

• the Act's requirement, in section 11(a), that, where insurance is required as a condition of obtaining a loan, the insurance and credit transactions be completed independently and through separate documents.

We also conclude that the following provision of the Act is preempted only in part:

• with respect to the Act's disclosure requirements, we conclude that the provisions, in section 9(a), prescribing the content of the disclosures that a financial institution is required to make in connection with the solicitation of an insurance product, and the requirement, in section 9(c), that a financial institution that sells insurance obtain a written acknowledgment, in a separate document, from its insurance customer that certain disclosures were provided are not preempted; but that the Act's provisions, in section 9(a), regarding the manner and timing of certain required disclosures are preempted.

Finally, it is our opinion that Federal law does preempt the following provisions of the West Virginia Act with respect to national banks:

• the Act's provisions, in section 6, requiring financial institutions to use separate employees for insurance solicitations;

• the Act's restrictions, in section 10(a), on the timing of bank employees' referral or solicitation of insurance business from customers who have loan applications pending with the bank;

• the Act's restrictions, in sections 13(b) and 13(c), on sharing with bank affiliates information acquired by a financial institution in the course of a loan transaction to solicit or offer insurance; and

• the Act's requirement, in section 14, that financial institutions segregate the place of solicitation or sale of insurance so that it is readily distinguishable as separate and distinct from the deposit-taking *and* lending areas.

In reaching these conclusions, we have reviewed each of the provisions of the West Virginia Act under the applicable legal standards, including the provisions of the Gramm-Leach-Bliley Act (GLBA) [2] that govern the applicability of State law to national banks. We also have relied on our experience in supervising national banks that engage in insurance activities to evaluate the effects of the State law provisions under consideration here on national banks' ability to conduct an insurance business.

Where the text of the West Virginia Act left some doubt about how a particular provision would be administered or applied as a practical matter, we have relied on the written comment submitted by the Insurance Commissioner for the State of West Virginia and on discussions with the staff of the West Virginia Insurance Department.

In addition, we note that the National Association of Insurance Commissioners (NAIC) has recently adopted revisions to the NAIC's Model Unfair Trade Practices Act (the Model Act) intended to implement the insurance functional regulation framework established by the GLBA. None of the conclusions reached in this letter result in a finding that any of the provisions of the Model Act that were adopted to implement the GLBA would be preempted.

The first section of this letter provides background on the process we used to develop our opinion and addresses the significant comments that we received in response to our publication of notice of your request. The second section describes the framework that governs our legal analysis. Finally, the third section analyzes each of the provisions of the West Virginia Act that you have asked us to review under the applicable principles of Federal preemption.

I. Background: The West Virginia Bankers' Association Request

On April 14, 1997, the State of West Virginia enacted the West Virginia Insurance Sales Consumer Protection Act. The West Virginia Act imposes a number of requirements that affect the insurance sales, solicitation, or cross-marketing activities of financial institutions, including national banks.

By letter dated May 8, 2000, you requested the OCC's opinion on whether section 104 of the GLBA [3] preempts the specific provisions of the West Virginia Act that your letter identified. In support of your request, you asserted that the West Virginia provisions do not fall within the express safe harbor provisions of the GLBA (Safe Harbors),[4] or are more burdensome or restrictive than the Safe Harbors, and impose requirements that prevent or significantly interfere with the ability of national banks to exercise their authority to engage in insurance sales, solicitation, or crossmarketing activities.

On June 2, 2000, the OCC published notice of your request in the **Federal Register** and requested comments on whether Federal law preempts the West Virginia Act provisions.[5] We received a total of 67 comments from 63 different commenters.[6] Several commenters, primarily banks and West Virginia banking trade associations, supported preemption of some or all of the West Virginia provisions. Commenters opposing preemption generally said that some or all of the provisions under review fall within the Safe Harbors and are therefore protected from preemption. These commenters also asserted that the provisions not covered by a Safe Harbor nevertheless are protected from preemption because they do not ''prevent or significantly interfere'' with the ability of a financial institution or its affiliate to engage in any insurance sales, solicitation, or crossmarketing activity. The discussion in Section III addresses these points with respect to each State law provision that we conclude is preempted by Federal law.

Some of the commenters opposed to preemption also argued more generally that the OCC lacks the authority to determine whether Federal law preempts the West Virginia provisions. As these comments suggest, Federal courts, rather than the OCC, are the ultimate arbiters of whether Federal law preempts State law in a particular case. There are, nonetheless, sound reasons why the OCC should provide its opinion about the likely outcome of consideration of these issues by Federal courts. As the primary supervisor of national banks, the OCC is uniquely positioned to evaluate the effect of the West Virginia Act on national banks' ability to exercise their Federal authority to sell insurance.

Further, from the practical perspective, in the absence of interpretive advice, national banks that sell, or wish to sell, insurance in West Virginia will face added cost, burden, and uncertainty. Those banks would either have to comply with the provisions of the Act, whether or not they apply under the relevant Federal preemption standards, or risk adverse action by the State. The costs of either alternative, measured both directly and in lost business opportunities, could well be substantial.

A few commenters opposed to preemption asserted that the OCC should not find that Federal law preempts the West Virginia Act provisions because State insurance regulators are, pursuant to the GLBA, responsible for the functional regulation of the business of insurance. Several commenters made the related argument that West Virginia's interest in protecting consumers pursuant to its insurance sales practices statute should compel the conclusion that Federal law does not preempt the West Virginia Act.

As we discuss fully in the next section of this opinion, however, the GLBA provides that the States' functional regulation authority over insurance activities is subject, in certain respects, to Federal preemption standards. In particular, the question whether a State insurance sales law applies to national banks is resolved by application of the Federal standards to the State provision in question. The next section describes the applicable Federal standards.

II. Federal Preemption Standards

The GLBA provisions that govern how State law applies to national banks (and other depository institutions) are complex. In some respects, the statute retains established standards, together with important judicial precedents. In other respects, it replaces existing standards with new rules. Because the GLBA expressly incorporates the decision

[2] See Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[3] Id. at § 104, 113 Stat. 1352 (1999). Section 104 of the GLBA is codified at 15 U.S.C. 6701. In this letter, we cite section 104 of the GLBA rather than to the provision as codified.

[4] See GLBA § 104(d)(2)(B).

[5] See 65 FR 35420 (June 2, 2000).

[6] The Independent Insurance Agents of Louisiana submitted five identical letters signed by five different officers; ten organizations representing insurance agents filed identical, or substantially similar, letters; and two organizations representing banks that sell insurance filed virtually identical comments.

of the United States Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson[7] for certain purposes, we first review the Barnett decision, then describe the relevant statutory provisions.

A. The Barnett Decision

Since the inception of the national bank charter, Federal courts have decided questions about the applicability of State law to a national bank's exercise of its Federally authorized powers by applying principles derived from the Supremacy Clause of the United States Constitution. In Barnett, the Supreme Court considered a Florida law that prohibited a licensed insurance agent from engaging in insurance agency activities if the agent was ''associated with, * * * owned or controlled by'' [8] a financial institution. The Court held that the Florida statute was preempted by the Federal statute—12 U.S.C. § 92—that authorizes national banks to sell insurance in small towns without regard to affiliation or control.

To reach this conclusion, the Court first reviewed the Federal authority provided to national banks by section 92. It held that section 92 granted to national banks ''a broad, not a limited, permission'' to sell insurance.[9] In this context, the Court then applied traditional Federal preemption standards,[10] concluding that the Florida statute at issue conflicted with section 92 because the Florida law was ''an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'' [11] in granting national banks the power to sell insurance and was, therefore, preempted.

The Court went on to note that, while Congress's grant of a Federal power cannot be made subject to State-imposed conditions, State statutes having only a small effect on the national bank's exercise of that power may still apply:

In defining the pre-emptive scope of statutes and regulations granting a power to national banks, [prior preemption] cases take the view that normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where (unlike here) doing so does not prevent or significantly interfere with the national bank's exercise of its powers.[12]

The Court cited three cases to illustrate the point that State laws will not be preempted if they do not, for example, ''unlawfully encroach'' upon, ''hamper,'' or ''impair'' the bank's ability to engage in the authorized activity.[13] The State laws that were found to apply to national banks in these cases did not serve to limit the exercise of bank powers.

Under the standards used by the Court in Barnett, a conflict between a state law and Federal law need not be complete in order for Federal law to have preemptive effect. Where a Federal grant of authority is unrestricted, State law that attempts to place limits on the scope and exercise of that authority will be preempted.[14] Thus, Federal law preempts not only State laws that purport to prohibit a national bank from engaging in an activity permissible under Federal law but also State laws that condition or confine the exercise by a national bank of its express or incidental powers.

The Barnett case is clear, moreover, that State law does apply when a Federal grant of power to national banks is accompanied by an ''explicit statement that the exercise of that power is subject to state law.'' [15] We next review the relevant provisions of the GLBA to evaluate the extent to which that statute subjects national banks' power to engage in the insurance sales, solicitation, and cross-marketing activities covered to State law.

B. The GLBA's Federal Preemption Standards

The GLBA actually contains several different preemption standards for different aspects of the operations of banks and their affiliates. First, section 104(c)(1) of the GLBA broadly preempts any State law that ''prevents or restricts'' the ability of a national bank (or other depository institution), or its affiliate, from being affiliated with any entity if the affiliation is authorized or permitted by Federal law.[16] Similarly, section 104(d)(1) preempts any State law that ''prevents or restricts'' a national bank (or other depository institution), or its affiliate, from engaging in any activity—other than insurance sales, solicitation, or cross-marketing—that is permissible for that entity to engage in under the GLBA.[17]

With respect to insurance sales, solicitation, or cross-marketing activities, section 104(d)(2) precludes any State action that ''prevents or significantly interferes'' with those activities when conducted by a depository institution or its affiliate.[18] However, the statute expressly protects from preemption 13 specified types of restrictions on insurance sales, solicitation, and cross-marketing activities.[19] The Barnett standards for preemption continue to apply, however, to State laws regarding insurance sales, solicitation, and cross-marketing activities that are not covered by (or substantially the same as) these 13 ''Safe Harbors.'' [20]

These provisions of section 104 require a three-step analysis in order to determine whether a particular State law applies to a national bank. First, if the State law in question is of a type addressed by section 104, it is necessary to determine which preemption standard—that is, which subsection of section 104—governs. Second, if the State law pertains to an insurance sales, solicitation, or cross-marketing activity, then we must determine whether it is protected from preemption by any of the 13 Safe Harbors set forth in section 104(d)(2)(B). Finally, if the State law pertains to insurance sales, solicitation, or cross-marketing but is not protected by any Safe Harbor, the third

[7] 517 U.S.C. 25 (1996).

[8] See Fla. Stat. Ann. § 626.988(2)(1996).

[9] The Court considered a national bank's authority to sell insurance in the historical context of the Federal statutory scheme of national bank regulation.

[T]he Federal Statute [i.e., section 92] says that its grant of authority to sell insurance is in ''addition to the powers now vested by law in national [banks].'' In using the word ''powers,'' the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental ''powers'' to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law.

Barnett, 517 U.S. at 32 (citations omitted).

[10] The Court summarized the three traditional constitutional bases for Federal preemption of State law—express preemption, preemption because Congress has ''occupied the field'' of regulation, and preemption on account of a conflict between Federal and State law—as follows:

Sometimes courts, when facing the pre-emption question, find language in the federal statute that reveals an explicit congressional intent to pre-empt state law. More often, explicit pre-emption language does not appear, or does not directly answer the question. In that event, courts must consider whether the federal statute's ''structure and purpose,'' or nonspecific statutory language, nonetheless reveal a clear, but implicit, pre-emptive intent. A federal statute, for example, may create a scheme of federal regulation ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' Alternatively, federal law may be in ''irreconcilable conflict'' with state law. Compliance with both statutes, for example, may be a ''physical impossibility,'' or, the state laws may ''stan[d] as an obstacle to the accomplishment and execution of the full purposes of and objectives of Congress.''

Id. at 31 (citations omitted).

[11] Id. at 31 (quoting *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941)).

[12] Id. at 33 (citations omitted).

[13] Id. at 33–34 (citing ''*Anderson Nat. Bank* v. *Luckett,* 321 U.S. 233, 247–252 (1944) (state statute administering abandoned deposit accounts did not 'unlawful[ly] encroac[h] on the rights and privileges of national banks'); *McClellan* v. *Chipman,* 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not 'destro[y] or hampe[r]' national banks' functions); *National Bank* v. *Commonwealth,* 9 Wall. 353, 362 (1870) (national banks subject to state law that does not 'interfere with, or impair [national banks'] efficiency in performing the functions by which they are designed to serve [the Federal] Government').'').

[14] See, e.g., *New York Bankers Ass'n, Inc.* v. *Levin,* 999 F. Supp. 716, 719 (W.D.N.Y. 1998) (holding that a New York statute that restricted the types of insurance banks could sell to their customers was preempted on the grounds that the State law ''constitutes an interference with [banks'] rights'' to sell insurance).

[15] Barnett, 517 U.S. at 34.

[16] See GLBA § 104(c)(1). Section 104(c)(2) contains exceptions to this preemption standard for certain types of State regulation of insurance underwriters that are not relevant to our analysis of the West Virginia Act.

[17] See id. § 104(d)(1), (2)(B). Section 104(d)(3) excepts from preemption under the ''prevent or restrict'' standard in section 104(d)(1) certain State laws regulating the activities (other than sales-related activities) of insurance companies (and depository institutions providing savings bank life insurance). See id. § 104(d)(3).

[18] See id. § 104(d)(2)(A).

[19] See id. § 104(d)(2)(B)(i)–(xiii).

[20] State statutes that were enacted after September 3, 1998, also must meet certain non-discrimination standards with respect to those provisions not covered by the Safe Harbors. See id. § 104(e). The West Virginia law was enacted on April 14, 1997, and therefore these nondiscrimination provisions are not applicable to this analysis.

Section 104(d)(4) addresses financial activities other than insurance, and thus also is not relevant for purposes of this analysis.

step is to determine whether Federal law preempts the West Virginia provision under the Barnett standards, as incorporated by section 104(d)(2)(A).

Section 104(d)(2)(A) provides:

In accordance with the legal standard for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.[21]

The text of section 104 makes clear that its ''prevent or significantly interfere'' standard is the same as the standard that was applied by the Supreme Court in the Barnett case. The standard itself expressly incorporates Barnett. Moreover, language that appears later in the same paragraph—paragraph (2) of subsection (d)—expressly preserves the Barnett decision. That language says that:

Nothing in this paragraph shall be construed (I) to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or (II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.[22]

The effect of this language is to preserve both the standards that the Supreme Court articulated in the Barnett decision and also the analysis that the Court used in that case. Thus, the standard for preemption used by the Court in Barnett before enactment of GLBA is the same standard that applies today with respect to State insurance sales, solicitation, or cross-marketing laws that are not covered by a Safe Harbor.

The Senate Report accompanying the GLBA, in commenting on a provision prescribing the ''prevent or significantly interfere'' standard, using language that was almost identical to the language of section 104(d)(2) as ultimately enacted, confirms this view. The Senate Report states that:

The Committee believes that State insurance sales, solicitation, and cross-marketing laws adopted prior to September 3, 1998 should be subject to preemption under the preemption standards applicable when such laws were adopted. Thus, it is the Committee's intent that such laws may be subject to preemption under applicable case law, and the statutory preemption standard set forth in subsection 104(d)(2)(A), which is patterned after such case law. There is an extensive body of case law related to the preemption of State law. For example, in Barnett Bank of Marion County, N.A. v. Nelson, 116 S.Ct. 1103 (1996), the U.S. Supreme Court noted that Federal courts have preempted State laws that ''prevent or significantly interfere'' with a national bank's exercise of its powers; that ''unlawfully encroach'' on the rights and privileges of national banks; that ''destroy or hamper'' national banks' functions; or that ''interfere with or impair'' national banks' efficiency in performing authorized functions.[23]

The limitation on the application of this standard to State laws adopted prior to September 3, 1998 was deleted in the final legislation.

III. Application of Federal Preemption Standards to the West Virginia Act

A. Summary of the Framework for the Preemption Analysis

As we have described in discussing the applicable Federal preemption standards, we use a three-step analysis to determine whether Federal law preempts the provisions of the West Virginia Act that you have requested us to review. First, we determine which preemption standard in section 104 of the GLBA is applicable.

Each of the West Virginia provisions that you have asked us to review regulates the sales, solicitation, or cross-marketing of insurance. Accordingly, the determination whether each of the provisions applies to a national bank is governed by section 104(d)(2)(A) of the GLBA. Section 104(d)(2)(A) establishes the ''prevent or significantly interfere'' standard, as that standard is set forth in the Supreme Court's Barnett decision.

However, one of the provisions that you have identified—section 13 of the West Virginia statute—regulates information sharing between a financial institution and its affiliate. The area addressed by section 13 is also the subject of a Federal statute, the Fair Credit Reporting Act[24] (FCRA), which contains an express preemption provision. Where Congress has expressly preempted State law, there is no need to apply the standards in section 104 of the GLBA to determine that State law's applicability.[25] Accordingly, our analysis of section 13 differs from our analysis of the other provisions you have asked us to review in that it focuses on whether the West Virginia provision is covered by the FCRA's express preemption.[26]

With respect to all of those other provisions, the second step in the analysis is to consider whether the particular provision falls within one or more of the 13 Safe Harbors. A State law that is covered by a Safe Harbor, or that is ''substantially the same as but no more burdensome or restrictive than''[27] a Safe Harbor, is protected from Federal preemption under the standard in section 104(d)(2)(A). No further analysis is necessary under section 104.[28] A list of the Safe Harbors is attached to this letter as Appendix A.

Finally, if the provision concerns an insurance sales, solicitation or crossmarketing activity, but is not protected by a Safe Harbor, we consider whether it is preempted under the Barnett standards incorporated in section 104.

The determination whether a particular State statute is preempted under the Barnett standards depends on the effect that the State law has on a national bank's ability to exercise its Federally authorized power to engage in insurance agency activities and on the scope of that effect. In the words of the Senate Report discussed in Section II of this letter (summarizing the Barnett holding), State laws are preempted if they:

''[P]revent or significantly interfere'' with a national bank's exercise of its powers; * * * ''unlawfully encroach'' on the rights and privileges of national banks; * * * ''destroy or hamper'' national banks' functions; or * * * ''interfere with or impair'' national banks' efficiency in performing authorized functions.[29]

Accordingly, our review under the *Barnett* standards focuses on how the West Virginia provision affects a national bank's ability to engage in insurance sales, solicitation, and cross marketing activities and on the nature and extent of that effect. This review includes, for example, consideration of the extent to which the substance of an authorized activity is affected and the costs that a bank would likely incur to comply with the State law.[30]

We also consider whether the West Virginia provision imposes requirements that have the same, or substantially the same, effect on a national bank as requirements imposed by Federal law. If, in a Federal statute, Congress has imposed conditions on a national bank's ability to exercise its insurance powers, then a Federal court is unlikely to find that the State statute ''prevents or significantly interferes with'' the

[21] Id. § 104(d)(2)(A).

[22] Id. § 104(d)(2)(C)(iii). The reference in the first clause to subparagraph (B) is to the Safe Harbors. We construe the ''no inference'' language in the second clause to mean that a State law may not be inferred to be preempted under the ''prevent or significantly interfere standard'' solely because it is excluded from coverage by one of the Safe Harbors. Accordingly, our analysis in Section III draws no such inferences.

[23] S. Rep. No. 106–44, at 13 (1999).

[24] 15 U.S.C. §§ 1681–1681u (as amended by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), Pub. L. No. 104–208, tit. II, subtit. D, ch. 1, §§ 2401–2422, 110 Stat. 3009–426 to 3009–454 (1996)).

[25] The Supreme Court summarized the three bases on which a Federal statute may preempt State law—express preemption, occupation of the field, and preemption by reason of conflict—in the Barnett decision. See supra note 10, quoting the Court's summary.

[26] The Safe Harbors protect State laws from Federal preemption only under the ''prevent or significantly interfere'' standard in section 104(d) of the GLBA. Therefore, we do not consider the Safe Harbors in determining whether FCRA preempts these provisions.

[27] GLBA § 104(d)(2)(B).

[28] State laws covered by a Safe Harbor, however, may not be applicable to national bank insurance activities because of other provisions of Federal law, such as the specific preemption provisions set forth in the FCRA, which are discussed in Section III of this opinion.

[29] S. Rep. No. 106–44, at 13 (1999).

[30] In *Association of Banks in Ins., Inc.* v. *Duryee,* 55 F. Supp. 2d 799 (S.D. Ohio 1999), *appeal docketed,* No. 99–3917 (6th Cir. July 19, 1999), the court found that complying with the state statute ''might . . . entail a substantial financial expense which could weigh significantly against the expected revenue from the sale of insurance in that small town, and therefore significantly impair the bank's ability to sell insurance.'' *Id.* at 809.

bank's exercise of those powers within the meaning of the *Barnett* standards.

B. Analysis of the Provisions of the West Virginia Act

In this portion of our analysis, we have grouped the West Virginia provisions according to the conclusions we reach with respect to Federal preemption. We first discuss those provisions that we conclude are not preempted under the Federal preemption standards we have described. We next address one provision that we conclude is preempted only in part. Finally, we discuss the provisions that we conclude are preempted. Within that grouping, we address the provisions in the order in which they appear in the West Virginia statute.

1. West Virginia Provisions That Are Not Preempted

Section 8—Tying Restrictions

Section 8 of the West Virginia statute generally restricts the tying of insurance products and other products or services offered by the bank. You have asked us to review both provisions of this section, and the following discussion addresses each provision separately.[31]

Section 8(a)—Tying of Products Prohibited

Section 8(a) of the West Virginia Act prohibits a financial institution from requiring or implying that the purchase of an insurance product from that institution is required as a condition of lending money or extending credit.

The Insurance Commissioner for the State of West Virginia (the Commissioner) asserted in his comment letter that Section 8(a) is protected by Safe Harbor (viii).[32] Safe Harbor (viii) protects State laws that prohibit financial institutions from requiring a customer to obtain insurance from that institution, or an affiliate of that institution, as a condition of obtaining the extension of credit.

As we have noted, the Safe Harbors protect State provisions that are ''substantially the same as but no more burdensome or restrictive than'' the restrictions in the Federal statutory text. Section 8(a) prohibits a person from requiring or implying that an individual applying for a loan or extension of credit must purchase an insurance product from the financial institution to obtain approval of the loan or extension of credit. The provision thus includes a phrase—''or imply''—that does not appear in the language of Safe Harbor (viii). The Commissioner argues that this provision ''contains the precise restriction'' found in Safe Harbor (viii),[33] but acknowledges that Section 8(a) ''merely restricts bank employees from requiring or suggesting that in order to obtain loan approval, the customer must purchase insurance from that financial institution.''[34] The language of section 8(a) thus is more restrictive than the language of Safe Harbor (viii).

Moreover, Safe Harbor (viii) also includes certain exemptions that are not contained in section 8(a). The first exemption excludes from protection a State law imposing a prohibition that would prevent a bank or its affiliate from engaging in an activity ''that would not violate'' 12 U.S.C. § 1972[35] as interpreted by the Board of Governors of the Federal Reserve System (FRB).[36] The second exemption excludes from protection a State law that would prevent a bank from informing a customer that insurance is available from the bank, or from a subsidiary or affiliate. The scope of the West Virginia provision is broader than the scope of Safe Harbor (viii) and, therefore, we conclude that section 8(a) is not protected from preemption by the Safe Harbor.

However, we also conclude that the provision is not preempted under the *Barnett* standards. National banks are already required to comply with tying restrictions in Federal law that are similar to those contained in the West Virginia provision. Section 1972 generally prohibits a bank from extending credit, leasing or selling property, furnishing services, or fixing or varying prices of these transactions, on the condition or requirement that the customer obtain additional credit, property, or service from the bank, subject to certain exceptions.[37] A bank engages in a tie for purposes of section 1972 by conditioning the availability of, or offering a discount on, one product or service (the ''tying product'') on the condition that the customer obtain some additional product or service.[38] For example, a national bank may not condition the extension of credit or the reduction of the price of credit on a customer purchasing insurance from the bank.

Several commenters suggested that Federal law should preempt section 8(a) because that provision would prohibit a bank employee from mentioning to the customer that the insurance products may be available at a discount as part of a package. Others questioned whether the bank employee could even tell the customer that the bank sells insurance. The West Virginia Insurance Department has advised us that it does not interpret section 8(a) to impose these restrictions. Based upon this representation, we conclude that section 8(a) of the West Virginia Act would not be preempted.

Section 8(b)—Separate Availability Provision

Section 8(b) provides that a financial institution may not offer an insurance product in combination with its other products, unless all the products are available separately from that institution. Offering products or services in combination, often at a reduced price, is known as ''bundling'' and is a common business practice among banks that sell insurance.

No Safe Harbor protects State separate availability provisions from preemption. In fact, as we have described, Safe Harbor (viii) expressly excludes from preemption protection State anti-tying provisions that prohibit conduct ''that would not violate'' the Federal anti-tying statute.

It appears that the plain language of section 1972 would permit the bundling of insurance and traditional banking products. Section 1972 prohibits a bank from conditioning the availability of, or offering a discount on, one product or service on the customer's obtaining an additional product or service. By its terms, however, the statute does not prevent a bank from conditioning the availability of, or offering a discount on, any product or service if the availability or price of the product or service depends on the customer's obtaining a ''loan, discount, deposit, or trust service'' from the same bank.[39] As explained by the FRB, this statutory ''traditional bank product exception'' permits a bank ''to tie any product or service to a loan, discount, deposit, or trust service offered by that bank.''[40] Because section 8(b) of the West Virginia statute contains no exception for bank insurance sales, solicitation, or crossmarketing practices that appear to be permissible under the terms of the Federal

[31] Specifically, Section 8 of the West Virginia Act provides that:

(a) No person shall require or imply that the purchase of an insurance product from a financial institution by a customer or propsective customer of the institution is required as a condition of the lending of money or extension of credit.

(b) No financial institution may offer an insurance product in combination with its other products, unless all the products are available separately from the financial institution.

W. Va. Code § 33–11A–8 (2000).

[32] See Comment Letter from Hanley C. Clarke, Insurance Commissioner, State of West Virginia, dated June 30, 2000, at 4 (hereinafter ''Commissioner's Letter'').

[33] *Id.*

[34] *Id.* (emphasis added).

[35] Section 106 of the Bank Holding Company Act Amendments of 1970, Pub.L. No. 91–607, § 106, 84 Stat. 1760, 1766 (1970) (codified at 12 U.S.C. 1972).

[36] *See* 12 CFR 225.7.

[37] *See* 12. U.S.C. 1972(1). For example, the statutory traditional bank product exception permits a bank to extend credit, lease or sell property, furnish services, or fix or vary prices on the transactions, on the condition that the customer obtain a loan, discount, deposit, or trust service from the same bank. *See id.* § 1972(1)(A). Further, the statute authorizes the Federal Reserve Board (FRB) to permit, by order or regulation, additional exceptions to the tying prohibitions. *See id.; see also* 12 CFR 225.7(b). In 1997 the FRB adopted significant changes to its tying restrictions. *See* 62 Fed. Reg. 9290, 9312–16 (Feb. 28, 1997). As stated by the FRB, these changes are designed to enhance competition in banking and nonbanking products and allow banks and their affiliates to provide more efficient and lower cost service to customers. *See id.* at 9312; *see also* 12 CFR 225.7(b)(2); Citigroup, Inc., FRB Interpretive Letter, [Current Binder] Fed. Banking L. Rep. (CCH) ¶ 80–292, at 89,220 (May 16, 2001) (describing the safe harbors for combined discount programs, where the FRB has permitted banks to vary the consideration for a product or package of products if the customer maintains a minimum balance in certain products specified by the bank, which may include insurance products.)

[38] *See* 60 FR 20186, 20187 (Apr. 25, 1995).

[39] ''A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service. . . .''

12 U.S.C. § 1972(1) (emphasis added).

[40] 62 Fed. Reg. at 9314 (preamble to final rule amending the FRB's anti-tying regulation to, among other things, permit interaffiliate tying arrangements that are permissible under the statutory traditional bank product exception).

anti-tying statute, section 8(b) is more restrictive than, and thus not protected from preemption by, the Safe Harbor.

In our opinion, however, the state separate availability provision is not preempted under the *Barnett* standards. Banks' ability to package products and services together enables them to provide products and services more efficiently and, therefore, to compete more effectively with other providers of financial services.[41] Moreover, as some commenters pointed out, bundling offers consumers the benefits of lower prices, the opportunity to consider the purchase of additional products as a result of crossmarketing, and one-stop shopping. The West Virginia provision does not prevent national banks from packaging products in the way that Federal law permits in order to realize these benefits, so long as the products are also available separately. Moreover, it does not hamper a national bank from pricing its products in a way that reflects the differences in cost and efficiency that may result depending on whether insurance is sold separately or is bundled with another product. Therefore, we conclude that Federal law does not preempt subsection 8(b) under the *Barnett* test set forth in section 104(d)(2) of GLBA.

Section 11(a)—Independent Documentation of Insurance and Credit Transactions

Section 11(a) provides that an extension of credit and insurance sales transaction must be completed independently and through separate documents when insurance is required as a condition of the loan.[42] Although Safe Harbor (xi) protects State restrictions requiring separate documentation for insurance and credit transactions, it excepts credit insurance and flood insurance from protection. A bank would have to maintain separate documents for credit insurance and flood insurance in order to comply with the West Virginia provision. As a result, Section 11(a) is more burdensome than Safe Harbor (xi). It covers transactions that the Safe Harbor expressly excludes and, therefore, imposes an additional paperwork burden and associated administrative costs on banks. Accordingly, the Safe Harbor does not protect section 11(a) from preemption.

Some commenters asserted that the West Virginia provision should be preempted under the Barnett standards because the use of the word Independently'' implies that an additional, undefined act must occur beyond the completion of separate documents. Many of these commenters argued, for example, that the provision requires customers to make a separate trip to the bank to sign documents. The West Virginia Insurance Commissioner, however, has stated that ''[n]othing in the state statute requires a customer to make separate visits to the bank; it merely requires the credit and insurance transactions be completed independently through the signing of separate documents.* * *''[43]

Based upon this representation, we conclude that the separate documentation requirement for credit and flood insurance transactions when insurance is required as a condition of the loan is not preempted. First, section 11(a) does not affect these types of insurance transactions unless insurance is required as a condition of the loan. Second, the additional requirement for separate documentation if these types of insurance are required as a condition of a loan would not appear to substantially affect the underlying insurance activities.

2. West Virginia Provision That Is Preempted Only in Part

Section 9—Disclosure Provisions

Section 9(a)—Content of Required Disclosures

Section 9 of the West Virginia Act generally contains disclosure requirements that apply when a bank solicits or sells insurance. In particular, section 9(a) of the Act requires banks soliciting or selling insurance to make certain disclosures to customers.[44] The bank must disclose that its insurance products are not deposits; are not Federally insured; are not guaranteed by any insured depository institution; and, where appropriate, that the products carry investment risk, including a potential loss of principal.

The content of the disclosures required by section 9(a) is substantially the same as that of the disclosures protected by Safe Harbor (x). Although there are some differences in wording between the West Virginia provision and Safe Harbor (x), the similarities predominate so that it is ''no more burdensome or restrictive'' for a bank to give the State disclosures than to give those described in the Safe Harbor. Accordingly, the West Virginia requirement that these disclosures be given is not preempted.

You have also asked us, however, to review two other aspects of the West Virginia disclosure requirements: the provisions that relate to the manner and timing of the disclosures and the provision requiring a bank to obtain acknowledgments that the disclosures have been given.

Section 9(a)—Manner and Timing of Required Disclosures

Section 9(a) requires that national banks soliciting or selling insurance make the disclosures in writing, including in connection with advertisements and promotional material, and orally ''during any customer contact.''[45]

The manner and timing requirements for the disclosures required by the West Virginia provision are more far-reaching than Safe Harbor (x). Section 9(a) requires the bank to make the disclosures ''in any advertisement or promotional material, and orally during *any* customer contact.''[46] Safe Harbor (x) is more limited in scope, protecting only State law provisions that require the bank to make the disclosure ''prior to the sale'' of an insurance policy. Moreover, section 9(a) requires disclosures to be made ''prominently * * * in clear and concise language,'' whereas Safe Harbor (x) covers State laws that require the disclosures to be ''clear and conspicuous * * * where practicable.'' Omission of the phrase, ''where practicable,'' eliminates an important qualification on the disclosure requirement.

The West Virginia Insurance Commissioner acknowledged that requiring disclosures in advertisements and promotional material might ''be of concern,'' but the Commissioner believes they ''could arguably fall within'' Safe Harbor (iii).[47] Although Safe Harbor (iii) does apply to advertisements or other insurance promotional material, it only protects State restrictions that prohibit misleading advertisements or other insurance promotional material; it does not protect State laws that require disclosures in advertisements and promotional material, nor does it address oral disclosures during any customer contact. Therefore, section 9(a) is not covered by any of the Safe Harbors because it is more far-reaching than either Safe Harbor (x) or Safe Harbor (iii).

In our opinion, the manner and timing requirements of section 9(a) are preempted

[41] The FRB has recognized the benefits and efficiencies of bundling products. The FRB's anti-tying rule formerly provided that the statutory traditional bank production exception would be available to banks (and bank holding companies and nonbank affiliates thereof) ''only if all products involved in the tying arrangement were separately available for purchase.'' 12 CFR 225.7(c) (1997). In 1997, as part of a package of significant changes to its anti-tying regulation, the Board eliminated the ''separately available'' requirement. In describing its reasons for the changes made to the anti-tying provisions, the Board explained that these changes ''remove Board-imposed tying restrictions on bank holding companies and their nonbank subsidiaries; create exceptions from the statutory restriction on bank tying arrangements to allow banks greater flexibility to package products with their affiliates; and establish a safe harbor from the tying restrictions for certain foreign transactions.'' Further, the FRB indicated that these changes ''are designed to enhance competition in banking and nonbanking products and allow banks and their affiliates to provide more efficient and lower-cost service to customers.'' See 62 FR 9290 at 9312–13. The FRB's current rules limit the availability of the statutory traditional bank product exception only by providing that the exception, and a bank's authority to use it, will terminate in a case where a tying arrangement is resulting in anti-competitive practices. 12 CFR § 225.7(c) (2001).

[42] Specifically, section 11(a) of the West Virginia statute provides:

If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

W. Va. Code § 33–11A–11(a) (2000).

[43] Commissioner's Letter, supra note 31, at 7.

[44] Section 9(a) of the West Virginia Act provides:

A financial institution soliciting the purchase of or selling insurance, and any person soliciting the purchase of or selling insurance on the premises of, in connection with a product offering of, or using a name identifiable with, a financial institution, shall prominently disclose to customers, in writing in clear and concise language, including in any advertisement or promotional material, and orally during any customer contact, that insurance offered, recommended, sponsored, or sold:

(1) Is not a deposit;

(2) Is not insured by the federal deposit insurance corporation or, where applicable, the National Credit Union Share Insurance Fund;

(3) Is not guaranteed by any insured depository institution; and

(4) Where appropriate, involves investment risk, including potential loss of principal.

W. V. Code § 33–11A–9(a)(2000).

[45] Id.

[46] Id. (emphasis added).

[47] Commissioner's Letter, supra note 31, at 6.

under the Barnett standards. Requiring banks to include these disclosures in all advertisements or promotional materials would increase a bank's operating costs and substantively hamper the bank's marketing activities.[48] For example, in cases where the promotional materials only mention insurance as one of several products offered the bank may nonetheless be required to provide the full panoply of disclosures. This is likely to confuse customers and, consequently, impair the bank's insurance solicitation and sales activities.[49]

The requirement to provide the disclosures orally during *any* customer contact also substantially impedes the bank's ability to solicit and sell its insurance products. It places additional burdens on banks to train personnel and to develop procedures to ensure compliance with this requirement. The restriction is also impractical in that it may result in multiple disclosures to the same person—a scenario that could be confusing and adversely affect the bank's ability to market its product.

This increased cost and burden is especially troublesome for small banks. The ability of these banks to meet community needs depends on the bank being able to provide these products and services in an affordable and efficient manner. These banks generally need to keep costs down to offer a full array of products and services in the communities they serve.

Finally, unlike the Federal insurance consumer protection regulations,[50] section 9(a) makes no exceptions for sales or solicitations that are conducted by telephone or through electronic means. This could have the effect of prohibiting insurance sales by telephone because it would be impossible to provide a written disclosure in those circumstances. Although we conclude that the manner and timing of the disclosure requirements of section 9(a) are preempted as applied to the solicitation and sale of insurance using traditional means, the potential effect of these requirements on solicitations and sales through alternative media provides an additional basis for preemption.

Section 9(c)—Written Acknowledgment of Required Disclosures

Section 9(c) requires the bank to obtain, prior to or at the time of an application for insurance, a written acknowledgment that a customer has received the disclosures.[51] It also requires the acknowledgment to be contained in a separate document.

None of the GLBA Safe Harbors applies to section 9(c). Safe Harbors (ix) and (x) address required disclosures, but neither of those Safe Harbors protects State provisions requiring that banks obtain a written acknowledgment from customers.

In our view, however, section 9(c) is not preempted under the Barnett standards when applied to in-person insurance applications. Several commenters suggested that the requirement to provide the written acknowledgment in a separate document at or prior to the time of application for a loan significantly interferes with the bank's ability to engage in insurance activities. Federal law, however, imposes a similar requirement.

The insurance consumer protection standards required by section 305 of the GLBA include a requirement that a bank obtain an acknowledgment of the disclosures specified by section 305.[52] The implementing regulations issued by the OCC and the other Federal banking agencies require that this acknowledgment be written, unless the transaction is conducted online or over the telephone.[53] There are differences between the acknowledgment required by section 305 and the agencies' regulations and that required by section 9(c) of the West Virginia Act, including West Virginia's requirement as to the content of the acknowledgment and its requirement that the acknowledgment be contained in a separate document. These differences do not impose significant new costs or require the sacrifice of operational efficiencies because national banks are already required to adjust the way they solicit and sell insurance to allow for the obtaining of the acknowledgment required by Federal law.

We note, however, that section 9(c) does not provide any exceptions or alternatives for obtaining acknowledgements when insurance sales are conducted by means other than face-to-face contact between the sales representative and the customer. For example, it is unclear how a bank could obtain a written acknowledgement at the time of application if the sales transaction is conducted by telephone.[54] The West Virginia Insurance Commissioner's office has stated that it will consider alternatives to accommodate this concern. Our conclusion that section 9(c) is not preempted under the Barnett standards therefore addresses only the application of the acknowledgement to face-to-face sales transactions. We believe that section 9(c) would be preempted if applied in the context of sales transactions conducted online or over the telephone.

3. West Virginia Provisions That Are Preempted

Section 6—Use of Separate Employees for Insurance Solicitations

Section 6 generally prohibits financial institution employees with lending responsibilities from soliciting the sale of insurance. Financial institutions with locations having three or fewer individuals with lending authority may use one of these individuals to solicit insurance as long as that individual is not the person primarily responsible for making the loan. This provision also permits small institutions to seek a waiver from the state insurance commissioner where the same individual is the licensed agent or broker and the sole individual with lending authority.[55]

There is no Safe Harbor that applies to this provision. Two of the Safe Harbors—Safe Harbor (xi) and Safe Harbor (xiii)—address the separation of the insurance transaction from the credit transaction. However, these Safe Harbors only cover State laws involving record keeping and documentation requirements; they do not address State laws that restrict individuals with lending responsibilities from soliciting the purchase or sale of insurance. None of the Safe Harbors protect State laws that prohibit bank

[48] One commenter noted that the additional space required for advertisements and promotional materials would add to the marketing expense.

[49] By contrast, the Federal insurance consumer protection regulations do not require the disclosures to be made in advertisements and promotional materials that are of a general nature describing or listing the services or products offered by the bank. See 12 CFR § 14.40(d).

[50] See 12 U.S.C. 1831(x); 12 CFR part 14.

[51] Section 9(c) of the West Virginia Act provides:

(c) Any person required under subsections (a) or (b) of this section to make disclosures to a customer shall obtain a written acknowledgment of receipt by the customer of such disclosures, including the date of receipt and the customer's name, address, and account number, prior to or at the time of any application for insurance sold by the person. Such acknowledgment shall be in a separate document.

W. Va. Code '' 33–11A–9(c) (2000).

[52] Section 305 of GLBA directed the Federal banking agencies to promulgate certain consumer protection regulations relating to the sale, solicitation and advertising of insurance products by depository institutions and persons selling insurance on the premises of depository institutions or otherwise on behalf of such institutions. 12 U.S.C. 1831x(a). Section 305(g)(2) explains the relationship between these regulations and State laws that are in effect in that jurisdiction. Pursuant to § 305(g)(2), these Federal regulations do not override inconsistent State laws unless the agencies jointly determine that the Federal regulations provide better consumer protections than the State provisions. The State then is given up to 3 years to override that determination. Section 305(g) relates solely to the preemptive effect to be given to Federal regulations promulgated under section 305(a). By its terms, it does not relate to the preemptive effect that is to be given to other Federal regulations or statutes. In the insurance sales area, this is determined pursuant to section 104 of the GLBA and the Barnett case standards incorporated therein.

[53] See 12 U.S.C. 1831x(c)(1)(F); 12 CFR 14.40(c)(7) (OCC consumer acknowledgment requirement).

[54] The Federal regulations permit a national bank to obtain an electronic acknowledgment when the insurance sale occurs over the Internet and, subject to certain conditions, permit oral acknowledgment when the sale is concluded over the telephone. See 12 U.S.C. 1831x(c)(1)(F); 12 CFR 14.40(c)(7) & accompanying preamble discussion at 65 FR 75822, 75828–29 (Dec. 4, 2000).

[55] Specifically, section 6 of the West Virginia Act provides that:

(a) Solicitation for the purchase or sale of insurance by a financial institution shall be conducted only by individuals whose responsibilities do not include loan transactions or other transactions involving the extension of credit. Provided, That for a financial institution location having three or less individuals with lending authority, solicitation for the sale of insurance may be conducted by an individual with responsibilities for loan transactions or other transactions involving the extension of credit, as long as the individual primarily responsible for making the specific loan or extension of credit is not the same individual engaged in the solicitation of the purchase or sale of insurance for that same transaction.

(b) In the event that in any small office, the same individual is the licensed agent or broker and the sole individual with lending authority, the commissioner may grant a waiver of the requirements of this section upon a written request. Such request shall include documentation that, due to the small office staff, compliance is not possible, and include identification of other steps which will be taken to minimize the customer confusion prohibited by this article.

W. Va. Code § 33–11A–6 (2000).

employees with lending responsibilities from also selling insurance.

Section 6 prevents any employee engaged in lending activities from soliciting or purchasing the sale of insurance and, conversely, precludes an employee selling insurance from also having any lending responsibilities. The restriction would apply to loan officers, customer service representatives, and branch managers, even if there is no connection between a given lending activity and the employee's insurance solicitation and sales activities. Thus, at a minimum, section 6 would require national banks to maintain a separate sales force for insurance products.[56]

This requirement in essence prohibits a bank from using the bank's existing personnel resources to solicit and sell insurance, forcing it to artificially configure its operations to establish segregated personnel who sell insurance and may have no responsibilities related to extensions of credit. The requirement is thus hugely disruptive of normal bank operations since it would require the bank to specially isolate insurance sales personnel not just from typical loan applications, but also credit card applications and transactions, and even bank accounts with overdraft features. Not only does the requirement prevent the bank from operating efficiently by using the same employees to perform multiple duties, it forces the bank to operate inefficiently and to incur additional costs that undermine its ability to compete. This burden and intrusion into the substance of bank operations, in our view, cause section 6 to be preempted under the standards set forth in Barnett.[57]

Section 6 contains an exception from the general restriction for locations that have three or fewer individuals with lending authority. Individuals with lending authority in these locations also may sell insurance, *provided* that the same individual does not both lend and sell insurance on the same transaction. A bank also may seek a *waiver* from the general restrictions of section 6 for small offices where the same individual is the licensed agent or broker and the sole individual with lending authority.

Neither of these exceptions saves the provision from preemption under Barnett. First, unless a Federal statute specifically directs the application of state law, a state may not limit or condition a national bank's exercise of its Federal authority to sell insurance or to engage in other permissible banking functions.[58] Both the proviso and the waiver provision in section 6 of the West Virginia statute have the effect of imposing conditions on the exercise of those activities and both are, thus, impermissible under the Barnett standards.

Section 10(a)—Timing of Insurance-Related Referrals or Solicitations

Section 10(a) generally prohibits a financial institution from making an insurance-related referral or solicitation of a loan customer until after the bank has approved the loan or credit. Subsection 10(b) permits a bank to inform a customer that insurance is required to obtain a loan and to contact consumers through direct or mass mailing so long as it is not done in connection with the bank's decision on whether to grant the consumer's application.[59]

None of the Safe Harbors protects a State law that restricts the timing of bank insurance solicitations.

In our opinion, section 10(a) is preempted under the Barnett standards. The provision restricts the time and, therefore, the methods by which a bank may solicit an insurance sale from a customer and thus substantively affects the bank's ability to solicit and sell insurance products. For example, section 10(a) would require banks to develop databases to keep track of customers that have loans pending with the bank. Banks also will have to institute methods of communicating this information to its sales force and of apprising the sales force of changes as they occur. Solicitations through mass mailings present additional difficulties requiring bank staff to remove from the mass mailing those individuals who have loans pending with the bank. The cost of developing and maintaining these procedures would impair the bank's ability to engage in insurance activities and frustrate its ability to pursue particular sales activities.

Section 10(a) also imposes significant restrictions on the bank's ability to cross-market its products. For example, many banks offer one-stop shopping as a convenient and efficient means of servicing customers.[60] Prohibiting the bank from soliciting insurance at this point will force the customer to shop elsewhere. For all of the foregoing reasons, therefore, in our view section 10(a) is preempted.

Section 13—Sharing of Insurance Information With Affiliated Entities

Section 13 generally prohibits a financial institution from using insurance information obtained in the making of a loan to solicit or offer insurance to the customer, unless the bank first obtains the customer's written consent. You have asked us to opine specifically with respect to sections 13(b) and 13(c). Section 13(b) requires the customer to consent in writing to the bank's disclosure of insurance information to an agent or broker affiliated with the bank, no less than two days after the time of application for, approval of and making of the loan or extension of credit. Section 13(b) requires the bank to obtain this consent in a separate document.[61]

As we indicated at the outset of this letter, the FCRA[62] expressly preempts any state law that restricts or prohibits the sharing of

[56] Several commenters stated that this provision would require banks to hire additional personnel to sell insurance, incur additional expenses and limit the bank's most effective allocation of its resources.

[57] Section 6 also has subtle, but consequential, negative consumer protection implications which may substantially affect the reputation risk arising from banks' insurance sales activities. By requiring a separate insurance sales force, the provisions may effectively require many banks to use a sales force compensated through a traditional commission structure. If banks were able to use employees to sell insurance who also had other types of responsibilities within the bank, those employees would have other bases for their income and there would be less incentive for them to be overly aggressive selling insurance products. Forcing banks to use a particular type of insurance sales force thus could have safety and soundness implications by increasing a bank's reputation risk.

[58] ''[W]here Congress has not expressly conditioned the grant of ''power'' upon a grant of state permission, the [Supreme] Court has ordinarily found that no such condition applies.''*Barnett Bank of Marion County, N.A.* v. *Nelson,* 517 U.S. 25, 34 (1996), citing *Franklin Nat'l Bank of Frankin Square* v. *New York,* 347 U.S. 373, 378 & n.7 (1954). Cf. 66 Fed. Reg. 34792, 34798 (July 2, 2001) (adding to Part 9 of the OCC's rules a new subsection, to be codified at 12 C.F.R. § 9.7(e)(2), providing that, except as made applicable by Federal statute, state laws limiting or establishing preconditions on the exercise of fiduciary powers are not applicable to national banks).

[59] Specifically, section 10 of the West Virginia Act provides that:

(a) No individual who is an employee or agent of a financial institution, or of a subsidiary or affiliate thereof, may, directly or indirectly, make an insurance-related referral to or solicit the purchase of any insurance from a customer knowing that such customer has applied for a loan or extension of credit from that financial institution before such time as the customer has received a written commitment with respect to such loan or extension of credit, or, in the event that no written commitment has or will be issued in connection with the loan or extension of credit, before such time as the customer receives notification of approval of the loan or extension of credit by the financial institution and the financial institution creates a written record of the loan or extension of credit approval.

(b) This provision shall not prohibit any individual subject to subsection (a) above from:

(1) Informing a customer that insurance is required in connection with a loan; or

(2) Contacting persons in the course of direct or mass mailing to a group of persons in a manner that bears no relation to the person's loan application or credit decision.

W. Va. Code § 33–11A–10 (2000).

[60] Some commenters have stated that the initial face-to-face meeting at which the credit application is taken is often the principal time at which insurance is offered and may, in some cases, be the only face-to-face meeting between the bank and the customer.

[61] Specifically, section 13 of the West Virginia Act provides that:

(a) When a financial institution requires a borrower to provide insurance information in connection with the making of a loan or extension of credit, neither such financial institution nor an insurance agent or broker affiliated with such financial institution may later use the information so obtained to solicit or offer insurance to such borrower, unless the consent required in subsection (b) below is first obtained.

(b) A borrower may consent to the financial institution's disclosure of insurance information to an agent or broker affiliated with the financial institution, but any such consent must be in writing and be given at a time subsequent, which shall be no less than two days, to the time of the application for, approval of and making of the loan or extension of credit.

(c) Consent under subsection (b) of this section shall be obtained in a separate document, distinct from any other transaction, and shall not be required as a condition for performance of other services for the customer.

W. Va. Code § 33–11A–13 (2000).

[62] 15 U.S.C. 1681–1681u (as amended by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), Pub. L. No. 104–208, tit. II, subtit. D, ch. 1, §§ 2401–2422, 110 Stat. 3009–426 to 3009–454 (1996)).

information among affiliated entities. The FCRA preemption provision states:

No requirement or prohibition may be imposed under the laws of any State * * * with respect to the exchange of information among persons affiliated by common ownership or common corporate control * * *.[63]

The language of this provision is broad and, on its face, appears to cover the restrictions on information sharing with affiliates contained in section 13 of the West Virginia statute. To determine whether it preempts the West Virginia provision, we first briefly review the purposes and scope of the FCRA, then consider whether the special anti-preemption rule contained in the McCarran-Ferguson Act applies.

Purpose and scope of the FCRA as amended. The purpose of the FCRA is to require consumer reporting agencies to ''adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information'' that operate in a fair and equitable manner to ensure accuracy and confidentiality.[64] To protect consumers, the FCRA imposes various obligations on ''consumer reporting agencies'[65] and on users of ''consumer reports.''[66]

A ''consumer report'' is ''any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living'' that is collected or used (or expected to be used) to establish the consumer's eligibility for ''credit or insurance to be used primarily for personal, family or household purposes; employment purposes; or any other purpose'' permissible under the Act.[67] If information is not a ''consumer report,'' any person or entity may share and use the information. Under the FCRA, a ''consumer report'' does not include ''experience information,'' which is information that relates solely to transactions or experiences between the consumer and the person making the report.[68]

In addition to ''experience information,'' Congress enacted amendments to the FCRA in September 1996 (''FCRA amendments'')[69] to expand the category of non-consumer report information to include:

[A]ny communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons * * *.[70]

The information that may be shared pursuant to the notice and opt-out requirements is not limited. It may include application information, medical information, consumer report information, information derived from consumer reports, and all other information. Thus, the FCRA amendments permit affiliated entities to share any or all information without becoming a ''consumer reporting agency.''[71] The affiliated entities must comply with the FCRA notice and opt-out requirements, however, before sharing any information other than experience information.[72]

The FCRA preemption provision ensures that affiliated entities may share customer information without interference from State law and subject only to the FCRA notice and opt-out requirements if applicable. The preemption is broad and extends beyond state information sharing statutes to preempt any State statute that affects the ability of an entity to share any information with its affiliates.[73] Congress intended the preemption provision to establish a national uniform standard in this area, noting that ''credit reporting and credit granting are, in many aspects, national in scope, and that a single set of Federal rules promotes operational efficiency for industry, and competitive prices for consumers.''[74]

The McCarran-Ferguson Act. Section 2(b) of the Act shields a State law from Federal preemption if the purpose of the State law is to regulate the business of insurance and the conflicting Federal law does not ''specifically relate'' to the business of insurance.[75] These key terms were analyzed by the Supreme Court in Barnett.[76] The Court initially noted that the word ''relates'' is ''highly general'' and has a ''broad common-sense meaning.''[77] More importantly, the Court found the word ''specifically'' to mean ''explicitly.''[78] In focusing on these terms, the Court observed that:

[T]he Act does not seek to insulate state insurance regulation from the reach of all federal law. Rather, it seeks to protect state regulation primarily against inadvertent federal intrusion—say, through enactment of a federal statute that describes an affected activity in broad, general terms, of which the insurance business happens to constitute one part.[79]

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[63] 15 U.S.C. 1681t(b)(2) (as amended by EGRPRA tit. II, subtit. D, ch. 1, § 2419, 110 Stat. 3009–452 to 3009–453 (1996)). This preemption provision remains in effect until January 1, 2004. *See id.* § 1681t(d)(2). The only state law not subject to this preemption is Vt. Stat. Ann. tit. 9, § 2480e(a) or (c)(1). *See id.* § 1681t(b)(2).

[64] *Id.* § 1681(b) (emphasis added).

[65] A ''consumer reporting agency'' is any party that regularly assembles or evaluates consumer information for the purpose of furnishing consumer reports to third parties. *Id.* § 1681a(f).

[66] A national bank may be either a consumer reporting agency or a user of a consumer report.

[67] 15 U.S.C. 1681a(d)(1) (as amended by the EGRPRA tit. II, subtit. D, ch. 1, § 2402(e), 110 Stat. 3009–428 (1996)) (emphasis added).

[68] *See id.* § 1681a(d)(2)(A)(i) (as amended by the EGRPRA tit. II, subtit. D, ch. 1, § 2402(e), 110 Stat. 3009–428 (1996)).

[69] *See* EGRPRA, Pub. L. No. 104–208, 110 Stat. 3009 (1996) (generally effective Sept. 30, 1997).

[70] 15 U.S.C. § 1681a(d)(2)(A)(iii) (as amended by EGRPRA tit. II, subtit. D, ch. 1, § 2402(e), 110 Stat. 3009–428 (1996)).

[71] For a ''consumer reporting agency'' furnishing reports containing medical information, additional requirements under FCRA may be applicable. See, e.g., 15 U.S.C. § 1681b(g) (as amended by EGRPRA tit. II, subtit. D, ch. 1, § 2405, 110 Stat. 3009–434 (1996)) (''A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless the consumer consents to the furnishing of the report.''). A national bank will not become a ''consumer reporting agency'' simply because it shares with an affiliate experience information or other information that ordinarily would be considered consumer report information so long as the bank shares the other information in accordance with the notice and opt-out requirements.

[72] There are no notice and opt-out requirements when any entities, whether affiliated or not, share ''experience information.'' Id. § 1681a(d)(2)(A)(i) (as amended by EGRPRA tit. II, subtit. D, ch. 1, § 2402(e), 110 Stat. 3009–428 (1996)). Prior to the FCRA amendments, a financial institution could regularly exchange consumer information between a branch or department of the financial institution, but not between correspondent financial institutions, a holding company and its subsidiaries or between subsidiaries of a holding company without becoming a consumer reporting agency. See Federal Trade Commission, Questions and Answers About the Fair Credit Reporting Act, at Qs and As Nos. 16–17, reprinted in 6 Consumer Cred. Guide (CCH) ¶ 26,703 at 63,955 (May 24, 1971).

[73] Affiliate information sharing provisions of bills introduced in prior Congresses limited Federal preemption either by preserving state laws in effect on the date of proposed enactment or by preempting only state information sharing statutes. See e.g., Consumer Reporting Reform Act of 1994, H. Rep. No. 103–486, at 2 (amending FCRA § 624, 15 U.S.C. 1681t).

[74] S. Rep. No. 104–185, at 55 (1995) (accompanying S. 650) [hereinafter ''1995 Senate Report'']. The need for Federal preemption was reiterated in the floor debate by Senator Bond, who stated that the uniform federal standards ''will reduce the burdens on the credit industry from having to comply with a variety of different State requirements.'' 141 Cong. Rec. S5450 (daily ed. Apr. 6, 1995). Earlier amendments to the FCRA, proposed by the House, were described as a ''compromise'' between establishing a uniform national standard and allowing states to enact laws stricter than the FCRA. 140 Cong. Rec. H4355, H4365–66 (daily ed. June 13, 1994) (statement of Rep. McCandless); see H.R. 1015, 103d Cong., 2d Sess. §§ 101–625 (1994). However, in the final legislation, Congress decided that for the next eight years, the FCRA would be ''the law of the land'' and afterwards, states may enact more stringent legislation. The FCRA amendments preserve this compromise by establishing a ''sunset'' provision—the special federal preemption provisions will not apply to any provision of state law enacted after January 1, 2004 that (i) gives greater protection to consumers than the FCRA provides and (ii) explicitly states that the provision is intended to supplement the FCRA. See 15 U.S.C. § 1681t(d)(2) (added by EGRPRA tit. II, subtit. D, ch. 1, § 2419(2), 110 Stat. 3009–452 to 3009–453 (1996)); 1995 Senate Report, supra, at 55.

[75] Section 2 of the Act provides:

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * unless such Act specifically relates to the business of insurance * * *.

15 U.S.C. 1012.

[76] See Barnett, 517 U.S. at 38.

[77] Id.

[78] Id.

[79] Id. at 39.

According to the Court, the McCarran-Ferguson Act does not require the federal statute to relate predominantly to insurance; a statute may relate to more than one thing.[80] These observations illustrate the importance the Court places on specific, explicit references to insurance in the federal legislation.[81] In Barnett, the Court determined that a federal statute authorizing national banks' insurance powers, which used the word ''insurance'' five times, ''specifically related'' to the business of insurance.[82]

The affiliate information sharing provisions of the FCRA ''relate'' to the business of insurance and do so ''specifically.'' The FCRA mentions ''insurance'' at least twenty-seven times. These references concern core provisions of the FCRA. For example, the FCRA defines ''consumer report'' expressly to include certain consumer information collected by a consumer reporting agency that is expected to be used ''in connection with the underwriting of insurance involving the consumer * * * ''[83] The FCRA amendments also expand the list of permissible purposes for furnishing a consumer report to include ''credit or insurance transactions that are not initiated by the consumer''—i.e., prescreening potential customers for marketing credit or insurance products.[84] Congress's definition of ''firm offer of credit or insurance'' also extends the current definition of ''firm offer of credit'' to include insurance for prescreening purposes.[85]

These specific references to insurance unambiguously demonstrate that Congress purposefully considered the effect of the FCRA amendments on insurance activities and did not merely enact a broad, general law that inadvertently affects insurance. A plain understanding of the FCRA, under the standards set forth by the Supreme Court in Barnett, results in a conclusion that the FCRA ''specifically relates'' to insurance.

Moreover, it is questionable whether the West Virginia provision passes the threshold of the first clause of section 2(b) of the McCarran-Ferguson Act, i.e., whether the State law was ''enacted * * * for the purpose of regulating the business of insurance * * *''[86]

The Supreme Court's analysis of this question has focused consistently on the impact of the State law on the relationship between the insured and the insurer.[87] Section 13 addresses a different relationship—the relationship between a financial institution and its customer. The West Virginia provision seeks to limit a financial institution's ability to use insurance information gathered in the course of a lending transaction for the purpose of soliciting or offering insurance.[88] In this sense, the provision seeks to protect borrowers from the intrusion of unauthorized insurance solicitations by financial institutions and their subsidiaries; it does not offer any protection to policyholders. State laws that relate to insurance but regulate an activity outside the relationship between the insured and the insurer are not laws enacted for the purpose of regulating the business of insurance for purposes of McCarran-Ferguson.[89] The Supreme Court made clear that to the extent a law is designed to further the interests of parties other than policyholders, it is not a law enacted for the purpose of regulating the business of insurance.[90]

The FCRA amendments thus permit a national bank and its affiliates, including insurance agency affiliates, to share and use experience information, including claims information, without any limitation and to share and use any other information, including medical information,[91] pursuant to the notice and opt-out requirements.[92] National banks and their affiliates may engage in these activities even if State laws restrict or otherwise limit such activities because the FCRA amendments expressly preempt any State law requirement or prohibition ''with respect to'' exchange of information between affiliated entities. Accordingly, we conclude that sections 13(b) and 13(c) of the West Virginia statute are preempted.

Section 14—Physical Location of Insurance Sales

Section 14 generally provides that the place of solicitation or sale of an insurance product by a financial institution must be clearly signed so as to be separate and distinct from the institution's lending and deposit-taking activities. The state law permits institutions with small physical facilities to seek a waiver from the state insurance commissioner if they do not have the physical space to comply with this provision.[93]

None of the Safe Harbors protect State provisions restricting the physical location where insurance sales take place, or requiring that insurance sales be physically separated from lending and deposit-taking activities.

The text of the West Virginia provision creates some ambiguity about whether signage distinguishing the insurance sales area from the lending and deposit taking areas would be sufficient to comply with the statute, or whether physical segregation of these activities is required. The language in the provision suggests that physical separation is required because the requirement to use signage must be done in a manner so the locations are readily distinguishable by the public as separate and distinct. The waiver for small institutions also speaks in terms of not having the

[80] Id. at 41. For example, the Court in Barnett recognized a statute may relate to banking and insurance. Likewise, the FCRA relates to consumer reporting agencies and insurance.

[81] As recognized by the Court, these types of references ''will call the proposed legislation to the attention of interested parties'' and should guarantee that Congress has focused on the legislation's ''insurance-related effects.''

[82] Id. at 39.

[83] 15 U.S.C. §§ 1681a(d)(1), 1681b(a)(3)(C) (emphasis added). The affiliate information sharing provisions enacted in 1996 specifically provide that when this type of information is shared between affiliated entities, it does not constitute a ''consumer report,'' and thus can be shared between affiliates, subject to specified procedures. See 15 U.S.C. § 1681a(d)(2)(A)(ii).

[84] 15 U.S.C. § 1681b(c) (added by EGRPRA tit. II, subtit. D, ch. 1, § 2404, 110 Stat. 3009–431 (1996)).

[85] Id. § 1681a(l) (added by EGRPRA tit. II, subtit. D, ch. 1, § 2402(b), 110 Stat. 3009–427 (1996) (emphasis added)).

[86] Id. § 1012(b).

[87] See e.g., *SEC* v. *National Securities, Inc.,* 393 U.S. 453, 457 (1969) (focus of the business of insurance is on the relationship between the insurance company and the policyholder and State law enacted to protect the interests of insurance company shareholders was not protected from preemption by McCarran-Ferguson); *Barnett Bank of Marion County, N.A.* v. *Nelson,* 517 U.S. 25, 39 (1996) (relation of insured to insurer and the spreading of risk are matters at the core of the McCarran-Ferguson Act's concern); *U.S. Dep't of Treasury* v. *Fabe,* 508 U.S. 491, 503–04 (1993) (performance of an insurance contract is central to the relationship between insurer and insured and therefore within the business of insurance).

[88] Likewise, section 13 limits the activities of financial institutions even where there is no insurance policy. The law could prohibit a financial institution from using information that a borrower did not have any insurance to solicit or offer insurance.

[89] See *Autry* v. *Northwest Premium Services, Inc.,* 144 F.3d 1037, 1044 (7th Cir. 1998) (state statute regulating premium financing for the purchase of automobile insurance served to protect the interests of borrowers and was not a law enacted for the purpose of regulating the business of insurance); *Owensboro Nat'l Bank* v. *Stephens,* 44 F.3d 388, 392 (6th Cir. 1994), cert. denied, 517 U.S. 1119 (1996) (state statute that excluded financial institutions from certain insurance sales activities sought to regulate the conduct of the financial institutions and was not a law enacted for the purpose of regulating the business of insurance).

[90] Fabe, 508 U.S. at 508.

[91] Medical information may, however, be subject to the restrictions on information sharing imposed by the Health Insurance Portability Act of 1996. The Department of Health and Human Services has implemented information sharing provisions of this statute in its rule captioned ''Standards for Privacy of Individually Identifiable Health Information.'' See 65 FR 82462 (December 28, 2000). This final rule, which took effect on April 14, 2001, is codified at 45 CFR Parts 160 and 164. Among other things, it covers electronic billing and fund transfers that include individually identifiable health information.

[92] Although the GLBA amended certain provisions of the FCRA relating to regulatory authority, nothing in GLBA, including the privacy provisions in Title V of that statute, alters the conclusion concerning the FCRA provisions on the sharing of information between affiliates or the preemptive effect of the FCRA. GLBA § 506(c) expressly provides that ''nothing in this title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act * * *'' 15 U.S.C. 6806.

[93] Specifically, section 14 of the West Virginia Act provides that:

The place of solicitation or sale of insurance by any financial institution or on the premises of any financial institution shall be clearly and conspicuously signed so as to be readily distinguishable by the public as separate and distinct from the financial institution's lending and deposit-taking activities. In the event that a person which would otherwise be subject to the requirements set forth in this provision does not have the physical space to so comply, the commissioner may grant a waiver of the requirements of this section upon a written request by such person demonstrating that, due to its small physical facilities, compliance is not possible, and including identification of other steps which will be taken to minimize customer confusion.

W. Va. Code § 33–11A–14 (2000).

physical space to comply—a condition that should not be relevant if all that is required is signage. The West Virginia Insurance Department also has suggested in informal discussions that this provision would require physical segregation.

We therefore assume that section 14 requires the physical separation of insurance from lending and deposit-taking activities. Accordingly, in our view, the West Virginia requirement for physical segregation of insurance sales from lending and deposit-taking is preempted under the *Barnett* standards.

In most banks, the deposit-taking area generally encompasses teller windows and teller lines. These spaces, which are different from the types of physical settings used in many other kinds of business offices, tend to be in a discrete area, characterized by a fairly quick movement through of customers. Both lending and insurance sales, on the other hand, are often done from desks in spaces apart from the teller services where the customer can speak with a representative for a longer time to discuss the transaction.

The requirement to separate lending and deposit-taking activities from insurance sales affects the banks' insurance sales efforts significantly. Many banks, both large and small, are developing ways to streamline their delivery systems, for example, by the use of more compact physical facilities and a greater reliance on technology. At the same time, banks are striving to increase convenience and product choices to consumers.[94] A restriction on the physical location of insurance activities would require the bank to devote more physical space to all three types of activities than is otherwise necessary, raising costs at bank facilities. Similar to the effect of the requirement in section 6 for a separate insurance sales force, this requirement in section 14 substantively intrudes into and disrupts bank operations by effectively prohibiting a bank from conducting all three activities without incurring substantial, unnecessary costs to reconfigure its physical space. Higher costs will impede the bank's ability to offer insurance products and reduce the availability of those products to consumers.

The Federal insurance consumer protection statute and regulations avoid this result by requiring that the routine acceptance of deposits is kept, *to the extent practicable,* physically segregated from insurance product activity.[95] In order to comply with Federal law, national banks must separate only deposit-taking from insurance sales, and only to the extent practicable.

The West Virginia statute permits the Commissioner to grant a waiver from the physical segregation requirement upon written request. However, the request must demonstrate that ''compliance is not possible,'' and must identify the steps the bank will take to ''minimize customer confusion.'' As we have said in our discussion of section 6 of the West Virginia statute, a state-administered waiver provision does not erase the conflict between the state provision and Federal law. Under the Barnett standards, a state may not condition a national bank's exercise of a Federally authorized power unless a Federal statute directs that result. Here, the State law imposes requirements that are expensive, disruptive of ongoing bank operations, and, in some cases, impossible to implement. Accordingly, section 14 of the West Virginia statute is preempted.

We trust the conclusions expressed in this letter are responsive to the preemption issues you have identified.

Sincerely,

Julie L. Williams,
First Senior Deputy Comptroller and Chief Counsel.

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DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–73]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs broker license cancellations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111), the following Customs broker licenses are cancelled. Some of these entities may continue to provide broker services under another valid brokerage license. Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	License	Port name
Ace Young, Inc	09667	Chicago
Aeromar USA, Inc	06159	Washington, DC
Albuquerque Brokerage Co., Inc	04547	Albuquerque
All Nations Forwarding Import Company, Inc	06589	Miami
Allround CHB, Inc	11854	New York
Apple Import Services Inc	07255	New York
Arthur J Fritz Company	05455	Miami
Arthur J Fritz Company	07646	St. Louis
Arthur J Fritz Company	03160	Honolulu
Arthur J Fritz Company	06951	Boston
Arthur J Fritz Company	06960	Detroit
Arthur J Fritz Company	03763	El Paso
Arthur J Fritz Company	07006	Atlanta
Arthur J Fritz Company	06346	Dallas/Fort Worth
Arthur J Fritz Company	09204	Philadelphia
Arthur J Fritz Company	03492	Portland, ME
Arthur J Fritz Company Of Hawaii, Inc	03520	Honolulu
Arthur J Fritz Company of Los Angeles	03205	Los Angeles
Arthur J Fritz Company, Inc	03501	New Orleans
Arthur J Fritz Company, Inc	07362	Charleston
Arthur J Fritz Company, Inc	07203	Cleveland
Associated Customhouse Brokers	06041	Buffalo
Autair Customhouse Broker, Inc	15120	Miami
Bar-Zel Expediters Inc	04436	New York
Barinco International Corporation	07692	San Francisco
BBC International	05051	San Francisco
Becnel, Gerard	06333	New Orleans
Becnel, Gerard A	09064	New Orleans

[94] From a consumer's standpoint, the OCC has noted, the convenience and ease of using a streamlined facility diminishes if the facility cannot offer the full panoply of services available at a traditional brick and mortar facility.

[95] *See* 12 U.S.C. 1831×(d); 12 CFR 14.50.

Name	License	Port name
Cammarano, John	06264	New York
Cammarano, Angelo	03648	New York
Cargo Brokers International, Inc	07217	Miami
Cargo Clearance Services, Inc	15103	Miami
Celaya Guerin International (CGI)	11938	Philadelphia
Christie, Roy G.W	05843	Tampa
Clopp, Jerry Bruce	12060	San Francisco
Continental Forwarding Co., Inc	13026	Cleveland
Craig International, Inc	13252	Cleveland
DAO Forwarding & Customs Brokerage, Inc	17406	Baltimore
Davis, Leonard H	06471	New York
DeAngelus & Associates, Inc	16916	Washington, DC
Dieterle, Hellmut Michael	08001	San Francisco
Disodado D. Roque Int'l, Inc	09597	San Francisco
DL Bynum & Company, Inc	12077	Dallas/Fort Worth
Eagle Warehouse, Inc	13198	Miami
Emery Distribution Systems, Inc	05790	Washington, DC
Emery Distribution Systems, Inc	04560	New Orleans
Evans & Wood Company, Inc	07922	Dallas/Fort Worth
Expediters International of Washington, Inc	07259	New York
Expeditors International of Washington, Inc	06946	San Francisco
FB Vandergrift Company, Inc	07645	San Francisco
Fong, J.B	06150	San Francisco
Foreign Forwarding, Inc	13311	Milwaukee
Fritz Air Freight	06658	Dallas/Fort Worth
Gash, Robert William	02215	San Francisco
Global Transportation Systems, Inc	14830	Washington, DC
Golden Eagle Customs Brokers	11891	Miami
Greenlee, Paul L	09903	Philadelphia
HB Thomas & Company	01049	San Francisco
Helstern, Jay P	04845	San Francisco
HH Elder & Company	03138	San Francisco
Hipage Company, Inc	04042	Washington, DC
HS Dorf Company, Inc (CA)	01861	San Francisco
Ingham International, Inc	09383	San Francisco
Interamerica Brokera	13991	Laredo
Interamerican World Transport Corporation	04445	San Francisco
Intercontinental Transport Services, Inc	03457	Boston
Interdocs, Inc	14236	Great Falls
International Cargo Group, Inc	14339	Boston
International Customs Service, Inc	06993	San Francisco
International Expediters, Inc	02603	San Francisco
Jacky Maeder, Ltd	10446	San Francisco
John S James Company	05615	Tampa
John V Carr & Son, Inc	01872	Detroit
Jones, Clifford Terrell	03534	San Francisco
Karl Schroff Associates, Inc	03506	San Francisco
Kearney, Kevin	09098	San Francisco
Kinetsu Intermodal (USA), Inc	09849	Los Angeles
Kuehne & Nagle, Inc	05573	San Francisco
Kuehne & Nagle, Inc	07206	Cleveland
LE Coppersmith, Inc	03411	San Francisco
LeBlanc, Gregory W	11384	New Orleans
Lindsey, James O	05273	New York
Lisoni, Ferruccio	02693	New York
Lorme International Ltd	04646	New York
Lorme, Jr., Charles A	04458	New York
Mattoon & Company, Inc	02053	San Francisco
Medeiros, Gerald	05709	San Francisco
Miami Valley Worldwide, Inc	11297	Cleveland
Milne & Craighead Customs Brokers (USA) Inc	07605	San Francisco
Modern Intermodal Traffic Co	03889	San Francisco
Nippon Express USA, Inc	07511	San Francisco
Norman G Jensen, Inc	02176	Seattle
Oakes, Charles Norman	03834	Boston
Oceanic Forwarding Company	03340	San Francisco
Pacific Customhouse Brokerage, Inc	05042	San Francisco
PC Heck and Company, Inc	10863	Tampa
Pearson, Hartvig M	04275	San Francisco
Percival, Wendy Wojnar	10730	New York
Rank International Forwarding, Inc	14074	Miami
Regis F Kramer Associates	04155	San Francisco
Rol-Pac Services, Inc	05465	San Francisco
Rubio, Ricardo E	05221	New York

Name	License	Port name
RW Smith & Company, Inc	04001	New Orleans
Saga & Associates, Inc	11153	Los Angeles
Schenker International, Inc	08077	Cleveland
Scheyer, Jules	09178	New York
SDV Logistics Inc	15613	Dallas/Fort Worth
Seamodal Transport Corporation	05850	Norfolk
Shields, Jr., William J	04437	New York
Soto, Jr., Jose Antonio	08025	Laredo
Stecher, Charlene M.T. Lam	05586	Honolulu
Sterling International Services, Inc	12814	Philadelphia
Three Way Customhouse Brokerage, Inc	05949	San Francisco
US Group Consolidator, Inc	13489	San Francisco
Wall Shipping Company, Inc	14058	Washington, DC
Western Overseas Corporation	06188	San Francisco
Wilson Group USA, Inc	04565	Baltimore
Wilson UTC, Inc	07897	San Francisco
Worldwide Logistics	13870	Baltimore
WR Zanes Company of Louisiana, Inc	06382	Dallas/Fort Worth
Yolanda Diaz, Inc	07494	Miami
Yoshioka, Shigeru	03392	San Francisco
Young, David A	06853	Detroit
Zawacki, Ronald	05815	San Francisco

Dated: September 28, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–25136 Filed 10–5–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–72]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a list of revoked Customs broker licenses.

Name	License	Port name
William F. Joffroy, Jr..	05864	Nogales.
Iselda C. Martinez.	12357	Miami.
Scott M. Pierce	15327	Atlanta.
Unit International of Miami.	13168	Miami.
Eduardo Villareal.	13683	Laredo.
W.J. Byrnes-Air & Company.	00060	San Francisco.

Customs broker licenses numbered 05864, 12357, 15327, 13168, 13683, and 00060 remain valid.

Dated: September 28, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–25137 Filed 10–5–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–71]

Cancellation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs broker license cancellation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled without prejudice.

Name	License No.	Port name
Total Logistic Control LLC.	16774	Detroit.

Dated: September 28, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–25138 Filed 10–5–01; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 66, No. 195

Tuesday, October 9, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2001-D001]

Defense Federal Acquisition Regulation Supplement; Cancellation of MIL-STD-973, Configuration Management

Correction

In rule document 01–24387 beginning on page 49865, in the issue of Monday, October 1, 2001, make the following correction:

252.248-7000 [Corrected]

On page 49866, in the first column, section 252.248-7000 should read as set forth above.

[FR Doc. C1–24387 Filed 10–5–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 253

[DFARS Case 2001-0004]

Defense Federal Acquisition Regulation Supplement; Reporting Requirements Update

Correction

In the issue of Wednesday, October 3, 2001 on page 50504, in the third column, in the correction of rule document C1-22420, in the first line, ''On page 47103'' should read ''On page 47105''.

[FR Doc. C1–22420 Filed 10–5–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 9, 2001

Part II

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Measurement of Mercury in Water; Revisions to EPA Method 1631; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7074–6]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Measurement of Mercury in Water; Revisions to EPA Method 1631; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this action, EPA is proposing modifications to EPA Method 1631, Revision C: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry (Method 1631C), which measures mercury in aqueous samples. The proposed modifications would require use of certain ''clean techniques'' and quality control requirements when using this test method. The Agency is proposing to modify EPA Method 1631C to fulfill obligations under a Settlement Agreement designed to resolve litigation challenging an earlier EPA rulemaking that standardized this test method. The proposed modifications are intended to improve performance of EPA Method 1631C by reducing opportunities for contamination during sample collection and analysis. In addition, EPA is proposing revisions to this test method based on comments received from method users following method approval.

DATES: Comments must be postmarked, delivered by hand, or electronically mailed on or before December 10, 2001. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. Eastern Standard Time (EST) on December 10, 2001.

ADDRESSES: Mail written comments on the proposed rule to ''Method 1631—Proposed Rule'' Comment Clerk (W–01–05), Water Docket (4101); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to: EPA's Water Docket at 401 M Street, SW., East Tower Basement (Room EB 57), Washington, DC 20460. If you wish to hand-deliver your comments, please call (202) 260–3027 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays, to schedule an appointment. Comments also may be submitted electronically to: *OW-docket@epamail.epa.gov.*

FOR FURTHER INFORMATION CONTACT: Maria Gomez-Taylor, Ph.D.; Engineering and Analysis Division (4303); Office of Science and Technology; Office of Water; U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW; Washington, DC 20460, or call (202) 260–1639 or E-mail at *gomez-taylor.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, NPDES permitting authorities, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has ''approved'' (i.e., promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permitting authority must specify one of the approved testing procedures or an approved alternate test procedure for the measurements required under the permit. In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the approved testing procedures. Categories and entities that may be regulated include:

Category	Examples of potentially regulated entities
State, Territorial, and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Record and Commenting Procedures

The record for this rulemaking has been established under Docket Number W–01–05. A copy of the supporting documents cited in this proposal are available for review at EPA's Water Docket. The record is available for inspection from 9 a.m. to 4 p.m. EST, Monday through Friday, excluding Federal holidays at EPA's Water Docket, 401 M Street SW., East Tower Basement (Room EB 57), Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Commenters are requested to submit any references cited in their comments. Commenters also are requested to submit an original and three copies of their written comments and enclosures, and to clearly identify the specific issue(s) and method section(s) to which the comment applies. Commenters who want a confirmed receipt of their comments should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand. No facsimiles (faxes) will be accepted.

Electronic comments must be submitted as a Word Perfect for Windows 5/6/7/8 file or an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in Word Perfect 5/6/7/8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. All electronic comments must be identified by docket number. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Information on Internet Access

This Federal Register document has been placed on the Internet for public review and downloading at the following location: http//www.epa.gov/fedrgstr. Method 1631, Revision C; Draft Method 1631, Revision D; the Method 1631 Guidance; and a Fact Sheet are available at *www.epa.gov/ost/methods/1631.html* or from the EPA Sample Control Center (SCC), DynCorp I&ET, 6101 Stevenson Ave., Alexandria, VA 22304 (703–461–2100; *SCC@DynCorp.com*).

Outline of Notice

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  A. Regulatory Actions
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B. Blanks
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E. Shipment of Empty Sample Containers
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I. Correction of Part Numbers
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C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. National Technology Transfer and Advancement Act
F. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
G. Executive Order 13132—Federalism
H. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. Plain Language Directive
VIII. Request for Comments

I. Statutory Authority

Today's proposal is pursuant to the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1311, 1314(h), 1317, 1361(a) (the ''Act''). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his function under this Act.'' EPA publishes CWA analytical method regulations at 40 CFR Part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR Parts 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR Part 403, §§ 403.10 and 402.12).

II. Background

A. Regulatory Actions

On May 26, 1998, EPA proposed Method 1631 at 40 CFR Part 136 for use in determining mercury at ambient water quality criteria levels in EPA's Clean Water Act programs (63 FR 28867). Subsequently, on March 5, 1999, EPA published a Notice of Data Availability that included additional data supporting the application of Method 1631 to effluent matrices (64 FR 10596) in response to comments received at proposal. On June 8, 1999, EPA published a final rule promulgating EPA Method 1631, Revision B: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry (64 FR 30416) at 40 CFR Part 136. EPA published a technical correction revising EPA Method 1631B to EPA Method 1631C (66 FR 32774; June 18, 2001) to clarify the method text regarding the use of field blanks (see Settlement Agreement discussion below).

B. Settlement Agreement

In response to a petition for judicial review of EPA Method 1631B, EPA entered into negotiations with several industry groups. On October 19, 2000, EPA entered into a Settlement Agreement with the Alliance of Automobile Manufacturers, Inc., the Chemical Manufacturers Association, and the Utility Water Act Group (collectively, Petitioners), and the American Forest & Paper Association (Intervenor). The Settlement Agreement (*Alliance of Automobile Manufacturers, et al.* v. *EPA*, No. 99–1420, D.C. Dir.), is included in the rulemaking record in the Water Docket for today's proposal (see the **ADDRESSES** section of this proposal for details on the Water Docket). The Settlement Agreement includes four clauses that directly affect Method 1631 (Clauses 2, 3, 4, and 5).

Clauses 2 and 3 of the Settlement Agreement committed EPA to sign a notice of final rulemaking by June 15, 2001, revising sections 12.4.2 and 9.4.3.3 of Method 1631B to clarify the use of field blank subtraction (section 12.4.2) and the use of multiple field blanks (section 9.3.3.3) to determine whether test samples are acceptable for compliance monitoring purposes. EPA complied with that commitment, and on June 18, 2001, EPA published a final rule; technical correction notice (66 FR 32774) announcing a revised version of Method 1631 (Revision C; Method 1631C). That notice included the technical corrections about field blanks required by the Settlement Agreement. At that time, no other changes were made to the test method.

Clause 4 of the Settlement Agreement requires that EPA sign a notice for publication in the **Federal Register** on or before September 30, 2001 to propose additional requirements for certain clean techniques and quality control (QC) provisions in Method 1631. Today's proposed rule complies with EPA's obligation under Clause 4 of the Settlement Agreement. The additional requirements were listed in the Settlement Agreement as Appendix A and are discussed in Section IV of this preamble. Clause 4 also requires that EPA propose that ''a National Pollutant Discharge Elimination System (NPDES) permittee or an industrial user of a publicly-owned treatment works (POTW) may elect not to implement such provisions in its discretion and at its peril, unless specifically provided otherwise by the relevant permitting agency or pretreatment control authority, as the case may be.''

Clause 5 of the Settlement Agreement required that EPA publish a guidance document on or before March 1, 2001 specifying procedures for identifying, reducing, and demonstrating potential matrix interferences. On February 27, 2001, EPA published Guidance for Implementation and Use of EPA Method 1631 for the Determination of Low-Level Mercury (40 CFR Part 136) (EPA 821–R–01–023; March 2001) to address this clause and to assist regulatory agencies, dischargers, industrial users, and laboratories in the application of Method 1631 to ambient water and wastewater. In addition to providing information on potential matrix interferences, the guidance provides information on the use of clean techniques and method flexibility, and answers frequently asked questions regarding method implementation.

III. Summary of Today's Action

This rulemaking proposes to modify EPA Method 1631 to require the use of certain clean techniques and quality control (QC) provisions in accordance with clause 4 of the Settlement Agreement. These changes are in response to the petitioners' concerns

that results produced by laboratories using EPA Method 1631 would not be reliable unless the optional clean techniques and QC provisions are required. These revisions are discussed in Section IV of this proposal and are included in draft Method 1631, Revision D (Method 1631D).

Today's notice also proposes improvements and clarifications to EPA Method 1631 to make this test method more consistent with other approved methods and current practices, and easier to use. These proposed revisions are based on comments received from method users since promulgation of Method 1631. The proposed revisions are discussed in Section V and are included in draft Method 1631D.

IV. Proposed Revisions Based on the Settlement Agreement

A. Additional Requirements for Clean Techniques and Quality Control Provisions

Clause 4 of the Settlement Agreement requires EPA to sign a notice for publication in the **Federal Register** on or before September 30, 2001, proposing to require certain clean techniques and quality control (QC) provisions in EPA Method 1631. These requirements to propose clean techniques and QC provisions are listed in Appendix A to the Settlement Agreement and are reproduced below. The Petitioners believe that these additional requirements are necessary to prevent samples from becoming contaminated during the sampling and analysis process. EPA believes that these techniques may improve test performance. EPA refers readers to the appropriate section of draft EPA Method 1631, Revision D for the proposed revised language, which is indicated in the draft revised method in brackets and italics.

EPA solicits your comments and/or data on the proposed requirements, collectively or individually, and requests that you provide a reason to support your position.

1. Proposed Revision to Section 1.4

Item 1 of Appendix A to the Settlement Agreement states, ''Section 1.4 currently explains the importance of minimizing contamination of ambient water samples and explains that the Method includes suggestions for improvements to minimize contamination and maximize the ability of laboratories to make reliable measurements. The notice shall invite comment on revisions to this section to explain that certain sections contain suggestions and that other sections contain requirements to minimize contamination.'' Revision D, as proposed, includes a statement to that effect in Section 1.4.

2. Proposed Revision to Sections 2.3 and 8.5

Item 2 of Appendix A to the Settlement Agreement states, ''Sections 2.3 and 8.5 currently suggest that a sample used for the determination of methyl mercury should be preserved with 5 mL/L HCl solution only. The notice would invite comment on whether to change these sections to require the use of HCl for preservation if the sample is collected for the determination of methyl mercury.'' Revision D, as proposed, includes statements in Sections 2.3 and 8.5 corresponding to this requirement.

3. Proposed Revision to Section 4.3.3

Item 3 of Appendix A to the Settlement Agreement states, ''Section 4.3.3 currently suggests the use of a clean room or a clean bench. The notice would invite comment on whether to change this section to require a clean bench if a clean room is not available. The notice would not invite comment on whether to require a nonmetal hood because the Agency believes removal and replacement of existing metal hoods is unnecessary; use of a plastic awning in the hood prevents contamination during sample digestion.'' Revision D, as proposed, reflects this language in Section 4.3.3.

4. Proposed Revision to Section 4.3.4

Item 4 of Appendix A to the Settlement Agreement states, ''Section 4.3.4 currently suggests precautions to minimize exposure of the apparatus to contamination. The notice would invite comment on whether to change the 'shoulds' to 'musts.' '' Revision D, as proposed, changes the 'shoulds' to 'musts' in Section 4.3.4.

5. Proposed Revision to Section 4.3.5

Item 5 of Appendix A to the Settlement Agreement states, ''Section 4.3.5 currently recommends cleaning work surfaces before a batch of samples is processed. The notice would invite comment on whether to require the laboratory to clean work surfaces after processing a batch of samples with high levels of mercury.'' Revision D, as proposed, includes a requirement to this effect in Section 4.3.5.

6. Proposed Revision to Section 4.3.7.1

Item 6 of Appendix A to the Settlement Agreement states, ''Section 4.3.7.1 currently recommends that only fluoropolymer or borosilicate glass containers be used for samples. The notice would invite comment on whether to change 'should' to 'must' to respond to Petitioners' concern.'' Revision D, as proposed, changes the 'should' to 'must' in Section 4.3.7.1.

7. Proposed Revision to Sections 4.3.8.1 and 11.2.4

Item 7 of Appendix A to the Settlement Agreement states, ''Sections 4.3.8.1 and 11.2.4 currently suggest that a bubbler blank be used to check for carryover after encountering an unusually concentrated sample. The notice would invite comment on whether to change 'should' to 'must' in both sections to require analysis of the bubbler blank.'' Revision D, as proposed, changes the 'should' to 'must' in Section 4.3.8.1 and also changes Section 11.2 to correspond to this requirement.

8. Proposed Revision to Section 4.3.8.4

Item 8 of Appendix A to the Settlement Agreement states, ''Section 4.3.8.4 currently suggests that sample processing should occur as far as possible from sources of airborne contamination. The notice would invite comment on whether to change the 'should' to 'must.''' Revision D, as proposed, changes the 'should' to 'must' in Section 4.3.8.4.

9. Proposed Revision to Section 4.4.3

Item 9 of Appendix A to the Settlement Agreement states ''Section 4.4.3 currently explains a concern regarding condensation of water in the gold traps. The section explains that condensation can be avoided by predrying the gold trap, and by discarding those traps that tend to absorb large quantities of water vapor. The notice would invite comment on whether to change this Section to preclude the use of gold traps that tend to absorb large quantities of water vapor.'' Revision D, as proposed, changes Section 4.4.3 to include a requirement to this effect.

10. Proposed Revision to Sections 6.1.2.3 and 9.4.4.1

Item 10 of Appendix A to the Settlement Agreement states, ''Sections 6.1.2.3 and 9.4.4.1 currently recommend the analysis of bottle blanks. The notice would invite comment on whether to change 'should' to 'must' to require analysis of bottle blanks in these sections.'' Revision D, as proposed, changes the 'should' to 'must' in Section 6.1.2.3 and also changes Section 9.4.7 to correspond to this requirement because the requirements for bottle blanks are presented in this section.

11. Proposed Revision to Section 7.2

Item 11 of Appendix A to the Settlement Agreement states, ''Section 7.2 currently lists two ways to assure that laboratory air is low in both particulate and gaseous mercury: use of outside air that is very low in mercury and use of inside air recycled through a gold-coated filter. As presently written, outside air 'should' be brought into the class-100 clean bench air intake. The notice would invite comment on whether to change this 'should' in the outdoor air option to a 'must.''' Revision D, as proposed, changes the 'should' to 'must' in Section 7.2.

12. Proposed Revision to Section 8.5.3

Item 12 of Appendix A to the Settlement Agreement states, ''Section 8.5.3 currently requires handling of samples in a mercury-free clean bench. The notice would invite comment on whether to change 'should' to 'must.''' Revision D, as proposed, changes the 'should' to 'must' in Section 8.5.3.

13. Proposed Revision to Note at Section 8.5.3

Item 13 of Appendix A to the Settlement Agreement states ''Section 8.5.3 (note) currently states that samples 'should' be filtered and preserved in accordance with the procedures in Method 1669. The notice would invite comment on whether to change the 'should' to 'must' but only for the provisions of Method 1669 related to filtration and preservation of samples when circumstances prevent overnight sample shipment (i.e., sections 2.9 and 2.10 of EPA Method 1669).'' Revision D, as proposed, changes the 'should' to 'must' in the Section 8.5.3 note.

14. Proposed Revision to Section 8.6

Item 14 of Appendix A to the Settlement Agreement states, ''Section 8.6 currently suggests that sample bottles should be stored in clean (new) polyethylene bags until sample analysis. The notice would invite comment on whether to change this section to require storage in clean bags by changing 'should' to 'must.''' Revision D, as proposed, changes the 'should' to 'must' in Section 8.6.

15. Proposed Revision to Section 9.4.4.2

Item 15 of Appendix A to the Settlement Agreement states, ''Section 9.4.4.2 currently suggests the use of 'Clean Hands/Dirty Hands' when preparing sampler check blanks at the laboratory or cleaning facility. The notice would invite comment on whether to change 'should' to 'must' in this section for low-level mercury measurements.'' Revision D, as proposed, makes this change in Section 9.4.6.1 because the ''clean hands/dirty hands'' technique is referenced in that section.

16. Proposed Revision to Section 11.1.2

Item 16 of Appendix A to the Settlement Agreement states, ''Section 11.1.2 currently suggests that there should be 2 matrix spike/matrix spike duplicate pairs for each analytical batch of 20 samples. The notice would invite comment on whether to make the matrix spike/matrix spike duplicate pairs mandatory by changing 'should' to 'must be a minimum of' in this section.'' Revision D, as proposed, makes this change in Section 11.1.2.

B. Election by a Permittee/Industrial User

In EPA's ''Guidance for the Implementation and Use of EPA Method 1631 for the Determination of Low Level Mercury (40 CFR Part 136),'' dated March 2001, EPA recommends that State and Federal agencies measuring ambient water quality for compliance with water quality standards at very low concentrations should require, as a matter of internal agency protocol, that their personnel use clean techniques. EPA also suggests in this guidance, that NPDES permits specify the use of clean techniques, on a permit-by-permit basis, depending on the measurement level of concern, upon request by the permit applicant. The guidance also states that EPA will propose additional requirements for clean techniques by October 2001, and that EPA may revise the guidance in accordance with any requirements that are promulgated as a result.

Clause 4 of the Settlement Agreement requires EPA to propose that an NPDES permittee or an industrial user of a POTW may elect not to implement the clean techniques and QC provisions that are listed in Appendix A to the Settlement Agreement and that are proposed today ''in its discretion and at its peril, unless specifically provided otherwise by the relevant permitting agency or pretreatment control authority, as the case may be.'' Revision D, as proposed, includes this election in Section 1.13.

As required by the Settlement Agreement, the election is applicable to the clean techniques and QC provisions designated in Appendix A to the Settlement Agreement only. These provisions are discussed in Section IV.A of this notice and are designated throughout draft EPA Method 1631D by bracketed and italicized text. If Section 1.13 is promulgated as proposed, any text pertaining to clean techniques and quality control provisions that is also promulgated as proposed under the Settlement Agreement, would remain italicized and bracketed in the approved version of EPA Method 1631D to designate the techniques and provisions to which the election is applicable.

Users of EPA Method 1631 should be aware that the election in Clause 4 of the Settlement Agreement would apply to the permittee/industrial user only, and not to a regulatory/control authority or to other users of the Method. Regulatory/control authorities and other users of EPA Method 1631 would be required to use the clean techniques and QC provisions as designated by the italicized bracketed text in the affected sections of EPA Method 1631D. Permittees/industrial users should be aware of the potential disparity that could result if a sample is analyzed by a permittee/industrial user not using the clean techniques and QC provisions and also by a regulatory/control authority using the clean techniques and QC provisions. In addition, if a regulatory/control authority requires that a permittee/industrial user use the clean techniques and QC provisions, the burden would be on the regulatory/control authority to incorporate this requirement into regulations or permits.

EPA is soliciting comments on this election and on the specific techniques and provisions to which the election would be applicable. EPA is soliciting comments particularly from permittees/industrial users because the users would have the election, and from regulatory/control authorities and other users of EPA Method 1631 because they would not. EPA also seeks comment on whether the philosophical change embodied by the election (*i.e.,* to allow a permittee/industrial user to not use certain techniques and QC provisions of an analytical method, yet require regulatory/control authorities and other users to use these techniques) is desirable, in general. In addition, EPA solicits comments on alternatives to the Settlement Agreement approach, mainly on whether the additional clean techniques and QC requirements should be applicable to all users or whether the additional requirements should be optional for all users.

V. Proposed Additional Revisions to EPA Method 1631

Since promulgation of EPA Method 1631 in June 1999, EPA has received many suggestions for method improvement and requests to clarify certain method procedures. In today's action, EPA is proposing revisions to clarify and improve the method in

response to these comments. This section explains the revisions included in draft EPA Method 1631D in response to these comments. EPA is soliciting comment on the proposed revisions described below.

A. Use of Automated Flow-Injection Systems

Automated flow-injection systems are currently available and have been used successfully for performing EPA Method 1631 procedures for several years. These systems use flow injection and a gas-liquid separator in place of the bubbler.

EPA has worked with several users of these systems to develop appropriate calibration and calculation procedures and blank sample requirements and has included these procedures and requirements in draft Method 1631D. The revisions incorporate calibration blanks (Section 9.4.2), calibration procedures (Section 10.2), and result calculation procedures (Section 2.2) that are specific for flow injection systems. The proposed method also refers to flow injection systems throughout the text, and includes a figure depicting the flow-injection system (Figure 3). The revisions will expand the use of the Method by providing appropriate procedures for the use of automated flow injection systems.

B. Blanks

EPA Method 1631C includes the use of bubbler blanks (Section 9.4.1), reagent blanks (Section 9.4.2), field blanks (Section 9.4.3), equipment blanks (Section 9.4.4), bottle blanks (Section 9.4.4.1), and sampler check blanks (Section 9.4.4.1). Several commenters noted that the blanks are not well defined and that blank requirements are inconsistent with common usage. In addition, commenters noted that the types and requirements for blanks are not appropriate for use with the flow-injection systems. To address these comments, EPA added definitions for all blanks in the Glossary of draft Method 1631D, and clarified these definitions throughout the Method text. EPA has also added requirements for calibration blanks (for use with flow injection systems only) and method blanks (for use with both bubbler and flow injection systems). The proposed revisions are discussed in the following sections.

1. Definitions

In response to several comments that the types of blank samples required by Method 1631 are defined inconsistently throughout the Method, EPA revised Section 17 of draft Method 1631D to include definitions for the calibration blank, method blank, reagent blank, field blank, and bottle blank samples. Section 17 of draft Method 1631D also includes a revised definition of the bubbler blank to clarify its specificity for use with bubbler systems. In addition, EPA revised Section 9.4 in draft Method 1631D to further clarify definitions and use of blank samples for both bubbler and flow-injection systems.

The proposed revisions address more accurately EPA's intent to allow the use of both bubbler and flow injection systems for determination of mercury using Method 1631. The revisions also clarify the application and use of blank samples to identify and handle potential contamination.

2. Calibration Blanks

In EPA Method 1631, bubbler blanks are used to establish a background for the bubbler system (*i.e.,* bubbler, traps, and cold-vapor atomic fluorescence detector) and can be used to identify potential carryover from one sample to the succeeding sample (see Section 9.4.1 of EPA Method 1631C). Results of bubbler blanks are subtracted from all raw calibration and sample results. Bubbler blanks, however, are not appropriate for flow injection systems. Hence, EPA added a requirement for calibration blanks, when using a flow injection system. The performance criteria and application requirements of the calibration blanks are identical to those for the bubbler blanks.

3. Method and Reagent Blanks

EPA Method 1631 requires reagent blanks to identify contamination from reagents, but these blanks are required only when a new batch of reagents is prepared, with verification in triplicate each month, and are not required with each analytical batch (see Section 9.4.2 of EPA Method 1631C). Method 1631 also requires field blanks to identify contamination from sample collection and transport (see Section 9.4.3 of EPA Method 1631C). These field blanks may be used to identify contamination introduced at some point during the entire measurement process from sample collection through mercury detection, but cannot isolate contamination caused by sample collection and transport from contamination that is introduced during sample processing and analysis.

Several method users commented that laboratories typically use method blanks to determine potential contamination in the analytical system during sample preparation and analysis. These method blanks are prepared and analyzed using procedures identical to those used to prepare and analyze the corresponding samples.

Because method blanks can be used to identify total analytical system contamination, and are subjected to all sample processing and analytical steps including digestion, reduction, and determination, EPA added a requirement for method blanks to draft Method 1631D. The proposed method includes a requirement that at least three method blanks be analyzed with each analytical batch. It also includes a requirement that any sample requiring increased oxidation (*e.g.,* an increased amount of reagent) be associated with at least one method blank that is processed and analyzed using the same amount of increased oxidation. The performance criteria for the method blanks is identical to the field blank criteria. This requirement provides method users with a more appropriate procedure for addressing contamination that may result during the entire analytical procedure.

EPA also proposes to revise the requirement for the frequency of reagent blanks. In draft Method 1631D, analysis of reagent blanks is required only when each new batch of reagents is prepared. EPA believes that the requirements for method blanks included in draft Method 1631D will be sufficient to identify contamination that may be introduced by reagent solutions during processing and analysis of an analytical batch.

4. Equipment and Bottle Blanks

EPA received several comments on Method 1631 expressing confusion over the use of the terms ''equipment blank,'' ''sampler check blank,'' and ''bottle blank.'' Commenters also noted that the terms ''equipment blank'' and ''sampler check'' blank are synonymous and that using two terms to identify blanks used to check sample collection equipment is confusing. Additionally, commenters were concerned that bottle blanks are listed in EPA Method 1631 under blanks specific for determination of contamination in sample collection equipment. These commenters noted that bottle blanks also are necessary to determine contamination in bottles used for sample preparation and analysis, and recommended that bottle blanks be analyzed at a frequency of at least 20 percent of each lot used.

In response to these comments, EPA proposes to change the term ''sampler check blank'' to ''equipment blank'' in Section 9.4.6 of draft Method 1631D, and to revise Section 9.4 of the method to expand the application of bottle blanks for determination of contamination in bottles used for both sample collection and analysis (Section

9.4.7). EPA also included a requirement in draft Method 1631D that a minimum of 20 percent of the bottles from a given lot shall be tested and demonstrated to be free of mercury at the Method MDL (Section 6.1.2.4).

C. Calibration Over a Different Range

Several users of Method 1631 stated that they prefer to use EPA Method 1631 for mercury determination because it is less prone to interferences than other available methods, and would like to apply EPA Method 1631 procedures across a higher calibration range. Other users of the method commented that when they are analyzing samples known to be within a narrower range of concentrations than that of the current method (*e.g.,* an analytical run consisting of ambient samples), they prefer to calibrate the analytical system across the narrower range. Additional users noted that they desire to calibrate to a lower point to measure mercury in blanks to a lower level.

In response to these comments and to allow expanded use of EPA Method 1631, EPA included a provision in draft Method 1631D to allow calibration over ranges other than the range currently specified (Section 10.4). EPA included certain criteria with this provision to ensure that this allowance does not compromise data quality. These criteria are: (1) there must be a minimum of five, non-zero calibration points; (2) the difference between successive calibration points must be no greater than a factor of 10 and no less than a factor of 2 and should be approximately evenly spaced on a logarithmic scale over the calibration range; (3) the relative standard deviation (RSD) of the calibration factors for all calibration points must be less than 15%; (4) the calibration factor for any calibration point at a concentration greater than 100 ng/L must be within plus or minus 15% of the average calibration factor for the points at or below 100 ng/L; (5) the calibration factor for any point less than 5 ng/L must be within plus or minus 25% of the average calibration factor for all points; (6) if the highest calibration point is increased above 100 ng/L, the lowest calibration point (ML) must be increased commensurately above 0.5 ng/L; and, (7) if the calibration is to a higher range and this Method is used for regulatory compliance, the ML must be less than one-third the regulatory compliance limit.

D. Sample Preservation, Refrigeration, Headspace, Collection Containers, and Storage

Section 8.5 of the currently approved EPA Method 1631 requires that samples are preserved upon collection, or alternatively, are collected only in fluoropolymer bottles, with zero headspace, capped tightly, and stored at 0–4°C until they can be preserved within 48 hours of collection.

Since promulgation of EPA Method 1631, EPA has received numerous comments on the sample preservation, refrigeration, headspace, and holding time requirements in the method and in Table II at 40 CFR 136.3(e). EPA has considered these comments and has included revisions in today's draft Method 1631D to address the recommendations from method users. Specific proposed revisions regarding preservation, refrigeration, container type, headspace, and holding time requirements are discussed below. The proposed changes are based on the comments received from method users and EPA requests data to support whether the changes would affect the quality of results. EPA is not proposing to revise the requirements that samples collected for determination of total mercury must be capped tightly and must be preserved or analyzed within 48 hours of collection. EPA is requesting comment on whether this requirement should be kept.

1. Sample Preservation

Sections 2.3 and 8.5 of EPA Method 1631 currently require that samples are either preserved with hydrochloric acid (HCl) or bromine monochloride (BrCl) solution immediately upon collection, or alternatively, are collected and stored under specific conditions (i.e., zero headspace, fluoropolymer bottles, capped tightly, and stored at 0–4°C) until they can be preserved in the laboratory within 48 hours of collection. As discussed in Section IV.A.2, EPA is also proposing to revise the sample preservation requirement in Sections 2.3 and 8.5 of the method for the determination of methyl mercury.

Commenters claim there is no need to preserve samples for total Hg if BrCl is added to the sample in the laboratory and the sample is allowed to stand for a minimum of 24 hours to oxidize all forms and species of mercury to $Hg^{(II)}$. Commenters also noted that the immediate preservation of samples collected for total or dissolved mercury determination is unnecessary, provided the samples are preserved or analyzed within 48 hours of collection, and have requested elimination of the requirement for preservation so that solutions of HCl or BrCl do not need to be shipped to the sampling site.

EPA currently is reviewing data that indicate that unpreserved samples collected for measurement of low level mercury may be stable for as long as 35 days. Additionally, EPA does not have data demonstrating that results of samples for total or dissolved mercury that are not preserved immediately are compromised, and solicits such data to determine whether immediate preservation should be required. Therefore, EPA has included revisions in draft Method 1631D (Section 8.5) to eliminate the requirement for immediate preservation of samples collected for determination of mercury using EPA Method 1631. Today's proposed method does not include a revision to the requirement for immediate preservation of samples collected for methyl- and dimethyl mercury determination.

EPA is also proposing to amend Table II of 40 CFR 136.3(e) to include requirements for preservation of samples collected for mercury measurement using Method 1631 within 48 hours of sample collection, using BrCl or HCl (see Section VI of this notice).

2. Sample Refrigeration

Users of EPA Method 1631 claim that there is no need to refrigerate unpreserved samples for total or dissolved mercury because the bromine monochloride (BrCl) digestion converts all forms of Hg to $Hg^{(II)}$. Therefore, if a given form or species of Hg were converted to another form or species in the absence of refrigeration (e.g., through biological activity), the BrCl digestion would convert the new form, as well as any remaining portion of the old form, to $Hg^{(II)}$. Commenters have requested that EPA eliminate the requirement for refrigeration of unpreserved samples because of costs and logistics problems (i.e., refrigeration requires purchase of ice, shipment of the sample in a cooler, and testing of the sample at the laboratory to make certain that the temperature remains in the range specified, 0–4 °C).

EPA currently does not have data demonstrating that refrigeration of unpreserved samples for measurement of total or dissolved mercury using Method 1631 is necessary, and is seeking such data to determine if refrigeration should be required. In the absence of data, EPA has revised draft Method 1631D (Section 8.5) to eliminate the requirement for refrigeration of unpreserved samples, provided that the sample is tightly capped and is either preserved or analyzed within 48 hours of collection.

EPA also has received comments that samples collected for measurement of mercury using Method 1631 are stable for up to 30 days prior to either preservation or analysis. EPA is

requesting data to support this comment. EPA will consider submitted data, and if appropriate, will re-evaluate the requirement for preservation or analysis of samples within 48 hours.

3. Sample Headspace

Section 8.5 of EPA Method 1631 requires that mercury samples are collected with zero headspace if they are not preserved immediately. A laboratory involved in the development of EPA Method 1631 commented that, although it is necessary to collect samples for methyl- and dimethyl-mercury with zero headspace, it is not necessary to collect samples for total or dissolved mercury with zero headspace. For total or dissolved mercury, the partitioning of volatile forms of mercury into a relatively small headspace volume is negligible.

EPA has removed the requirement for collecting unpreserved samples with zero headspace in draft Method 1631D (Section 8.5.1), provided the sample is tightly capped and is preserved or analyzed within 48 hours of sample collection. The proposed method does not include a revision of the requirement to collect samples for methyl mercury with no headspace.

4. Sample Collection Containers

Section 8.5.1 of EPA Method 1631 requires that unpreserved samples must be collected in fluoropolymer sample containers. Several users of EPA Method 1631 have commented that, in addition to fluoropolymer bottles, glass bottles can be used successfully for collection of unpreserved samples, provided the containers are demonstrated to be clean, are tightly capped, and are preserved or analyzed within 48 hours of sample collection.

EPA is soliciting data demonstrating that the use of glass containers for collection of mercury samples that are not preserved immediately does not compromise the quality of results obtained using EPA Method 1631. EPA has revised Sections 2.1, 4.3.7.1, and 8.5.1 in draft Method 1631D, to allow collection of unpreserved samples in either clean fluoropolymer or clean glass sample containers.

As discussed previously in Section V.D.1 of this document, EPA is requesting data to support the comment that samples collected for measurement of mercury using Method 1631 are stable for up to 30 days prior to preservation or analysis. EPA will consider submitted data, and if appropriate, will re-evaluate the requirement for preservation or analysis of samples within 48 hours.

5. Holding Time

Section 8.5 of EPA Method 1631 states that acid- and BrCl-preserved samples are stable for a period of 28 days. Several laboratories that assisted in the development of EPA Method 1631 believe that samples are stable for at least three months and have provided data to EPA demonstrating this stability in mercury samples that have been preserved with either BrCl or HCl. These data are included in the Record supporting today's rule.

EPA revised Section 8.5 of draft Method 1631D to recognize that acid- or BrCl-preserved samples that are collected for measuring mercury using Method 1631 are stable for a period of 90 days. EPA is also proposing to amend Table II of 40 CFR 136.3(e) to include a maximum holding time of 90 days for samples collected for determination of mercury using Method 1631 (see Section VI of this preamble).

E. Shipment of Empty Sample Containers

Section 6.1.2.1 of EPA Method 1631 requires that sample bottles be filled with 0.4% HCl solution and stored until use. EPA Method 1631 also references Section 6.3.1 of EPA Method 1669, which suggests that clean sample bottles should be filled with reagent water for shipment to the sampling site prior to sample collection.

Commenters have stated that EPA Methods 1631 and 1669 should allow shipment of empty sample bottles to avoid shipping acid and to save shipping weight. As with sample refrigeration and preservation, EPA is soliciting data demonstrating whether shipping sample bottles full of dilute acid or reagent water is necessary and should be required. We have revised Section 6.1.2.1 in draft Method 1631D to allow shipment of empty bottles for sample collection based on comments from method users.

F. Scope of ''Should'' and ''May''

The introduction to EPA Method 1631 contains a note that addresses the performance-based aspects of the Method. The note states that the terms ''shall'' and ''must'' define procedures required for producing reliable data at water quality criteria levels and that the terms ''should'' and ''may'' indicate optional steps that may be modified or omitted if the laboratory can demonstrate that the modified method produces results equivalent or superior to results produced by the unmodified method. As discussed in Section IV of today's notice, EPA is proposing additional requirements for clean techniques and quality control that would, if implemented, change certain ''should'' and ''may'' to ''shall'' and ''must.''

Some commenters have interpreted the terms ''should'' and ''may'' as limiting the applicability of the performance-based allowances in the Method. EPA does not intend this restriction. As stated in Sections 1.8 and 9 of EPA Method 1631, any procedure may be modified, except for procedures required as defined by the terms ''shall'' and ''must'' and all QC tests.

To preclude ambiguity, EPA has revised the note in draft Method 1631D to clarify that the laboratory is permitted to omit steps or modify procedures provided that all performance requirements in this Method are met, but that the laboratory must not omit or modify any procedure defined by the term ''shall'' or ''must'' and must perform all quality control tests.

G. Field Filtration for Dissolved Metals

Both EPA Method 1669 (Section 8.3) and the current version of EPA Method 1631 (Method 1631C, Section 8.5.3) recommend that filtration of samples collected for dissolved Hg should be performed in the clean room of the laboratory. In contrast, 40 CFR 136.3(e), Table II, footnote 7, says that samples for dissolved metals should be filtered immediately on-site before adding preservative.

Since promulgation of EPA Method 1631, some commenters have noted that it is preferable to filter samples for dissolved Hg in the laboratory under controlled clean conditions. Other commenters, however, have noted that it is preferable to filter samples for dissolved Hg immediately upon collection, thereby allowing for in-line filtration and immediate preservation if desired.

EPA believes that filtration of mercury samples in either the field or laboratory is appropriate, provided the filtration is performed in a clean area, and provided that samples are accompanied by a blank that has been filtered under the same conditions. EPA has revised Sections 2.2 and 8.4 of draft Method 1631D to allow for both in-field and laboratory sample filtration under these provisions.

EPA is also proposing to amend 40 CFR 136.3(e) Table II to include requirements for filtration of samples for measurement of dissolved mercury using Method 1631, in a clean area in the laboratory or in the field (see Section VI of this preamble for proposed revisions to 40 CFR 136.3(e), Table II).

H. Carryover Test

The bubbler blank carryover test in EPA Method 1631 is recommended ''when an unusually concentrated sample is encountered'' (Method 1631C, Section 4.3.8.1) or ''after very high samples'' (Method 1631C, Section 11.2.4).

Several commenters stated that ''unusually concentrated'' and ''high sample'' are not defined. Commenters also have noted that it may not be practical to stop a run and analyze a bubbler blank immediately after these samples. Often a sample is determined to have a high Hg concentration that could result in carryover only after subsequent samples have been analyzed or at the completion of an analytical batch.

To quantify the concentration of mercury in a sample that would carry a concentration into a subsequent sample, EPA has included a carryover test in draft Method 1631D (Section 4.3.8.1) that is similar to that in Section 8.5.1 of EPA Method 1624B for analysis of volatile organic compounds using a gas chromatograph/mass spectrometer (40 CFR Part 136, appendix A). In this test, successively greater concentrations of mercury in reagent water are analyzed to determine the concentration at which more than 0.2 ng/L (the MDL in Method 1631) would be measured in a subsequent bubbler blank.

EPA also has included revisions in draft Method 1631D (Section 4.3.8.1 and Section 11.2.1.3) to require that when an unusually concentrated sample is encountered, a bubbler blank must be analyzed to check for carryover and that samples run immediately following a sample that has been determined to result in carryover must be reanalyzed using a bubbler that is demonstrated to be free of Hg at the 0.2 ng/L level.

I. Correction of Part Numbers

Users of Method 1631 have informed EPA that the supplier does not recognize part numbers for the peristaltic pump or tubing suggested in the method. The supplier has informed us that the leading letter in the part number signifies the version of the catalog and should be omitted from the part number. EPA has corrected these part numbers in proposed Method 1631D (Sections 6.1.3.2 and 6.1.3.3).

J. Use of Polyethylene or Polypropylene Vessels for Sample Digestion

Most methods for determination of metals allow polyethylene bottles as sample containers (see 40 CFR Part 136, Table II, footnote 1). EPA Method 1631 requires use of glass or fluoropolymer because mercury can diffuse in and out of polyethylene bottles (see Section 16.4 of EPA Method 1631).

Commenters have stated that, although fluoropolymer or glass bottles are necessary for sample collection, this type of labware is not necessary for sample digestion and other laboratory uses, because mercury will not diffuse through these materials in the relatively short time during which the sample is analyzed. Because polyethylene and polypropylene is less expensive than fluoropolymer and is less susceptible to breakage than glass, EPA has included a revision to this requirement in draft Method 1631D (Section 4.3.7.1) to allow use of polyethylene or polypropylene labware for sample digestion and preparation, but not for sample collection.

K. Indication of Complete Oxidation

Section 8.1 of EPA Method 1631 currently states that the pH of all aqueous samples must be tested immediately before analysis to ensure that the sample has been properly preserved.

Users of EPA Method 1631 have noted that the pH of a sample provides an insufficient indication of whether or not the sample is completely oxidized or ready for analysis, and cite as an example, samples containing high concentrations of sulfides or other reducing compounds that can consume BrCl, but still have a pH less than 2. These commenters have stated that color is a better indication of complete oxidation (see Sections 11.1.1.1 and 11.1.1.2 of EPA Method 1631).

EPA proposes to revise Section 8.1 in EPA Method 1631D to recognize that samples must be completely oxidized prior to direct analysis and that pH alone is not sufficient for determination of complete oxidation.

L. Adjustment for Amount of Bromine Monochloride to Blanks

Section 9.4.2.2 of EPA Method 1631 currently requires that the amount of reagent that is added to a reagent blank must be the same as the amount of reagent that is added to the samples. One of the laboratories responsible for the development of EPA Method 1631 commented that this requirement is inconsistent with Section 12.3 which allows adjustment during calculation of reagent blanks for greater amounts of reagent that may be added to samples requiring increased oxidation. Users also have commented that, although the correction allowed in Section 12.3 is appropriate for volume adjustment, it is not necessarily appropriate for adjustment of increased reagent concentration.

In draft Method 1631D, EPA has clarified that a sample requiring increased oxidation via an increased amount of reagents must be associated with at least one blank sample that has been analyzed using procedures identical to those used to prepare and analyze the sample. This requirement is included with the requirements for method blanks (draft Method 1631D, Section 9.4.4.3).

M. Addition of Method 1631 Guidance as a Reference

On March 2001, EPA published guidance to assist users with the implementation and use of EPA Method 1631. This guidance, Guidance for Implementation and Use of EPA Method 1631 for the Determination of Low-Level Mercury (40 CFR Part 136) (EPA 821–R–01–023, March 2001), was developed and published largely in response to the October 19, 2000 Settlement Agreement. EPA has added a reference for this guidance to draft Method 1631D (Section 16.22).

VI. Proposed Amendment to 40 CFR 136.3(e) Table II

EPA is today proposing to amend Table II at 40 CFR 136.3(e), which lists required containers, preservation techniques, and maximum holding times for biological and chemical parameters. This amendment provides consistency with previously approved requirements in EPA Method 1631 and with requirements proposed today (see Section V of this preamble). This proposal would add a footnote (17) to Table II to include requirements for collection, filtration, preservation, and maximum holding times that are specific to samples collected for determination of mercury using EPA Method 1631. This footnote would include the following requirements for mercury samples: samples must be collected using either fluoropolymer or glass containers, samples must be preserved with either HCl or BrCl within 48 hours of collection, preserved samples have a maximum holding time of 90 days, and samples must be filtered in a clean area in the laboratory or in the field prior to sample preservation. EPA invites comment on the proposed text to be added to Table II at 40 CFR 136.3(e).

VII. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory

action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and 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.

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

B. 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 prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the U.S. Small Business Administration definitions at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule proposes a revised version of a currently approved EPA Method to include additional requirements for clean techniques and quality control and to improve and clarify method procedures. Today's rule also proposes an amendment to Table II at 40 CFR 136.3(e) to provide consistency with previously approved requirements in Method 1631 and with revisions proposed today for collection, preservation, and storage of samples collected for determination of mercury using Method 1631 procedures.

Overall, the cost of these revisions are minimal. While some of the revisions may increase cost (e.g., clean technique and quality control requirements), others will provide flexibility and actually lower the overall analytical costs (e.g., use of new, less expensive equipment). Only NPDES permitting authorities must use the clean techniques. Permittees, including small entities, are not required to use them unless required to do so by their permitting authority. Many of the laboratories that analyze for mercury are already using the clean techniques, further minimizing any potential cost increases. EPA estimates that any costs associated with clean techniques would be alleviated or eliminated by the additional flexibility resulting from some of the proposed revisions to the Method that are discussed in Section V. Therefore, EPA believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. 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, Tribal, and local 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, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for the notification of potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. This rule proposes revisions to a previously approved method for measuring mercury in wastewater. This rule also proposes to revise Table II at 40 CFR 136.3(e) to clarify requirements for sample collection, preservation, and storage, and to make these requirements consistent with previously approved requirements in EPA Method 1631 and with today's proposed method revisions. As discussed in Section VII.B regarding RFA analysis, EPA expects the cost of these revisions to Method 1631 to be minimal. Thus, today's rule is not subject to sections 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule proposes to revise a currently approved test method for use in water monitoring programs but does not require the use of the test method.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. 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., material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies (VCSBs). The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no standard for the measurement of mercury at low water quality criteria levels or for the use of ''clean techniques.'' Therefore, EPA proposes to use EPA Method 1631, Revision D: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards for measuring low levels of mercury and for ''clean techniques'' and to explain why such standards should be used in this regulation.

F. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132—Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule proposes revisions to EPA's Method 1631, Revision C, for measuring mercury at low levels for compliance monitoring under the Clean Water Act. As discussed in Section VII.B regarding RFA analysis, EPA expects the cost of these revisions to Method 1631 to be minimal. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. As discussed in Section VII.B regarding RFA analysis, EPA expects the cost of these revisions to Method 1631 to be minimal. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

I. Executive Order 13211: Actions Concerning Regulations 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.

J. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example, have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that isn't clear? Would a different format (grouping and order of sections, use of

headings, paragraphing) make the rule easier to understand? Would more (but shorter) sections be better? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

VIII. Request for Comments

EPA encourages public participation in this rulemaking and is requesting comments on the various EPA Method 1631 revisions detailed in the proposal. EPA is also requesting data supporting comments, if available. Specifically, EPA is soliciting comments on: the proposed requirements for certain quality control and clean techniques that are currently recommended in the method and that are detailed in Section IVA of this preamble; the proposal to allow a discharger to elect not to implement the requirements at Section IVA; the proposed revisions to Method 1631 that address stakeholder comments and are detailed in Section V of this preamble; the proposed amendment to 40 CFR 136.3(e) Table II to include requirements for preservation and storage that are specific to aqueous samples collected for measurement of mercury using Method 1631; and the testing costs that may be associated with any of the proposed method modifications.

To ensure that EPA can properly respond to comments, commenters should cite, where possible, the paragraph(s) or section(s) in this proposal or in Method EPA 1631 to which each comment refers.

List of Subjects at 40 CFR Part 136

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 28, 2001

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended by revising paragraph (b) (41) and by revising the ''Metals'' entry in Table II of paragraph (e) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

(41) USEPA. 2001. Method 1631, Revision D, ''Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry.'' September 2002. Office of Water, U.S. Environmental Protection Agency (EPA–821–R–xx–xxx). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB2001–xxxxxx. Cost: $25.50 (subject to change). Table IB, Note 43.

* * * * *

Parameter No./name	Container [1]	Preservation [2, 3]	Maximum holding time [4]
* * *	*	* *	*
Metals			
18. Chromium VI [7]	P, G	Cool, 4°C	24 hours.
35. Mercury [17]	P, G	HNO_3 to pH<2	28 days.
3, 5–8, 12,13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals except boron, chromium VI and mercury [7].	P, G	.....do	6 months.
* * *	*	* *	*

[1] Polyethylene (P) or glass (G). For microbiology, plastic sample containers must be made of sterilizable materials (polypropylene or other autoclavable plastic), except for samples collected for trace-level mercury (see footnote 17).

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed, except for samples collected for trace-level mercury (see footnote 17).

[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. (See footnote 17 for samples collected for trace level mercury). Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory , is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details. The term ''analyze immediately'' usually means within 15 minutes or less of sample collection.

* * * * *

[7] Samples should be filtered immediately on site before adding preservative for dissolved metals, except for samples collected for trace-level mercury (see footnote 17).

* * * * *

[17] Samples collected for the determination of trace level mercury using EPA Method 1631, must be collected in tightly-capped fluoropolymer or glass bottles and preserved with BrCl or HCl solution within 48 hours of sample collection. Samples for dissolved trace level mercury must be filtered in a clean area in the field or the laboratory prior to sample preservation. Samples that have been preserved for determination of total or dissolved trace level mercury must be analyzed within 90 days of sample collection.

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Federal Register

Tuesday,
October 9, 2001

Part III

Department of Justice

Drug Enforcement Administration

21 CFR Part 1308

Interpretation and Clarification of Listing of "Tetrahydrocannabinols" in Schedule I; Exemption From Control of Certain Industrial Products and Materials Derived From the Cannabis Plant; Final Rules and Proposed Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–204]

RIN 1117–AA55

Interpretation of Listing of ''Tetrahydrocannabinols'' in Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Interpretive rule.

SUMMARY: For the reasons provided herein, the Drug Enforcement Administration (DEA) interprets the Controlled Substances Act (CSA) and DEA regulations to declare any product that contains any amount of tetrahydrocannabinols (THC) to be a schedule I controlled substance, even if such product is made from portions of the cannabis plant that are excluded from the CSA definition of ''marihuana.'' Consistent with this interpretation, DEA is publishing today a proposed rule in a separate Federal Register document that immediately follows this interpretive rule. The proposed rule proposes to revise the wording of the DEA regulations to make clear that the listing of THC in schedule I refers to both natural and synthetic THC. In a third **Federal Register** document being published today (following the proposed rule), DEA is issuing an interim rule, which exempts from control certain industrial products, processed plant materials, and animal feed mixtures made from those portions of the cannabis plant that are excluded from the definition of marijuana, to the extent such products, plant materials, and feed mixtures contain THC but are not used, or intended for use, for human consumption. The interim rule also provides a 120-day grace period for persons to dispose of existing inventories of THC-containing ''hemp'' products that are not exempted from control.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Why Is DEA Issuing This Interpretive Rule?

Over the past several months, DEA has received numerous public inquiries regarding the interpretation of the CSA with respect to certain products made from plants of the genus Cannabis (hereafter, ''cannabis plant''). These inquiries have raised the following question: If a product contains THC but is made from a portion of the cannabis plant that is excluded from the CSA definition of marijuana, is such product a controlled substance? This document answers this question and provides the public with the in-depth legal analysis that DEA has undertaken.

Legal Analysis

A. Relevant Statutory Provisions

Under the CSA, marijuana is defined as follows:

> The term ''marihuana'' [1] means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

21 U.S.C. 802(16). As the second sentence of this definition indicates, Congress expressly exempted certain portions of the cannabis plant from the definition of marijuana. At the same time, however, Congress expressly declared in the scheduling provisions of the CSA that ''any material, compound, mixture, or preparation, which contains any quantity of * * * Tetrahydrocannabinols [THC]'' is a schedule I controlled substance. 21 U.S.C. § 812(c), schedule I(c)(17).

Given the foregoing provisions of the CSA, several persons have recently asked DEA about the legal status of products marketed in the United States that are made from portions of the cannabis plant that are excluded from the definition of marijuana. Such products include, among other things, certain types of paper, clothing, bird seed, food, beverages, shampoos, and body lotions. Often, such products are labeled or advertised as being made from ''hemp.'' (Some members of the public refer to these as ''hemp'' products.) In some cases, the labeling indicates that the products contain a certain percentage of THC. Given the recent increase in marketing of these so-called ''hemp'' products in the United States, and given that many such products have recently been determined to contain THC, DEA has repeatedly been asked in recent months whether the THC content of such products renders them controlled substances despite the fact that they are reportedly made from portions of the cannabis plant that are excluded from the definition of marijuana.

In DEA's view, the answer lies in the plain language of the CSA, which states that ''any material, compound, mixture, or preparation, which contains any quantity of * * * Tetrahydrocannabinols'' is a schedule I controlled substance. The CSA does not state that any material, compound, mixture, or preparation containing THC is only a controlled substance if it fits within the definition of marijuana.

Several members of the public who have corresponded with DEA disagree with the above interpretation of the CSA. Some have contended that classifying what they term ''hemp'' products as controlled substances is contrary to the history of the federal drug laws, DEA's own regulations, and reported court decisions. In light of such comments from the public, set forth below is a detailed analysis of pertinent legal authorities.

B. Historical Development of the Law

Congress' definition of marijuana has remained unchanged since 1937. The definition that appears in the CSA today is identical to the definition that was contained in the Marihuana Tax Act of 1937. Congress carried this definition forward when it enacted the CSA in 1970. (The CSA repealed and superseded the Marihuana Tax Act.)

The question presented here is not answered by the legislative history of the CSA. The 1970 Congress seems to have adopted the definition of marijuana from the 1937 Marihuana Tax Act without reported discussion. In contrast, the legislative history of the Marihuana Tax Act contains substantial discussion of the definition of marijuana. The Senate Report to the 1937 Act states:

> The term ''marihuana'' is defined so as to bring within its scope all parts of the plant having the harmful drug ingredient, but so as to exclude the parts of the plant in which the drug is not present. The testimony before the committee showed definitely that neither the mature stalk of the hemp plant nor the fiber produced therefrom contains any drug, narcotic, or harmful property whatsoever and because of that fact the fiber and mature stalk have been exempted from the operation of law.

S. Rep. No. 900, 75th Cong., 1st Sess., at 4 (1937).

The foregoing legislative history was reiterated by the United States Court of Appeals for the District of Columbia Circuit in a 1975 case, *United States* v. *Walton,* 514 F.2d 201. The court stated:

> Looking at the legislative history of [the Marihuana Tax Act of 1937], we find that the

[1] ''Marihuana'' is the spelling used in the CSA. In this document, the common spelling ''marijuana'' is used, except when directly quoting the CSA or citing the ''Marihuana Tax Act of 1937.''

definition of marijuana was intended to include those parts of marijuana which contain THC and to exclude those parts which do not. * * * The legislative history is absolutely clear that Congress meant to outlaw all plants popularly known as marijuana to the extent those plants possessed THC.

Id. at 203–204.

Thus, it is evident that the 1937 Congress exempted certain portions of the cannabis plant from the definition of marijuana based on the assumption (now refuted) that such portions of the plant contain none of the psychoactive component now known as THC.[2] Although the 1970 Congress did not revisit this issue when it carried forward the 1937 definition of marijuana, it did separately specify that ''any material, compound, mixture, or preparation, which contains any quantity of * * * ''Tetrahydrocannabinols'' is a schedule I controlled substance. This is consistent with the conclusion of the Court of Appeals in Walton that, in enacting both the 1937 Act and the CSA, ''Congress meant to outlaw all plants popularly known as marijuana to the extent those plants possessed THC.''

It cannot be assumed (as some members of the public have asserted in recent correspondence with DEA) that because Congress adopted the 1937 definition of marijuana when it enacted the CSA, it intended to control marijuana in precisely the same manner as under the Marihuana Tax Act. As the United States Court of Appeals for the First Circuit recently stated: ''While in 1937 Congress had indicated in legislative history that production for industrial uses would be protected (primarily by a relatively low tax), we can find no indication that Congress in 1970 gave any thought to how its new statutory scheme would affect such production.'' *New Hampshire Hemp Council, Inc.* v. *Marshall,* 203 F.3d 1 (1st Cir. 2000) (citations omitted). The First Circuit further explained that basic differences between the 1937 Act and the CSA disallow interpreting the two acts in the same way:

Congress' main vehicle for protecting industrial-use plant production in 1937 was not its basic definition of ''marijuana,'' which included plants ultimately destined for industrial use; it was the complex scheme of differential tax rates and other requirements for transfers. That is the regime that was drastically modified in 1970 in favor of a broad criminal ban (subject only to federal licensing), a ban which read literally embraces production of cannabis plants regardless of use.

The possibility remains that Congress would not have adopted the 1970 statute in its present form if it had been aware of the effect on cultivation of plants for industrial uses. But that is only a possibility and not a basis for reading the new statute contrary to its literal language, at least absent a clear indication that Congress intended to protect plant production for industrial use as it existed under the prior tax statute. Nor, given Congress' enlargement of drug crimes and penalties in recent years, would one bank on its adoption of an exception strongly opposed by the DEA as a threatened loophole in the ban on illegal drugs.

Id. at 7 (footnote and citation omitted). Thus, industrial uses of marijuana that were permitted under the 1937 Tax Act are not necessarily permissible under the CSA, even though the definition of marijuana has remained the same in both acts.

One might reasonably ask: Why would Congress exempt certain portions of the cannabis plant from the CSA definition of marijuana if such portions would nonetheless be subject to CSA control to the extent they contain THC? The answer now seems clear. As indicated above, the 1970 Congress did not address the possibility that portions of the cannabis plant excluded from the definition of marijuana might contain THC.

C. Control of Natural and Synthetic THC

Some members of the public who have corresponded with DEA have expressed the view that the listing of THC in schedule I of the CSA applies only to synthetic THC, rather than natural THC. (For purposes of this document, ''natural THC'' means THC found in nature in the cannabis plant, as opposed to THC synthesized by humans.) Based on this supposition, some have contended that the THC content of ''hemp'' products is irrelevant because only synthetic THC (not natural THC) is controlled under the CSA. As explained below, DEA rejects this contention because it is DEA's interpretation that the listing of THC in schedule I includes both natural and synthetic THC.

1. Listing of THC in the CSA

When Congress established the initial schedules of controlled substances in 1970, it simply listed ''Tetrahydrocannabinols'' in schedule I. The CSA makes no mention of synthetic versus natural THC. Furthermore, the commonly understood meaning of ''Tetrahydrocannabinols'' includes both natural THC and synthetic THC, since ''Tetrahydrocannabinols'' is simply a name that refers collectively to a category of chemicals—regardless of whether such chemicals occur in nature or are synthesized in a laboratory. For example, Merriam-Webster's Collegiate Dictionary (10th ed. 1999) defines ''THC'' as ''a physiologically active chemical $C_{21}H_{30}O_2$ from hemp plant resin that is the chief intoxicant in marijuana—called also tetrahydrocannabinol;'' this definition does not mention synthetic THC.

2. Listing of THC in the DEA Regulations

In the DEA regulations, THC is listed in schedule I as follows:

Tetrahydrocannabinols 7370

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers

Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers

$\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

21 CFR 1308.11(d)(27). DEA interprets this regulation at face value. The first line—''Tetrahydrocannabinols''—refers to all forms of THC (natural or synthetic), while the subsequent lines refer to synthetic equivalents of the substances contained in the cannabis plant and synthetic substances with similar chemical structure and pharmacological activity. That the regulation refers specifically to certain synthetic equivalents of THC does not

[2] The technology used for chemical analysis has improved significantly since 1937. Using advanced methods of testing that are currently available, the analysis of all portions of today's cannabis plant, including those portions that are excluded from the definition of marijuana, will result in the identification of some amounts of THC within the structure of all portions of the plant. Additional amounts of THC might also be detected on the surface of those portions of the plant excluded from the definition of marijuana due to resin or particulate matter from other portions of the plant that adhered to the excluded portions during the harvesting process.

Some members of the public who have corresponded with DEA correctly point out that the legislative history of the 1937 Act contains testimony from witnesses who believed that some portions of the cannabis plant that were being excluded from the definition of marijuana did contain small amounts of the psychoactive drug. Other witnesses who appeared before the 1937 Congress testified to the contrary—that the portions of the plant that were being excluded from the definition of marijuana contained none of the psychoactive drug. In the final analysis, the Senate concluded (as quoted above) that the 1937 Act defined marijuana ''so as to bring within its scope all parts of the plant having the harmful drug ingredient, but so as to exclude the parts of the plant in which the drug is not present.''

mean that natural THC is excluded. The regulation does not state, for example: ''Tetrahydrocannabinols, meaning only synthetic equivalents. * * *''

To better understand this regulation, it is helpful to examine the historical control of THC under federal law.

3. Historical Control of THC Under Federal Law

Natural THC found in marijuana has been controlled, at least implicitly, under federal law since 1937. As stated above, under the Marihuana Tax Act of 1937, marijuana was defined exactly as it is now under the CSA—to include, among other things, any ''compound, manufacture, salt, derivative, mixture, or preparation of'' the cannabis plant. This definition included natural THC (to the extent such THC was contained in, or derived from, those portions of the cannabis plant included in the definition of marijuana). Thus, from 1937 until 1971 (the year the CSA became effective and the Marihuana Tax Act was repealed), such natural THC was federally controlled under the Marihuana Tax Act.

Synthetic THC, however, was not controlled under the 1937 Marihuana Tax Act since it did not fit within the Act's definition of marijuana. Nor were there any other federal drug laws in existence in 1937 that controlled synthetic hallucinogenic substances. Moreover, there was no reason in 1937 to expressly control THC (natural or synthetic) since this chemical had not been isolated in 1937 and it was not synthesized in the laboratory until 1964. In the late 1960s, when synthetic THC began showing up in the illicit market, federal officials concluded that federal control over the drug was necessary to prevent abuse. At that time, however (approximately three years before the enactment of the CSA), the federal laws governing drugs of abuse were not unified into a single act as they are now under the CSA. Marijuana and its derivatives were controlled under the Marihuana Tax Act; narcotics were controlled under a variety of acts, including the Harrison Narcotics Act of 1914; and what were termed ''depressant and stimulant drugs'' (which included some hallucinogenic substances) were controlled under the Drug Abuse Control Amendments of 1965 (DACA), which were part of the Food, Drug, and Cosmetic Act.

Because synthetic THC is a synthetic hallucinogenic substance, any federal control of the drug in 1968 could only be accomplished pursuant to DACA. Accordingly, the Bureau of Narcotics and Dangerous Drugs (BNDD, which was DEA's predecessor) promulgated a regulation, effective September 21, 1968, listing synthetic THC under DACA. This 1968 BNDD regulation was identical to the current listing of THC in the DEA regulations, except that the general reference to ''Tetrahydrocannabinols'' was absent. Thus, the 1968 regulation was expressly limited to synthetic THC (and synthetic equivalents thereof). This was because DACA prohibited BNDD from promulgating a regulation that would list under DACA any substance included in the definition of marijuana under the Marihuana Tax Act of 1937. In other words, if a drug was controlled under the Marihuana Tax Act, it could not also be controlled under DACA. Since natural THC (derived from marijuana) fit within the definition of marijuana and was thereby controlled under the Marihuana Tax Act, the BNDD regulation listing THC had to exclude such natural THC. Therefore, the BNDD regulation listing THC under DACA was limited to the synthetic form.

Thus, during the brief period from September 21, 1968, until May 1, 1971 (the effective date of the CSA), natural and synthetic THC were separately controlled under distinct federal acts. Natural THC (as a derivative of marijuana) was controlled under the Marihuana Tax Act of 1937, while synthetic THC was controlled under DACA.

When Congress enacted the CSA in 1970, one of its aims was to unify what had been the ''plethora of legislation'' controlling narcotics and dangerous drugs into ''one piece of legislation.'' H. Rep. No. 91–1444, 1970 U.S.C.C.A.N. 4566, 4571. One result was that, following the enactment of the CSA, THC no longer had to be separately categorized into ''natural'' versus ''synthetic'' in order to maintain the Congressionally mandated separation between drugs controlled under DACA and those controlled under the Marihuana Tax Act. Thus, Congress was able to list ''Tetrahydrocannabinols'' in schedule I without having to distinguish between natural and synthetic. Likewise, the first regulations implementing the CSA (the 1971 BNDD regulations) did not simply carry forward, without change, the prior regulation that listed only ''synthetic'' THC (as was required under DACA). Rather, BNDD added the general term ''Tetrahydrocannabinols'' to the beginning of the listing, above the references to ''synthetic equivalents,'' since the regulation no longer had to be limited to synthetic THC.

Thus, it is DEA's interpretation that the listing of THC in schedule I of the CSA and DEA regulations has always included both natural and synthetic THC.

4. Case Law Addressing Natural and Synthetic THC

It appears that no court has ever undertaken the foregoing extensive analysis of the control of natural and synthetic THC. Further, the few reported cases that have addressed the issue reach differing conclusions.

The first case to address the issue was United States v. Wuco, 535 F.2d 1200 (9th Cir. 1976), where the defendants were initially charged with trafficking in marijuana. When the defense indicated that they would argue the ''species defense'' (i.e., that the CSA only prohibits trafficking in ''Cannabis sativa L.''—not the supposedly other variety of cannabis with which defendants ''were caught red-handed''), the United States Attorney's Office sought to preclude this defense by filing a superseding indictment that charged defendants with trafficking in ''marijuana, a substance containing * * * tetrahydrocannabinol * * *, a schedule I controlled substance.'' Defendants were convicted of the latter charge and, on appeal, sought to reverse their conviction on the ground that this charge required the government to prove ''that the substance they possessed contained synthetic THC.'' For reasons that are not revealed in the court's opinion, the United States Attorney's Office ''conceded'' on appeal that the listing of ''Tetrahydrocannabinols'' in schedule I was limited to synthetic THC. The court agreed with this ''concession'' without explanation. The Wuco opinion contains no analysis of the CSA, DEA regulations, or legislative history. The opinion simply indicates that the court and the government agreed for purposes of that case that the listing of ''Tetrahydrocannabinols'' in schedule I meant only synthetic THC.

United States v. *Lochan,* 674 F.2d 960 (1st Cir. 1982), was another case in which the defendant was charged with, and convicted of, trafficking in ''tetrahydrocannabinols'' (in this case, hashish)—rather than ''marihuana''. Defendant argued on appeal that the government was required to prove that the hashish contained THC. The appeals court disagreed, indicating that it was sufficient for the government to prove ''that the material was in fact hashish.'' In addressing this issue, the court stated: ''Hashish is a schedule I substance if it contains tetrahydrocannabinols (THC), 21 U.S.C. 812, Schedule I (c)(17), which is the 'active ingredient' in hashish.'' This statement by the court is consistent with

the view that the listing of ''Tetrahydrocannabinols'' in schedule I does include natural (not merely synthetic) THC.

United States v. *McMahon,* 861 F.2d 8 (1st Cir. 1988) was another case in which the indictment charged the defendant with trafficking in ''hashish, a substance containing tetrahydrocannabinol, a Schedule I controlled substance.'' Based on this charge, the defendant contended that the government was required to prove the presence of THC in order to convict. The court upheld the conviction, ruling that ''the government is not required to prove that the substance contained THC, organic or synthetic; [i]t merely has to prove * * * that the substance was hashish and thus a derivative of marijuana, a Schedule I controlled substance.'' In attempting to explain this ruling, the court stated that ''the substance referred to in Schedule I(c)(17) is synthetic, not organic, THC.'' As support for this statement, the court cited Wuco and pointed to the separate listings of ''Marihuana'' and ''Tetrahydrocannabinols'' in schedule I of the DEA regulations. The court referred to the DEA regulations as ''describing THCs listed in schedule I as '[s]ynthetic equivalents of substances contained in the plant . * * * ''.

In DEA's view, the McMahon court erred in suggesting that the separate listings of ''Marihuana'' and ''Tetrahydrocannabinols'' in schedule I are mutually exclusive. Congress gave no indication in the CSA that there can be no overlap between separate listings in a particular schedule. An example serves to illustrate. In schedule I of both the CSA and DEA regulations, ''peyote'' is listed separately from ''mescaline''. Mescaline is to peyote what THC is to marijuana: the former is the psychoactive chemical component of the plant, while the latter is the plant itself (including derivatives thereof). Both natural and synthetic mescaline are known to exist. Yet, the fact that natural mescaline falls under the listing of ''peyote'' (as an extract, compound, derivative or preparation of such plant—see 21 CFR 1308.11(d)(22)) does not mean that the separate listing of ''mescaline'' refers only to the synthetic form. On the contrary, the listing of ''mescaline'' refers to the chemical in any form (natural or synthetic).

Moreover, the McMahon court acknowledged that its interpretation of ''Tetrahydrocannabinols'' appears inconsistent with that of the Lochan court. See 861 F.2d at 11 n.1. To resolve this apparent discrepancy between these two First Circuit cases, the McMahon court suggested that it may be possible that natural THC fits within the listing of both ''Tetrahydrocannabinols'' and ''Marihuana'' in schedule I. Id. In doing so, the McMahon court effectively acknowledged that the listing of THC in schedule I is not limited to synthetic THC.

Because the foregoing three cases arrive at no consensus about the issue of natural versus synthetic THC, and because none of the cases contains an in-depth study of the control of THC, these decisions fail to resolve the issue here. More instructive is the Walton decision (discussed earlier), which points out that THC content was of paramount concern to Congress in deciding how to control marijuana.

Conclusion

By stating that ''any material, compound, mixture, or preparation, which contains any quantity of * * * Tetrahydrocannabinols'' is a schedule I controlled substance, the plain language of the CSA leads to the conclusion that all products containing any amount of THC are schedule I controlled substances. The legislative history supports this conclusion by revealing that Congress wrote the definition of marijuana intending to control all parts of the cannabis plant that were believed to contain THC. When the CSA was enacted, the implementing regulations did not simply adopt, verbatim, the prior regulations that were expressly limited to synthetic forms of THC. Rather, the word ''Tetrahydrocannabinols'' was inserted in the regulations at the top of the listing, thereby including all forms of THC (natural and synthetic). DEA therefore interprets the CSA and DEA regulations such that any product that contains any amount of THC is a schedule I controlled substance, even if such product is made from portions of the cannabis plant that are excluded from the definition of marijuana.

DEA recognizes that this interpretive rule, standing alone, would effectively prohibit the use of an assortment of industrial products made from the cannabis plant (such as certain paper products, fiber, rope, and animal feed) that Congress intended to allow under the 1937 Marihuana Tax Act. Although the intent of the now-repealed 1937 Act is no longer controlling, DEA is issuing today, in a separate **Federal Register** document that accompanies this document, an interim rule that will except from CSA control the types of industrial products that were allowed under the 1937 Act, provided such products do not cause THC to enter the human body. See [insert **Federal Register** cite for interim rule]. As explained further in the interim rule, all other products made from any of the excluded portions of the cannabis plant (such as edible ''hemp'' products) remain controlled substances if they cause THC to enter the human body.

Also as set forth in the interim rule, a 120-day grace period is being provided for persons to dispose of existing inventories of THC-containing ''hemp'' products that are not exempted from control.

Regulatory Certifications

This document is an interpretive rule. It is not a proposed rule, general notice of which the agency must publish in accordance with the Administrative Procedure Act. See 5 U.S.C. 553. Therefore, the following provisions, which require the agency to include regulatory certifications in proposed rules, are not applicable to this document: Regulatory Flexibility Act (5 U.S.C. 601–612); Executive Order 12988 (civil justice reform); Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538); and Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801–808). All of the foregoing certification provisions are addressed, however, in the proposed rule that accompanies this interpretive rule. See [insert **Federal Register** cite for proposed rule].

Executive Order 12866

This interpretive rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), Principles of Regulation. This rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, § 3(f). Accordingly, this interpretive rule has been reviewed by the Office of Management and Budget for purposes of Executive Order 12866.

Executive Order 13132

This interpretive rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state or diminish the power of any state to enforce its own laws. Accordingly, this interpretive rule does not have federalism implications warranting the application of Executive Order 13132.

Paperwork Reduction Act of 1995

This interpretive rule does not involve collection of information within the meaning of the Paperwork Reduction Act of 1995.

Plain Language

In writing this interpretive rule, DEA has attempted to use plain language in

an easy-to-read manner, consistent with the June 1, 1998 directive of the President. See 63 FR 31885. If you have any suggestions to make this document more clear, call or write Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Washington, D.C. 20537; telephone: (202) 307–7297.

Dated: October 2, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–25022 Filed 10–5–01; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–205]

RIN 1117–AA55

Clarification of Listing of ''Tetrahydrocannabinols'' in Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Proposed rule and request for comments.

SUMMARY: In a separate document published today in the **Federal Register**, the Drug Enforcement Administration (DEA) issued an interpretive rule stating that under the Controlled Substances Act (CSA) and DEA regulations, any product that contains any amount of tetrahydrocannabinols (THC) is a schedule I controlled substance, even if such product is made from portions of the cannabis plant that are excluded from the CSA definition of ''marihuana.'' (Hereafter ''the interpretive rule''.) Consistent with the interpretive rule, this document proposes to revise the wording of the DEA regulations to clarify that the listing of ''Tetrahydrocannabinols'' in schedule I of the CSA refers to both natural and synthetic THC. In a third **Federal Register** document issued today (immediately following this document), DEA is issuing an interim rule exempting from the application of the CSA certain industrial products, processed plant materials, and animal feed mixtures made from those portions of the cannabis plant that are excluded from the CSA definition of marijuana, to the extent such products and plant materials contain THC but are not used, or intended for use, for human consumption. The interim rule also provides a 120-day grace period for persons to dispose of existing inventories of THC-containing ''hemp'' products that are not exempted from control.

DATES: Comments must be received by DEA on or before December 10, 2001.

ADDRESSES: Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537; Attention: DEA Federal Register Representative/CCD.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537; Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

This proposed rule will clarify that, under the CSA and DEA regulations, the listing of ''Tetrahydrocannabinols'' in schedule I refers to both natural and synthetic THC.

This proposed rule is being issued pursuant to 21 U.S.C. 811, 812, and 871(b). Sections 811 and 812 authorize the Attorney General to establish the schedules in accordance with the CSA and to publish amendments to the schedules in the Code of Federal Regulations, Part 1308 of Title 21. Section 871(b) authorizes the Attorney General to promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient enforcement of his functions under the CSA. The functions vested in the Attorney General by the CSA have been delegated to the Administrator of DEA. 21 U.S.C. 871(a); 28 CFR 0.100.

Why Is There a Need To Clarify the Meaning of ''Tetrahydrocannabinols''?

It has become evident from correspondence that DEA has received in recent months that some members of the public are under the impression that the listing of ''Tetrahydrocannabinols'' in schedule I of the CSA and DEA regulations refers only to synthetic—but not natural—THC. As explained in detail in the interpretive rule, it is DEA's interpretation of the plain language of the CSA and DEA regulations, and the legislative history, that the listing of ''Tetrahydrocannabinols'' in schedule I refers to both natural and synthetic THC. To eliminate any uncertainty, DEA is proposing to revise the wording of its regulations to refer expressly to both natural and synthetic THC.

While This Proposed Rule Is Pending, What Is the Current Legal Status of ''Hemp'' Products?

As set forth in the interpretive rule, DEA interprets the current CSA and DEA regulations such that any product that contains any amount of tetrahydrocannabinols is a schedule I controlled substance, even if such product is a ''hemp'' product (i.e., a product made from portions of the cannabis plant that are excluded from the CSA definition of marijuana). However, as set forth in the interim rule, DEA is today exempting from control certain industrial ''hemp'' products, processed cannabis plant materials, and animal feed mixtures containing sterilized cannabis seeds, provided such items are not used, or intended for use, for human consumption. With the exception of such exempted products and materials, all other ''hemp'' products and materials that contain any amount of THC remain schedule I controlled substances.

As specified in the interim rule, a 120-day grace period is being provided for persons to dispose of existing inventories of THC-containing ''hemp'' products that are not exempted from control.

Regulatory Certifications

Certain provisions of federal law and executive orders (specified below) require the agency to assess how a proposed rule might impact the economy, small businesses, and the states. (Hereafter in this document, these provisions will be referred to collectively as the ''certification provisions.'') The certification provisions must be considered in light of the nature of this rule. This rule merely proposes to revise the wording of the DEA regulations to clarify for the public the agency's understanding of existing law. In other words, through this proposed rule, DEA is implementing what it understands to be the mandate of Congress under the CSA. (This mandate is that every substance containing THC be listed in schedule I, unless the substance is specifically exempted from control or listed in another schedule.) Regardless of how this proposed rule might impact the economy, small businesses, or the states, DEA has no choice but to carry out such mandate.

Furthermore, when Congress enacted the CSA, it created a system of controls that was comprehensive in scope to protect the health and general welfare of the American people. Incidental restrictions on economic activity resulting from enforcement of the CSA have never been viewed as a proper basis to cease such enforcement. The certification provisions are no exception to this rule.

Moreover, one of the chief aims of the certification provisions is to ensure that agencies consider the potential economic ramifications of imposing new regulations. The proposed rule, however, would not create any new category of regulation governing the handling of controlled substances. Rather, the proposed rule merely helps to clarify what products are, or are not, subject to existing CSA regulations.

In a similar vein, it must be taken into account that this proposed rule does not alter existing legal obligations and rights

of members of the public. Since the proposed rule merely codifies DEA's interpretation of existing law, the legal status of THC-containing ''hemp'' products is unchanged by this proposed rule. Therefore, this proposed rule has no impact on any ongoing lawful economic activity in the United States. No THC-containing product that may be distributed under current United States law will become prohibited under the rules DEA is proposing and issuing today. Nor will the proposed rule impose any new regulation over such lawful products. Thus, this proposed rule has no economic impact for purposes of the certification provisions.

DEA recognizes, however, that some members of the public are either unaware of the current status of THC-containing products under federal law or disagree with DEA's interpretation of such law. As a result, there is ongoing economic activity in the United States related to the marketing of ''hemp'' products—despite the fact that such products are prohibited under current law to the extent they result in THC entering the human body. This proposed rule is intended to discourage such illegal trade in THC-containing products by clarifying the law. If this proposed rule succeeds in doing so, it will impact certain THC-related economic activity. However, since only unlawful economic activity will be affected, this impact should not preclude the promulgation of the rule.

If one were to assume, however, for the sake of argument, that this proposed rule would indeed change (not merely clarify) existing law, DEA would be required to conduct the economic assessments in accordance with the certification provisions. I.e., if one assumes that, prior to the issuance of this rule, it was lawful to manufacture and distribute all ''hemp'' products whose use resulted in THC entering the human body, then the certification provisions require DEA to assess the extent of such economic activity that would become prohibited under the proposed rule.

To conduct such an economic assessment, certain assumptions are made here. First, it is assumed that all products that are marketed as containing ''hemp,'' ''hempseed,'' or ''hemp oil'' are, in fact, made using portions of the cannabis plant.[1] Next, it is assumed that legitimate industrial ''hemp'' products—such as paper, rope, clothing, and animal feed mixtures—need not be considered in this economic assessment because they are exempted from control under the interim rule that DEA is issuing today. Finally, to err on the side of inclusiveness, economic activity related to all personal care ''hemp'' products will be considered here, even though (as explained in the interim rule) DEA believes that most such products meet the criteria for exemption under the interim rule.

Given the foregoing assumptions, the ''hemp'' products that will be affected economically by the proposed rule can be placed into three categories: Edible ''hemp'' products, personal care ''hemp'' products, and ''hemp'' raw materials. The economic activity related to each of these three categories is addressed separately below.

As a general matter, neither edible ''hemp'' products nor personal care ''hemp'' products have a long-standing and established history in the United States that provides a reliable source of market data. DEA found no official economic data on such products upon inquiring with the United States Department of Commerce, the United States Customs Service, and the Small Business Administration. A recent report of the United States Department of Agriculture (USDA) does contain some general information about the ''hemp'' products industry. In addition, one company that distributes ''hemp'' personal care products has provided some information to DEA about its sales. DEA was also able to obtain some information from the Internet, as specified below. Relying on an Internet search for economic statistics on the ''hemp'' products industry, however, has obvious limitations. Accordingly, DEA urges any manufacturer or distributor of ''hemp'' products to submit within the comment period any relevant data and supporting documents that it wishes DEA to consider in assessing the economic impact of the proposed rule.

Edible ''Hemp'' Products

As stated in the interim rule, all edible ''hemp'' products containing THC are not exempted from control, since use of these products results in THC entering the human body. Such products would remain prohibited schedule I controlled substances under the proposed rule.

A recent USDA report states the following about edible ''hemp'' products: Companies are using hemp seed in their products. Natural-product magazines, such as the Natural Food Merchandiser and Organic & Natural News, have advertised products containing hemp ingredients such as roasted hull seed, nutrition bars, tortilla chips, pretzels, and beer. At least two breweries in the United States, as well as breweries in Canada, Germany, and Switzerland, make hemp beer. One article touts hulled hemp seeds as more shelf-stable than flax and more digestible than soybeans and finds the seeds in snacks, spreads, salad dressings, cheese, and ice cream. The market potential for hemp seed as a food ingredient is unknown. However, it probably will remain a small market, like those for sesame and poppy seeds. Some consumers may be willing to pay a higher price for hemp-seed-containing products because of the novelty, but otherwise hemp seed will have to compete on taste and functionality with more common food ingredients. Industrial Hemp in the United States: Status and Market Potential (January 2000) (citations omitted) (hereafter, ''USDA report'').

DEA's search of the Internet indicates that at least 50 different companies located in the United States manufacture or distribute edible ''hemp'' products. One such company located in California claims on its website that its ''hempseed bars'' are ''the top selling hemp food in the U.S.'' According to the website, the company has sold over 125,000 ''hempseed bars.'' The advertised price is approximately $40 for a box of 24 bars ($1.67 per bar). Using these figures for purposes of estimation, the company's total revenues from the sales of these bars is approximately $200,000. DEA is unable to determine from the company's website the time period during which these sales arose. Nor could DEA ascertain from the website the extent of revenue that the company might be generating from sales of other edible ''hemp'' products. If, however, the company's ''hempseed bars'' are indeed ''the top selling hemp food in the U.S.,'' one might preliminarily assume that the sales of this product represent at least one percent of all sales of edible ''hemp'' products in the United States.[2] If so, then the approximately $200,000 per year that the company takes in on

[1] The word ''hemp'' is sometimes used to refer not only to the cannabis plant, but also to other plants grown for fiber, such as Musa textilis (''manila hemp''), Agave sisalina (''sisal hemp''), and Crotalaria juncea (''sunn hemp''), none of which contains any controlled substances. Furthermore, that the manufacturer placed the word ''hemp'' on the product label does not guarantee that the product truly contains such ingredient. If a product says ''hemp'' on the label but actually contains no portion of the cannabis plant, it is not affected by this proposed rule.

[2] The top-selling edible ''hemp'' product might represent significantly more than one percent of the total market. However, the one-percent assumption is made so as not to underestimate the entire market.

the sale of its ''hempseed bars'' is at least one percent of the total sales of edible ''hemp'' products in the United States. If so, then the total sales of edible ''hemp'' products in the United States is no more than $20 million. DEA recognizes that this estimate is based on rough assumptions and might therefore be far from the actual sales figures. Accordingly, DEA again urges any members of the public with reliable data and documentation to submit such information to DEA during the comment period.

Based on the information that DEA has thus far obtained, the number of employees in the edible ''hemp'' products industry cannot be accurately determined. To make a very rough estimate, if there were 100 such companies in the United States, each of which had five employees whose jobs were dependent on the sale of edible ''hemp'' products, then 500 jobs would be terminated if the companies followed the proposed rule and ceased their production and distribution of such products. Again, DEA will consider any relevant data and supporting documentation received during the comment period and adjust these economic assessments accordingly.

Personal Care ''Hemp'' Products

As noted above, to err on the side of inclusion, all personal care ''hemp'' products are being considered for purposes of this economic assessment, even though (as explained in the interim rule) it seems likely that most ''hemp'' personal care products meet the criteria for exemption under the interim rule.

DEA's search of the Internet indicates that at least 34 firms manufacture or distribute ''hemp'' personal care products in the United States. Of these 34 firms, the one that appears to be the largest is a company based outside of the United States that sells a variety of personal care products worldwide. This company has advised DEA that four percent of its sales are attributable to ''hemp'' personal care products. Based on additional statistics provided by the company, it appears that the total of its retail sales of ''hemp'' products in the United States is approximately $10 million per year.

According to the 1997 Economic Census of Manufacturing (''Manufacturing Census'') published by the United States Census Bureau, in the category of toilet preparations, the total value of shipments in the United States of creams, lotions, and oils in 1997 was approximately $3.5 billion, while the total value of shipments of shampoos was approximately $2.4 billion. (The Manufacturing Census contains no specific data on ''hemp'' products.) It seems reasonable to assume that no more than 0.5 percent of all such creams, lotions, oils and shampoos are ''hemp'' products.[3] Thus, it seems reasonable to conclude that the total shipments of ''hemp'' personal care products in 1997 was no more than $30 million. The Manufacturing Census also indicates that there are 134 establishments employing approximately 22,000 persons in the cream, lotion, oil, and hair preparations industries. If 0.5 percent of these companies and jobs were dependent on the sale of ''hemp'' products, this would represent a total of approximately seven firms and 110 total jobs.

''Hemp'' Raw Materials

For purposes of this part of the economic assessment, three categories of ''hemp'' raw materials used for industrial purposes are considered: unprocessed stalks, pure sterilized[4] seeds (not mixed with other ingredients), and unprocessed seed oil.

Unprocessed Stalks

It appears that no significant quantities of unprocessed cannabis stalks are imported into the United States for industrial purposes. The USDA report (and documents cited therein) suggests that such stalks are generally processed into fiber or fabrics before they are imported into the United States. Such processed materials are exempted from control under the interim rule and, therefore, need not be considered for purposes of this economic assessment.

Pure Sterilized Seeds

According to a recent study by the University of Kentucky,[5] the total demand for ''hemp'' seed in North America is approximately 1,300 tons per year. The University of Kentucky study indicates that the price of such seed is no more than $0.39 per pound. Using these figures, the total value of the demand for ''hemp'' seed in North America is approximately $1 million. The United States share of this demand is only a portion of this figure. Moreover, where sterilized cannabis seeds are sold in an animal feed product that contains other ingredients (not derived from the cannabis plant), the product is exempted from control under the interim rule and, therefore, need not be considered for purposes of this economic assessment. Accordingly, it can be inferred for purposes of this economic assessment that far less than $1 million worth of seeds will be impacted by the proposed rule.

One significant portion of the ''hemp'' seeds imported into the United States is that used in bird seed. The University of Kentucky study states that 60 tons of ''hemp'' seed were imported into the United States for use in bird seed in 1990, and that such demand has decreased in recent years. Even if the current demand for ''hemp'' bird seed remained at 60 tons per year, this would constitute less than one percent of all bird seed imported into the United States in 1999, according to data compiled by the United States International Trade Commission (USITC).[6] The USITC data indicates that the total value of all bird seed imported in the United States in 1999 was approximately $7.7 million. If one percent of this were ''hemp'' seed, this would mean that approximately $77,000 worth of ''hemp'' bird seed is imported into the United States per year. It is worth repeating here that any bird seed that consists of a mixture of sterilized cannabis seed and other noncannabis ingredients is exempted from control under this interim rule and can, therefore, be excluded from this economic assessment.

Unprocessed Seed Oil

Based on the USDA report and the University of Kentucky study, it appears that no significant amount of

[3] As noted above, the company that appears to be the largest retailer of ''hemp'' personal care products in the United States has advised DEA that such products account for four percent of its sales of personal care products. It seems certain that most retail stores in the United States that sell personal care items do not carry any ''hemp'' personal care products. Thus, it seems likely that ''hemp'' personal care products actually account for far less than 0.5 percent of all personal care products sold in the United States.

[4] Unsterilized cannabis seeds (which are capable of germination) fit within the CSA definition of marijuana regardless of their THC content. Therefore, unsterilized seeds are considered a schedule I controlled substance. Accordingly, the control status of unsterilized seeds is unaffected by this propose rule and need not be considered in this economic analysis. Also, sterilized seeds that mixed with seeds from other plants in an animal feed product are exempted from control under the interim rule and are, therefore, not being considered in this economic analysis. Economic activity related to sterilized seeds used in edible hemp products and personal care products is addressed in the preceding section of this document.

[5] Thompson, Eric C., Mark C. Berger, & Steven Allen, Economic Impact of Industrial Hemp in Kentucky, University of Kentucky, Center for Business and Economic Research, July 1998. [6]: See http://dataweb.usitc.gov. [7]: The economic activity related to ''hemp'' oil used in edible products and personal care products is addressed in preceding sections of this document. Moreover, as noted above, processed ''hemp'' oil that is not used or intended for use for human consumption, and is not readily converted for human consumption, is exempted from control under the interim rule and is, therefore, not considered in this economic assessment.

[6] See http://dataweb.usitc.gov.

unprocessed ''hemp'' seed oil is imported into the United States for use in manufacturing industrial products (such as paints, sealants, inks, and lubricating oils).[7] However, as with all products potentially impacted by this proposed rule, DEA invites members of the public with relevant economic data to submit such information during the comment period.

Regulatory Flexibility Act

For the reasons provided above, the Administrator hereby certifies that this proposed rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. '' 605(b)). The economic activity that would be disallowed under this proposed rule is already illegal under DEA's interpretation of existing law. Even if one were to assume that such economic activity were legal under current law, the prohibition on such activity resulting from this proposed rule (summarized above) would not constitute significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Therefore, an initial regulatory flexibility analysis is not required for this proposed rule.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), Principles of Regulation. This rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, § 3(f). Accordingly, this interim rule has been reviewed by the Office of Management and Budget for purposes of Executive Order 12866.

Executive Order 13132

This proposed rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this proposed rule does not have federalism implications warranting the application of Executive Order 13132.

[7] The economic activity related to ''hemp'' oil used in edible products and personal care products is addressed in preceding sections of this document. Moreover, as noted above, processed ''hemp''oil that is not used or intended for use for human consumption, and is not readily converted for human consumption, is exempted from control under the interim rule and is, therefore, not considered in this economic assessment.

Executive Order 12988—Civil Justice Reform

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

Unfunded Mandates Reform Act of 1995

This proposed 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. Therefore, no actions are necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

For the reasons provided above, this proposed rule is not likely to result in any of the following: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The economic activity disallowed under this proposed rule is already illegal under DEA's interpretation of existing law. Even if one were to assume that such economic activity were legal under current law, the prohibition on such activity resulting from this proposed rule would not render the rule a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. '' 804. Therefore, the provisions of SBREFA relating to major rules are inapplicable to this proposed rule. However, a copy of this proposed rule is being submitted to each House of the Congress and to the Comptroller General in accordance with SBREFA (5 U.S.C. 801).

Paperwork Reduction Act of 1995

This proposed rule does not involve collection of information within the meaning of the Paperwork Reduction Act of 1995.

Plain Language

In writing this proposed rule, DEA has attempted to use plain language in an easy-to-read manner, consistent with the June 1, 1998 directive of the President. See 63 FR 31885. If you have any suggestions to make this document easier to understand, call or write Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Washington, DC 20537; telephone: (202) 307–7297.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and recordkeeping requirements.

Proposed Rule

Pursuant to the authority vested in the Attorney General under sections 201, 202, and 501(b) of the CSA (21 U.S.C. 811, 812, and 871(b)), delegated to the Administrator pursuant to section 501(a) (21 U.S.C. 871(a)) and as specified in 28 C.F.R. 0.100, the Administrator hereby orders that Title 21 of the Code of Federal Regulations, Part 1308, is proposed to be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11(d)(27) is revised to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(27) Tetrahydrocannabinols 7370

Meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers

Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers

$\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

* * * * *

Dated: October 2, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–25023 Filed 10–5–01; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–206]

RIN 1117–AA55

Exemption From Control of Certain Industrial Products and Materials Derived From the Cannabis Plant

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Interim rule and request for comments.

SUMMARY: In a separate document published today in the **Federal Register**, the Drug Enforcement Administration (DEA) issued an interpretive rule stating that under the Controlled Substances Act (CSA) and DEA regulations, any product that contains any amount of tetrahydrocannabinols (THC) is a schedule I controlled substance, even if such product is made from those portions of the cannabis plant that are excluded from the CSA definition of ''marihuana.'' (Hereafter ''the interpretive rule''.) In view of the interpretive rule, DEA is issuing this interim rule to exempt from control (i.e., exempt from application of the CSA) certain THC-containing industrial products, processed plant materials used to make such products, and animal feed mixtures, provided such products, materials and feed mixtures are made from those portions of the cannabis plant that are excluded from the definition of marijuana and are not used, or intended for use, for human consumption. With respect to those ''hemp'' products that are not exempted from control under this interim rule, a 120-day grace period is being provided for persons to dispose of existing inventories.

DATES: This interim rule is effective October 9, 2001. Comments must be received by DEA on or before December 10, 2001. If DEA determines based on any comments received that a modification of this interim rule is warranted, such modification will be specified in the final rule.

As set forth in this document, a grace period is being provided for persons to dispose of existing inventories of ''hemp'' products that are not exempted from control under this interim rule. Any person who, as of October 9, 2001, possesses a THC-containing hemp product not exempted from control under this interim rule has until February 6, 2002 to dispose of such product in the manner described in this document.

ADDRESSES: Comments should be submitted to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Attention: DEA Federal Register Representative/CCD.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537; Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Does This Rule Accomplish and by What Authority Is It Being Issued?

This interim rule exempts from CSA control certain THC-containing industrial products, processed plant materials used to make such products, and animal feed mixtures, provided such products, materials, and feed mixtures are made from those portions of the cannabis plant that are excluded from the definition of marijuana and are not used, or intended for use, for human consumption. Among the types of industrial products that are exempted as a result of this interim rule are paper, rope, and clothing. Also exempted are processed plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope. Also exempted are animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formulation designed, marketed, and distributed for animal (nonhuman) consumption. Personal care products made from ''hemp'' (i.e., made from portions of the cannabis plant excluded from the CSA definition of marijuana), such as shampoos, soaps, and body lotions, are exempted if using them does not cause THC to enter the human body.

With respect to those THC-containing ''hemp'' products that are not exempted from control under this interim rule, a 120-day grace period is being provided for persons to dispose of existing inventories of such products.

This interim rule is being issued pursuant to 21 U.S.C. 811, 812, and 871(b). Sections 811 and 812 authorize the Attorney General to establish the schedules in accordance with the CSA and to publish amendments to the schedules in the Code of Federal Regulations, Part 1308 of Title 21. Section 871(b) authorizes the Attorney General to promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient enforcement of his functions under the CSA. In addition, the Attorney General is authorized to exempt, by regulation, any compound, mixture, or preparation containing any controlled substance from the application of all or any part of the CSA if he finds such compound, mixture, or preparation meets the requirements of § 811(g)(3). The functions vested in the Attorney General by the CSA have been delegated to the Administrator of DEA. 21 U.S.C. 871(a); 28 CFR 0.100. A detailed explanation of how the foregoing provisions authorize this interim rule is provided in the next section of this document.

Why Is DEA Exempting From Control Certain THC-Containing Substances Not Intended for Human Consumption?

As explained in detail in the interpretive rule, when Congress enacted the CSA in 1970, it carried forward the definition of marijuana from the 1937 Marihuana Tax Act, which expressly excluded certain portions of the cannabis plant. However, Congress also expressly stated in the CSA scheduling provisions that ''any material, compound, mixture, or preparation, which contains any quantity of * * * Tetrahydrocannabinols [THC]'' is a schedule I controlled substance. Given these provisions, several members of the public have recently asked DEA whether so-called ''hemp'' products (i.e., products made from portions of the cannabis plant excluded from the definition of marijuana) are controlled if they contain THC. DEA concluded in the interpretive rule that, under the plain language of the CSA, such products are controlled if they contain THC.

The interpretive rule, standing alone, would view as schedule I controlled substances a wide variety of cannabis-derived industrial products that were not subject to regulation under the Marihuana Tax Act.[1] For example, under the interpretive rule (without this interim rule), products such as paper, rope, clothing, industrial solvents and lubricants, and bird seed mixtures made from portions of the cannabis plant excluded from the definition of marijuana would all be considered schedule I controlled substances if they contained THC. As a result, the use of such legitimate industrial products would be severely restricted. (The CSA

[1] Under the Marihuana Tax Act, persons who grew cannabis to make industrial ''hemp'' products were required to pay an occupational tax; however, the distribution of ''hemp'' paper, fiber products, and bird seed was exempt from the Act's taxing provisions.

permits industrial use of schedule I controlled substances, but only under strictly regulated conditions.) Under this interim rule, however, DEA is exempting such legitimate industrial products from control, provided they are not used, or intended for use, for human consumption. As explained below, DEA believes this approach protects the public health and safety while striking a fair balance between the plain language of the CSA and the intent of Congress under prior marijuana legislation.

THC is an hallucinogenic substance with a high potential for abuse. Congress recognized this fact by placing it in schedule I. Consistent therewith, under the interpretive rule, the proposed rule, and this interim rule (viewed together), there are only two ways that THC may lawfully enter a person's body. First, if the person is using a drug product that has been approved by the Food and Drug Administration (FDA) as being safe and effective for human use.[2] See 21 U.S.C. 331, 355, 811(b), 812(b). Second, if the person is a research subject in clinical research that has been approved by FDA and conducted by a researcher registered with DEA. 21 U.S.C. 823(f); 21 CFR 5.10(a)(9), 1301.18, 1301.32.

In arriving at this interim rule, DEA has taken into account the uses of ''hemp'' products that were allowed under the Marihuana Tax Act of 1937. The Senate Report that accompanied the Act stated:

> The [cannabis] plant * * * has many industrial uses. From the mature stalks, fiber is produced which in turn is manufactured into twine, and other fiber products. From the seeds, oil is extracted which is used in the manufacture of such products as paint, varnish, linoleum, and soap. From hempseed cake, the residue of the seed after the oil has been extracted, cattle feed and fertilizer are manufactured. In addition, the seed is used as a special feed for pigeons.

S. Rep. No. 900, 75th Cong., 1st Sess., at 2–3 (1937).

As explained in the interpretive rule, the intent of Congress in 1937 to allow certain industrial uses of ''hemp'' is no longer controlling since the CSA repealed the 1937 Act. This is particularly so given that the 1937 Congress assumed that the ''hemp'' products it was allowing contained none of the psychoactive drug now known as THC, whereas the 1970 Congress expressly declared anything containing THC to be a schedule I controlled substance. Nonetheless, the legitimate industrial uses of ''hemp'' allowed under the 1937 Act will generally be allowed under this interim rule. At the same time, DEA believes that this interim rule comports with the CSA by ensuring that no humans may lawfully take THC into their bodies except when they are (i) using a drug product that the FDA has approved as being safe and effective or (ii) the subjects of FDA-authorized research conducted by a DEA registrant.

DEA may not arbitrarily exempt a controlled substance from application of the CSA. Rather, such an exemption must be based on a provision of the CSA. As noted above, the exemption of certain ''hemp'' products under this interim rule is issued pursuant to two CSA provisions: 21 U.S.C. 811(g)(3)(B) and 871(b).

Pursuant to § 811(g)(3)(B), the Administrator of DEA may exempt from control ''[a] compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.'' This provision, which was added to the CSA in 1984, was aimed primarily at analytic standards and preparations which are not for use in humans and pose no significant abuse threat by nature of their formulation. It bears emphasis, however, that Congress did not mandate that DEA exempt from control all mixtures and preparations that DEA determines meet the criteria of § 811(g)(3)(B). Rather, as the word ''may'' in the first line of § 811(g)(3) indicates, Congress gave DEA discretionary authority to issue such exemptions.

The DEA regulation that implements § 811(g)(3)(B) is 21 CFR 1308.23. Section 1308.23(a) provides that the Administrator may exempt from control a chemical preparation or mixture containing a controlled substance that is ''intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or other animal'' if it is packaged in such a form or concentration, or with adulterants or denaturants, so that the presence of the controlled substance does not present any significant potential for abuse.

DEA believes that industrial ''hemp'' products such as paper, clothing, and rope, when used for legitimate industrial purposes (not for human consumption) meet the criteria of § 811(g)(3)(B) and § 1308.23. Legitimate use of such products cannot result in THC entering the human body. Moreover, allowing these products to be exempted from CSA control in no way hinders the efficient enforcement of the CSA. Accordingly, DEA believes that these types of industrial products should be exempted from application of the CSA, provided they are not used, or intended for use, for human consumption. For the same reasons, processed cannabis plant materials that cannot readily be converted into any form that can be used for human consumption, and which are used in the production of such legitimate industrial products, are being exempted from control under this interim rule.

The use of sterilized cannabis seeds[3] that contain THC in animal feed fails to meet the criteria of § 811(g)(3)(B) and § 1308.23 because this involves the use of a controlled substance (THC) in animals.[4] Nonetheless, pursuant to 21 U.S.C. 871(b), DEA believes it is appropriate to exempt from application of the CSA animal feed mixtures containing such seeds, provided the seeds are mixed with other ingredients (not derived from the cannabis plant) in a formulation designed, marketed and distributed for animal consumption (not for use in humans). Section 871(b) authorizes the Attorney General to promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient enforcement of his functions under the CSA. It should be underscored that § 871(b) is not a catchall provision that can be used to justify any exemption. For the following reasons, however, DEA believes that the use of sterilized cannabis seeds in animal feed mixtures is a unique situation that warrants an exemption pursuant to § 871(b).

[2] At present, Marinol® is the only THC-containing drug product that has been approved for marketing by FDA. Marinol® is the brand name of a product containing synthetic dronabinol (a form of THC) in sesame oil and encapsulated in soft gelatin capsules that has been approved for the treatment of nausea and vomiting associated with cancer chemotherapy as well as the treatment of anorexia associated with weight loss in patients with AIDS. Because Marinol® is the only THC-containing drug approved by FDA, it is the only THC-containing substance listed in a schedule other than schedule I. DEA recently transferred Marinol® from schedule II to schedule III, thereby lessening the CSA regulatory requirements governing its use as medicine. *See* 64 Fed. Reg. 35928 (1999).

[3] Unless otherwise indicated, all references in this document to ''cannabis seeds'' or "'hemp' seeds'' refer to sterilized seeds (incapable of germination). In contrast to sterilized cannabis seeds, unsterilized cannabis seeds fit within the CSA definition of marijuana and are not exempted from control under this interim rule.

[4] If, however, the ''hemp'' seeds used in animal feed are sterilized cannabis seeds that contain no THC, such seeds are not a controlled substance. Under such circumstances, there is no need to exempt such seeds from control.

As stated above and in the interpretive rule, the legislative history of the 1937 Marihuana Tax Act reveals that Congress expressly contemplated allowing ''hemp'' animal feed. The 1937 Congress categorized such use of ''hemp'' as a legitimate ''industrial'' use. It is true that the intent of the 1937 Congress is no longer controlling since the CSA repealed the 1937 Act and declared anything containing THC to be a schedule I controlled substance. However, because neither the text nor the legislative history of the CSA addresses the legality of using sterilized cannabis seeds in animal feed, or the possibility that such seeds might contain THC, what was viewed under the 1937 Act as ''legitimate industrial use'' of such seeds in animal feed continued uninterrupted following the enactment of the CSA in 1970.

The historical lack of federal regulation of a particular THC-containing product (whether based on differences between prior law and the CSA, lack of awareness of the THC content of such product, or other considerations) does not—by itself—justify exempting such product from control under the CSA. DEA remains obligated to apply the provisions of the CSA to all controlled substances absent a statutory basis to exempt a particular substance from control. However, with respect to animal feed mixtures containing sterilized cannabis seeds, additional factors (combined with Congress' express desire under prior legislation to allow such products) justify an exemption pursuant to § 871(b). The presence of a controlled substance in animal feed poses less potential for abuse than in a product intended for human use and does not entail the administration of THC to humans. Moreover, when sterilized cannabis seeds are mixed with other animal feed ingredients and not designed, marketed, or distributed for human use, there is minimal risk that they will be converted into a product used for human consumption. Therefore, such legitimate use in animal feed mixtures poses no significant danger to the public health and safety. Accordingly, given the unique circumstances and history surrounding the use of sterilized cannabis seeds in animal feed, DEA believes that it comports with the CSA to continue to treat such activity as a legitimate industrial use—not subject to CSA control—provided the foregoing conditions are met.

How Is ''Human Consumption'' Defined Under This Interim Rule?

Under this interim rule, a material, compound, mixture, or preparation containing THC will be considered ''used for human consumption'' (and therefore not exempted from control) if it is: (i) Ingested orally or (ii) applied by any means such that THC enters the human body. A material, compound, mixture, or preparation containing THC will be considered ''intended for use for human consumption'' (and therefore not exempted from control) if it is: (i) Designed by the manufacturer for human consumption; (ii) marketed for human consumption; or (iii) distributed, exported, or imported with the intent that it be used for human consumption.

In any legal proceeding arising under the CSA, the burden of going forward with the evidence that a material, compound, mixture, or preparation containing THC is exempt from control pursuant to this rule shall be upon the person claiming such exemption. 21 U.S.C. 885(a)(1). In order to meet this burden with respect to a product or processed plant material that has not been expressly exempted from control by the Administrator pursuant to 21 CFR 1308.23 (as explained below under the heading ''What Is the Control Status of Personal Care Products Made from 'Hemp'?''), the person claiming the exemption must present rigorous scientific evidence, including well-documented scientific studies by experts trained and qualified to evaluate the effects of drugs on humans.

How Are ''Processed Plant Material'' and ''Animal Feed Mixture'' Defined Under This Interim Rule?

Under this interim rule, any portion of the cannabis plant excluded from the CSA definition of marijuana will be considered ''processed plant material'' if it has been subject to industrial processes, or mixed with other ingredients, such that it cannot readily be converted into any form that can be used for human consumption. For example, fiber that has been separated from the mature stalks by retting for use in textiles is considered processed plant material, which is exempted from control, provided it is not used, or intended for use, for human consumption. (In contrast, mature stalks that have merely been cut down and collected do not fit within the definition of ''processed plant material'' and, therefore, are not exempted from control.) As another example, if a shampoo contains oil derived from sterilized cannabis seeds, one would expect that, as part of the production of the shampoo, the oil was subject to industrial processes and mixed with other ingredients such that, even if some THC remains in the finished product, the shampoo cannot readily be converted into a product that can be consumed by humans. Under such circumstances, the product is exempted from control under this interim rule. (In contrast, a personal care product that consists solely of oil derived from cannabis seeds does not meet the definition of ''processed plant material'' under this interim rule and, therefore, is not exempted from control.)

''Animal feed mixture'' is defined under this interim rule to mean sterilized cannabis seeds mixed with other ingredients in a formulation that is designed, marketed, and distributed for animal consumption (and not for human consumption). For example, sterilized cannabis seeds mixed with seeds from other plants and for sale in pet stores fits within the definition of ''animal feed mixture'' and is exempted from control under this interim rule provided the feed mixture is not used, or intended for use, for human consumption. (In contrast, a container of pure sterilized cannabis seeds—mixed with no other ingredients—does not meet the definition of ''animal feed mixture'' under this interim rule and, therefore, is not exempted from control.)

Which ''Hemp'' Products Are Exempted From Control Under This Interim Rule?

It is impossible to list every potential product that might be made from portions of the cannabis plant excluded from the definition of marijuana. Therefore, DEA cannot provide an exhaustive list of ''hemp'' products that are exempted from control under this interim rule. Nonetheless, in order to provide some guidance to the public, the following are some of the more common ''hemp'' products that are exempted (noncontrolled) under this interim rule, provided they are not used, or intended for use, for human consumption: paper, rope, and clothing made from fiber derived from cannabis stalks, and bird seed containing sterilized cannabis seed mixed with seeds from other plants (or other ingredients not derived from the cannabis plant).

Which ''Hemp'' Products Are Not Exempted From Control Under This Interim Rule?

Other than those substances that fit within the exemption being issued in this interim rule, all other portions of the cannabis plant, and products made therefrom, that contain any amount of

THC are schedule I controlled substances.

Again, because one cannot list every conceivable ''hemp'' product, it is impossible to examine here every ''hemp'' product for a determination of whether such product is used, or intended for use, for human consumption within the meaning of this interim rule. Therefore, this document contains no exhaustive list of ''hemp'' products that are not exempted from control under this interim rule. Nonetheless, to provide some guidance, the following are some of the ''hemp'' products that are not exempted from control under this interim rule (and therefore remain controlled substances) if they contain THC: any food or beverage (such as pasta, tortilla chips, candy bars, nutritional bars, salad dressings, sauces, cheese, ice cream, and beer) or dietary supplement.

What Is the Control Status of Personal Care Products Made From ''Hemp''?

Personal care ''hemp'' products (such as lotions, moisturizers, soaps, or shampoos that contain oil from sterilized cannabis seeds) present a more difficult question. DEA has not conducted chemical analyses of all of the many and varied ''hemp'' products that are marketed in the United States. Accordingly, DEA does not know whether every product that is labeled a ''hemp'' product necessarily was made using portions of the cannabis plant, and if so, whether such portions of the plant are those excluded from the definition of marijuana. Even if one assumes that a product that says ''hemp'' on the label was, in fact, made using cannabis seeds or other portions of the plant, one cannot automatically infer (without conducting chemical analysis) that the product contains THC.[5] Assuming, however, that a ''hemp'' product does contain THC, and assuming further that such product is marketed for personal care (e.g., body lotion or shampoo), the question remains whether the use of the product results in THC entering the human body. DEA is unaware of any scientific evidence definitively answering this question. Therefore, DEA cannot state, as a general matter, whether ''hemp'' personal care products are exempted from control under this interim rule. Nonetheless, given the information currently available, DEA will assume (unless and until it receives evidence to the contrary) that most personal care products do not cause THC to enter the human body and, therefore, are exempted under this interim rule. For example, DEA assumes at this time that lotions, moisturizers, soaps, and shampoos that contain oil from sterilized cannabis seeds meet the criteria for exemption under this interim rule because they do not cause THC to enter the human body and cannot be readily converted for human consumption. However, if a personal care ''hemp'' product is formulated and designed to be used in a way that causes THC to enter the human body, the product is not exempted from control.

Again, it must be emphasized that, although DEA believes that most personal care ''hemp'' products currently marketed in the United States meet the criteria for exemption under this interim rule, it is not possible for DEA to provide an exhaustive list of every such product and to state whether such product is exempted. Should manufacturers, distributors, or importers of ''hemp'' personal care products wish to have their products expressly exempted from control, they should take steps to determine whether such products contain THC and, if they do contain THC, whether use of the products results in THC entering the human body. Any such manufacturer, distributor, or importer who believes that its product satisfies the criteria for exemption under this interim rule may request that DEA expressly declare such product exempted from control by submitting to DEA an application for an exemption, together with appropriate scientific data, in accordance with the procedures set forth in 21 CFR 1308.23(b) and (c).

A manufacturer, distributor, or importer of a ''hemp'' product that meets the criteria for exemption under this interim rule need not obtain an express exemption from DEA in order to continue to handle such product. DEA leaves it to the individual manufacturer, distributor, or importer to decide whether there is sufficient uncertainty about its product to seek an express exemption from DEA. However, any person who continues to handle a ''hemp'' product that does not meet the criteria for an exemption under this interim rule is subject to liability under the CSA (unless such person is acting to dispose of such product within the 120-day grace period, as specified below).

What Is the Legal Status of ''Hemp'' Products That Contain No THC?

Any portion of the cannabis plant, or any product made therefrom, or any product that is marketed as a ''hemp'' product, that is both excluded from the definition of marijuana and contains no THC (nor any other controlled substance) is not a controlled substance. Accordingly, such substances need not be exempted from control under this interim rule, since they are, by definition, noncontrolled.

What Is the Justification for Issuing This Rule as an Interim Rule, Which Takes Effect Immediately?

The Administrative Procedure Act (APA) provides that ''[g]eneral notice of proposed rule making shall be published in the **Federal Register** * * * '' However, this requirement is not applicable ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. § 553(b)(B). Similarly, the APA requirement that a substantive rule be published in the **Federal Register** at least 30 days before its effective date is inapplicable where the agency finds good cause for having the rule take effect immediately upon publication. 5 U.S.C. 553(d)(3).

In this case, DEA believes it is both necessary for the most effective enforcement of the CSA and consistent with the public interest to allow the exemptions contained in this interim rule to become effective immediately. Otherwise, as set forth in the interpretive rule, all products containing any amount of THC are schedule I controlled substances. In other words, as DEA interprets current law (in the absence of this interim rule), ''hemp'' paper, rope, clothing, and animal feed mixtures are schedule I controlled substances if they contain THC. Thus, without this interim rule, anyone who wishes to import such products (or processed plant materials used to make such products) would need to obtain a DEA registration and an import permit. 21 U.S.C. 952(a)(2), 957(a). Distributors of such products and processed plant materials would also need a DEA registration and would be required to utilize DEA order forms and maintain strict records of all transactions. 21 U.S.C. 822(a)(1), 827(a), 828(a). With respect to industrial products and processed plant materials exempted under this interim rule, DEA believes that such regulatory requirements are unnecessary to achieve the goals of the CSA provided such products and plant materials are not used, or intended for use, for human consumption. Furthermore, DEA believes that it would be less than an ideal allocation of agency resources if

[5] Any product that both is made from portions of the cannabis plant excluded from the CSA definition of marijuana and contains no THC (nor any other controlled substance) is not a controlled substance.

DEA had to take on the responsibility of regulating these products and plant materials as schedule I controlled substances when they are not being used for human consumption. Therefore, as long as there is no possibility that humans will consume THC by using something other than an FDA-approved drug product (or a product that the FDA has authorized for clinical research), DEA believes that it is consistent with the public health and safety to immediately exempt industrial ''hemp'' products, processed plant materials, and animal feed mixtures in the manner specified in this interim rule.

What Are the Registration Requirements for Handlers of ''Hemp'' Products Under This Interim Rule?

As stated above (and as explained in the interpretive rule), DEA interprets the CSA such that all products containing THC are schedule I controlled substances. This interim rule, however, exempts certain industrial ''hemp'' products, processed plant materials, and animal feed mixtures from application of the CSA. As a result, the following registration requirements will apply:

Who must obtain a registration—Persons who wish to manufacture or distribute any THC-containing product or plant material that is not exempted from control (under this interim rule) must apply for the corresponding registration to handle a schedule I controlled substance. Absent such registration, it is unlawful to manufacture, distribute, or dispense, import, or export any such product or plant material. 21 U.S.C. 822(b), 841(a)(1), 957(a), 960(a). In addition, as has always been the case since the enactment of the CSA, no person may cultivate the cannabis plant for any purpose except when expressly registered with DEA to do so. See 21 U.S.C. 822(b), 823(a); 21 CFR Part 1301; *see also New Hampshire Hemp Council, Inc.* v. *Marshall,* 203 F.3d 1 (1st Cir. 2000). Further, the CSA prohibits the importation of schedule I controlled substances except as authorized by 21 U.S.C. 952(a)(2). Similarly, the CSA prohibits the exportation of schedule I nonnarcotic controlled substances except as authorized by 21 U.S.C. § 953(c).

Who need not obtain a registration—Persons who import and distribute ''hemp'' products and processed cannabis plant material that are exempted from control under this interim rule (when not used, or intended for use, for human consumption) are not subject to any of the CSA requirements, including the requirement of registration. For example, persons who import ''hemp'' clothing are not subject to any of the CSA requirements. Similarly, persons who obtain processed cannabis plant material that is exempted from control under this interim rule may use such plant material to manufacture products that are not used, or intended for use, for human consumption without being subject to any of the CSA requirements. Again, if a product marketed as a ''hemp'' product actually contains no THC (or any other controlled substance), it is noncontrolled and not subject to any of the CSA provisions.

Grace Period for Persons With Existing Inventories of THC-Containing Products Not Exempted From Control

It seems likely that, upon publication of this rule, some manufacturers and distributors of THC-containing ''hemp'' products will have in their possession existing inventories of such products that will be considered controlled under the interpretive rule and the proposed rule and not exempted from control under this interim rule. In fairness to such persons, the following grace period is being provided. Any person who, on the date of publication of this interim rule, possesses a THC-containing ''hemp'' product not exempted from control under this interim rule will have 120 days (until February 6, 2002) to dispose of such product. However, during this 120-day grace period, no person may use any THC-containing ''hemp'' product for human consumption (as defined in this interim rule); nor may any person manufacture or distribute such a product with the intent that it be used for human consumption within the United States.

Regulatory Certifications

Economic Impact of This Interim Rule

This interim rule allows economic activity that would otherwise be prohibited. Under DEA's interpretation of current law, all ''hemp'' products are schedule I controlled substances if they contain THC. Thus, without this interim rule, industrial ''hemp'' products such as paper, rope, clothing, and animal feed would be subject to the provisions of the CSA and DEA regulations that govern schedule I controlled substances if they contained THC. The CSA permits the use of schedule I controlled substances for industrial purposes, but only under strictly regulated conditions. By virtue of this interim rule, however, such industrial ''hemp'' products are exempt from all provisions of the CSA and DEA regulations. Thus, this interim rule imposes no regulatory restrictions on any economic activities; rather, it removes regulatory restrictions on certain economic activities.

Regulatory Flexibility Act

For the reasons provided in the foregoing paragraph, the Administrator hereby certifies that this interim rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). Therefore, an initial regulatory flexibility analysis is not required for this interim rule.

Executive Order 12866

This interim rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), Principles of Regulation. This rule has been determined to be a ''significant regulatory action'' under Executive Order 12866, § 3(f). Accordingly, this interim rule has been reviewed by the Office of Management and Budget for purposes of Executive Order 12866.

Executive Order 13132

This interim rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this interim rule does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988—Civil Justice Reform

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

Unfunded Mandates Reform Act of 1995

This interim 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. Therefore, no actions are necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not likely to result in any of the following: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic and export markets. Accordingly, under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), this interim rule is not a major rule as defined in 5 U.S.C. § 804. Therefore, the provisions of SBREFA relating to major rules are inapplicable to this interim rule. However, a copy of this interim rule is being submitted to each House of the Congress and to the Comptroller General in accordance with SBREFA (5 U.S.C. 801).

Paperwork Reduction Act of 1995

This interim rule does not involve collection of information within the meaning of the Paperwork Reduction Act of 1995.

Plain Language

In writing this interim rule, DEA has attempted to use plain language in an easy-to-read manner, consistent with the June 1, 1998, directive of the President. See 63 FR 31885. If you have any suggestions to make this document easier to understand, call or write Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Washington, DC 20537; telephone: (202) 307–7297.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, prescription drugs, Reporting and recordkeeping requirements.

Interim Rule

Pursuant to the authority vested in the Attorney General under sections 201, 202, and 501(b) of the CSA (21 U.S.C. 811, 812, and 871(b)), delegated to the Administrator pursuant to section 501(a) (21 U.S.C. 871(a)) and as specified in 28 CFR 0.100, the Administrator hereby orders that Title 21 of the Code of Federal Regulations, Part 1308, be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. A new undesignated center heading and § 1308.35 are added to read as follows:

EXEMPT CANNABIS PLANT MATERIAL, AND PRODUCTS MADE THEREFROM, THAT CONTAIN TETRAHYDROCANNABINOLS

§ 1308.35 Exemption of certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols.

(a) Any processed plant material or animal feed mixture containing any amount of tetrahydrocannabinols (THC) that is both:

(1) Made from any portion of a plant of the genus Cannabis excluded from the definition of marijuana under the Act [i.e., the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination] and

(2) Not used, or intended for use, for human consumption, has been exempted by the Administrator from the application of the Act and this chapter.

(b) As used in this section, the following terms shall have the meanings specified:

(1) The term *processed plant material* means cannabis plant material that has been subject to industrial processes, or mixed with other ingredients, such that it cannot readily be converted into any form that can be used for human consumption.

(2) The term *animal feed mixture* means sterilized cannabis seeds mixed with other ingredients (not derived from the cannabis plant) in a formulation that is designed, marketed, and distributed for animal consumption (and not for human consumption).

(3) The term *used for human consumption* means either:

(i) Ingested orally or

(ii) Applied by any means such that THC enters the human body.

(4) The term *intended for use for human consumption* means any of the following:

(i) Designed by the manufacturer for human consumption;

(ii) Marketed for human consumption; or

(iii) Distributed, exported, or imported, with the intent that it be used for human consumption.

(c) In any proceeding arising under the Act or this chapter, the burden of going forward with the evidence that a material, compound, mixture, or preparation containing THC is exempt from control pursuant to this section shall be upon the person claiming such exemption, as set forth in section 515(a)(1) of the Act (21 U.S.C. 885(a)(1)). In order to meet this burden with respect to a product or plant material that has not been expressly exempted from control by the Administrator pursuant to § 1308.23, the person claiming the exemption must present rigorous scientific evidence, including well-documented scientific studies by experts trained and qualified to evaluate the effects of drugs on humans.

Dated: October 2, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–25024 Filed 10–5–01; 8:45 am]

BILLING CODE 4410–09–P

Federal Register

Tuesday,
October 9, 2001

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92]

RIN 2120–AH52

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action allows airline operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action prohibits the possession of flightdeck compartment door keys by cabin flight attendants during flight. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATE: This action is effective October 9, 2001 and shall remain in effect until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Smith, Technical Programs Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7242; e-mail address: *9-awa-avr-design@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

On the search page, type in the last four digits of the docket number shown at the beginning of this document. Click on ''search.''

On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register's** web page at *http://www.access.gpo.gov/su—docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http:www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in a manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation, by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of Transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airline pilots, and flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strengthen the flightcrew compartment door. The short-term options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of the emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid Response Team report also concluded, and the FAA agrees, that all existing

design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made. This relief is limited to 18 months, at which time the modified airplane must be brought back into full compliance with all design requirements. Airlines will submit reports within 180 days of the publication of the SFAR on how they will achieve this compliance.

This SFAR will provide airlines with maximum flexibility to incorporate door modifications rapidly. In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alterations (§ 121.379(b)). In addition to the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufacturers regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forego the requirement that major alterations to accomplish this task, have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that date must be in accordance with approved data, and whatever the airline installs in the short term must ultimately be brought into full regulatory compliance for emergency egress and venting.

The SFAR requires reports to the FAA at 90 days and 180 days after the publication date of the SFAR, so the modifications can be monitored and corrective action taken if necessary.

The SFAR Provisions

This SFAR allows passenger airplane operators to install flightcrew compartment door improvements and to prohibit possession of flightcrew compartment keys by cabin crewmembers during flight. It is very broad, to allow maximum short-term flexibility in crafting enhanced door security measures. It allows the doors to be modified and airplanes to be operated with modified doors.

The FAA has established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expect this will give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that meet regulatory requirements for egress and venting.

The SFAR requires operators to submit a report to the FAA within 90 days that details the specific modifications they have made to the flightcrew compartment door. This will allow the FAA to monitor what has been installed and take action if the installation creates an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report within 180 days of the publication date of the SFAR that describes how the operator will meet regulatory compliance for egress and venting.

We also expect that airframe manufacturers and modifiers will produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. While service documents would not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by this SFAR also applies to manufacturers and other persons applying for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understand that some operators may rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers would be subject to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR 21.303. However, to facilitate reinforcement of these doors, the SFAR includes a provision overriding the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, this SFAR temporarily relieves the operator of having to obtain prior approval of the data. This part of the SFAR terminates 180 days after the publication date of the SFAR. As soon as the design data is submitted (no later than 90 days from the publication date of the SFAR), the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under this SFAR, documents can reflect compliance with regulatory requirements by citing the SFAR.

In addition to the above changes to harden the flightcrew compartment doors against intruders, the FAA also believes it is prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, this SFAR temporarily changes the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, will have flight crew compartment keys during flight. This should lessen the opportunity for gaining unauthorized access and reduce the likelihood of attacks on cabin crewmembers to obtain the key. Note that this change to 121.313(g) will expire with this SFAR. Further rulemaking will be necessary to address this subject after expiration.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C 553(d) for making this rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 USC § 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA is requesting the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package that it is submitting. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Therefore, notification will be made to the public when a clearance is received. Following is a summary of the information collection activity.

Title: Flightcrew Compartment Access and Door Designs

Summary/Need: The SFAR requires operators to submit a report to the FAA within 90 days that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report within 180 days of the SFAR that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 95 airplane operators covered under 14 CFR part 121.

Burden: The burden associated with this SFAR has not been determined prior to this publication, but will be submitted to OMB with the request for clearance.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule. At this time, the FAA is not able to assess whether this rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory analysis of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR chapter parts 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Add Special Federal Aviation Regulation (SFAR) No. 92 to part 121 to read as follows:

SPECIAL FEDERAL AVIATION REGULATIONS NO. 92—FLIGHTCREW COMPARTMENT ACCESS AND DOOR DESIGNS

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to operators that hold an air carrier certificate or operating certificate issued under part 119 and that conduct operations under part 121 as passenger carrying operations in common carriage. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders and applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modifications.

2. *Regulatory Relief.* Contrary provisions of part 21, and §§ 121.153(a)(2) and 121.379(b), notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data not previously approved by the Administrator, subject to the following conditions:

(i) Within 90 days after publication of this SFAR, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplane that have been accomplished to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) Within 180 days after publication of this SFAR, submit to the Director, Aircraft Certification Service, a schedule for accomplishment of the changes necessary to restore compliance with all applicable airworthiness requirements, as well as a listing of the regulations not currently complied with. The schedule may not extend beyond the termination date of this SFAR.

(iii) If, upon reviewing the data submitted in paragraph a.i. above, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Return to Service Documentation.* Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

4. *Provision for Flightdeck Door Compartment Key.* Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exit identified to passengers in the briefing

required by § 121.571(a)(1)(ii) of this part. The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers.

5. *Termination.* With respect to the ability to approve airplanes for return to service without data previously approved by the Administrator in the case of major alterations, this SFAR terminates on April 8, 2002. All other provisions of this SFAR terminate on April 9, 2003.

Issued in Washington, DC, on October 3, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–25376 Filed 10–4–01; 1:48 pm]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
October 9, 2001

Part V

Department of Health and Human Services

Emergency Funds for Public Health Assistance Related to September 11, 2001 Terrorist Attacks; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Emergency Awards for Healthcare Under Section 319 of the PHS Act Grants for Immediate Response

AGENCY: Department of Health and Human Services.

ACTION: Notice of availability of funds.

SUMMARY: In order to provide emergency funding for public health assistance related to the terrorist acts that occurred on September 11, 2001, the Department of Health and Human Services (HHS) announces the availability of a competitive grant program. HHS will issue awards that will help pay for healthcare-related costs incurred and/or to be incurred by organizations that have been affected by the attacks of September 11. This special disaster relief initiative will be characterized by a relatively easy process of applying for funds, speedy review and abbreviated administrative procedures. Grant awards will go to recipients rapidly.

Name of Grant Program: Grants for Immediate Response

Program Authorization: Section 319 of the Public Health Service Act, 42 U.S.C. 247d.

Amount of funding available: $35 million. We expect that individual grant awards will range between $5,000 and $1 million.

Eligible Applicants: Public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers that incurred healthcare-related expenses or lost revenues as a result of their response to the public health emergency resulting from terrorist acts on September 11, 2001. This includes hospitals, skilled nursing facilities, home health agencies, dialysis facilities, durable medical equipment suppliers, and transportation providers. For the purposes of this program, ''response'' is defined as immediate actions responding to the attacks, including actions taken by hospitals in implementing their disaster plans in response to State and/or Federal emergency management directives.

Faith-based and community organizations that meet the above criteria and have incurred allowable costs are eligible to receive funding from this program.

Individuals are not eligible for funding under this program.

Allowable costs: Expenses incurred by an eligible applicant in the provision of healthcare-related services that were needed as a direct result of the terrorist acts on September 11, 2001. Personnel costs, supplies, and contractual expenses for healthcare-related services are examples of allowable costs. Capital equipment, repair of public facilities, renovations and alterations, and other capital expenditures essential to the provision of healthcare-related services are also eligible for consideration. Lost or foregone revenues directly attributable to the terrorist acts will also be considered an eligible cost for the purposes of this program.

Costs must directly relate to the provision of healthcare in the affected areas (New York, New Jersey, Connecticut, Virginia, Pennsylvania, Washington, DC).

Allowable costs are costs for which payment and/or reimbursement has not been (and will not be) received and/or the applicant is not eligible for reimbursement. This program is intended to cover only direct costs (i.e., costs that can be specifically identified with a particular project or program). Requests can cover costs incurred on or after September 11, 2001, including those costs expected to be incurred (and which can be reasonably estimated) prior to January 11, 2002.

Costs for which funding is awarded will be subject to verification and validation, including audits by the Office of the Inspector General, after grants are awarded. The grants are also subject to the general provisions applicable to Federal grants awarded by the Department of Health and Human Services (see 45 CFR parts 74 and 92), including applicable cost principles incorporated by those regulations.

For profit organizations should pay particular attention to 45 CFR 74.81, which requires that no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization.

Unallowable costs: Unallowable costs include, but are not limited to, the following:

Research activities
Political and lobbying activities
Subgrants to other organizations
Purchase of real property
Indirect costs and overhead
Expenses intended to prepare for future similar events

Applicant submission: All applications must be received at the below address before 5:00 PM EDT on October 19, 2001.

Applications must be submitted to the following location:

U.S. Department of Health and Human Services, Health Resources and Services Administration (HRSA), Office of Special Programs, Room 7–100, 5600 Fishers Lane, Rockville, MD 20857

Applications may be faxed to 301 443–1221 or 301 594–6096. In the event the application is faxed, please note a fax and phone number so that a representative from the Office of Special Programs can confirm receipt.

Applications can also be e-mailed to *gir@hrsa.gov*

For applications that are faxed or e-mailed, if the applicant does not receive confirmation of receipt it should be assumed that the application was not received. For any application that is faxed or e-mailed a hard copy original signed application must also be provided.

Application requirements: Applications should not exceed 10 pages and must be submitted on standard size paper (8.5″ x11″). All application information may be submitted on plain bond paper (i.e., there are no special forms that need to be submitted). All of the following information must be included:

1. Cover sheet which references CFDA #93.003 and includes the following: Date submitted, legal name of applicant, applicant address, employer identification number, name and telephone number of contact person, grant amount requested, Medicare/Medicaid provider number (if applicable). Alternatively, applicants may choose to submit Standard Form 424, Application for Federal Assistance, which can be viewed on line at *www.hrsa.gov/osp/gir.htm*. This cover sheet must also include the following statement signed by an authorized representative of the applicant: ''To the best of my knowledge and belief, all information included in this application is true and correct. The filing of this application has been duly authorized by the governing body of the applicant and the applicant will comply with all required assurances if the assistance is awarded.'' [Information on assurances can be viewed on line at *www.hrsa.gov/osp/gir.htm*.]

Applicant shall provide sufficient detail to ensure that individual recipients of grant funds are clearly identified where they differ from the applicant.

2. Breakdown and justification of expenses and/or lost revenues for which funding is sought.

3. The need for the funding and the impact on the organization if funding is not received.

4. Expenses and/or revenues that would have been expected if there were no terrorist acts and the actual level of expenses and/or revenues covering the period for which funding is requested. Funding can be sought for a combination of lost revenues and

increased expenses; in such cases clearly delineate the amount attributable to lost revenue and the amount attributable to increased expenses.

If there is not a clear and direct link between the services provided/expenses incurred/revenues lost and the terrorist acts, provide an explanation of the relationship.

5. The manner/methodology by which any increased expense or lost revenue estimates were determined. If such information is not readily available, please indicate how any estimates were derived.

6. Location where the services for which funding is sought were provided.

7. Statement from an authorized representative of the applicant confirming that the applicant is a public or not-for-profit organization, if applicable.

8. Listing of any additional Federal, State, or private agencies or organizations from which funding relief has been sought in relation to the September 11, 2001, terrorist acts (e.g., FEMA, Red Cross). Amount of funding requested and description/explanation of basis for any such request.

9. Statement/assurance from an authorized representative of the applicant that:

a. Expenses/lost revenues for which grant funding is sought are not eligible for reimbursement and/or payment from Medicare, Medicaid, FEMA;

b. Reimbursement and/or payment will not be sought from Medicare, Medicaid, or FEMA for any expenses/lost revenues covered by the grant;

c. Grant funds will be not used to supplant any Federal or non-Federal funds that are received for the activities or purposes for which funding is sought; and

d. If the applicant has sought funding from another source for the same expenses and/or lost revenues and is uncertain as to whether such request(s) will be approved, it must include an assurance that if that funding is received, funding from this program will be returned.

Review Criteria

1. Demonstration that costs or lost revenues were for healthcare-related services or will be used for such services. This includes a clear explanation of the services provided/or to be provided, including a clear differentiation between ''normal'' services and any incremental services needed because of the terrorist acts.

2. Demonstration that the services/expenses/lost revenues for which the grant is sought are directly associated with terrorist acts on September 11, 2001.

3. Reasonableness of estimates and clarity of methodology used to support cost estimates for which funding is sought.

4. Extent to which funds will rapidly be made available for the provision of needed healthcare.

5. Urgency and nature of need for the funds.

6. Impact on the organization if funding is not received.

Program Contact Person: Mr. Timothy Miller, Executive Officer, HRSA Office of Special Programs, Room 7–100, 5600 Fishers Lane, Rockville, MD 20857, 301 443–4268 (phone), 301 443–1221 (fax), *tmiller@hrsa.gov* (e-mail)

Dated: October 4, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–25461 Filed 10–5–01; 9:28 am]

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To amend the Immigration and Nationality Act to provide permanent authority for the admission of "S" visa nonimmigrants. (Oct. 1, 2001; 115 Stat. 258)

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24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5]Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–042–00100–1)	33.00	July 1, 2000
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
*1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
*1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–042–00108–7)	49.00	July 1, 2000
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
*200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–042–00117–6)	25.00	July 1, 2000
700–799	(869–044–00118–7)	42.00	July 1, 2001
*800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
*300–399	(869–044–00124–1)	40.00	July 1, 2001
*400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–042–00126–5)	10.00	July 1, 2000
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–042–00128–1)	24.00	July 1, 2000
300–End	(869–042–00129–0)	43.00	July 1, 2000
***37**	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
*0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–042–00133–8)	28.00	July 1, 2000
40 Parts:			
1–49	(869–042–00134–6)	37.00	July 1, 2000
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–042–00136–2)	36.00	July 1, 2000
52 (52.1019–End)	(869–042–00137–1)	44.00	July 1, 2000
*53–59	(869–044–00138–1)	28.00	July 1, 2001
60	(869–042–00139–7)	66.00	July 1, 2000
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.1119)	(869–042–00141–9)	66.00	July 1, 2000
63 (63.1200–End)	(869–042–00142–7)	49.00	July 1, 2000
64–71	(869–044–00145–4)	26.00	July 1, 2001
*72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–042–00145–1)	36.00	July 1, 2000
86	(869–042–00146–0)	66.00	July 1, 2000
87-99	(869–044–00150–1)	54.00	July 1, 2001
*136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–042–00149–4)	38.00	July 1, 2000
190–259	(869–042–00150–8)	25.00	July 1, 2000
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–042–00152–4)	35.00	July 1, 2000
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–042–00156–7)	46.00	July 1, 2000
790–End	(869–042–00157–5)	23.00	[6]July 1, 2000
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–042–00159–1)	37.00	July 1, 2000
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–042–00162–1)	53.00	Oct. 1, 2000
400–429	(869–042–00163–0)	55.00	Oct. 1, 2000
430–End	(869–042–00164–8)	57.00	Oct. 1, 2000
43 Parts:			
1–999	(869–042–00165–6)	45.00	Oct. 1, 2000
1000–end	(869–042–00166–4)	55.00	Oct. 1, 2000
44	(869–042–00167–2)	45.00	Oct. 1, 2000
45 Parts:			
1–199	(869–042–00168–1)	50.00	Oct. 1, 2000
200–499	(869–042–00169–9)	29.00	Oct. 1, 2000
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–042–00171–1)	54.00	Oct. 1, 2000
46 Parts:			
1–40	(869–042–00172–9)	42.00	Oct. 1, 2000
41–69	(869–042–00173–7)	34.00	Oct. 1, 2000
70–89	(869–042–00174–5)	13.00	Oct. 1, 2000
90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–042–00176–1)	23.00	Oct. 1, 2000
156–165	(869–042–00177–0)	31.00	Oct. 1, 2000
166–199	(869–042–00178–8)	42.00	Oct. 1, 2000
200–499	(869–042–00179–6)	36.00	Oct. 1, 2000
500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
47 Parts:			
0–19	(869–042–00181–8)	54.00	Oct. 1, 2000
20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
40–69	(869–042–00183–4)	41.00	Oct. 1, 2000
70–79	(869–042–00184–2)	54.00	Oct. 1, 2000
80–End	(869–042–00185–1)	54.00	Oct. 1, 2000
48 Chapters:			
1 (Parts 1–51)	(869–042–00186–9)	57.00	Oct. 1, 2000
1 (Parts 52–99)	(869–042–00187–7)	45.00	Oct. 1, 2000
2 (Parts 201–299)	(869–042–00188–5)	53.00	Oct. 1, 2000
3–6	(869–042–00189–3)	40.00	Oct. 1, 2000
7–14	(869–042–00190–7)	52.00	Oct. 1, 2000
15–28	(869–042–00191–5)	53.00	Oct. 1, 2000
29–End	(869–042–00192–3)	38.00	Oct. 1, 2000
49 Parts:			
1–99	(869–042–00193–1)	53.00	Oct. 1, 2000
100–185	(869–042–00194–0)	57.00	Oct. 1, 2000
186–199	(869–042–00195–8)	17.00	Oct. 1, 2000
200–399	(869–042–00196–6)	57.00	Oct. 1, 2000
400–999	(869–042–00197–4)	58.00	Oct. 1, 2000
1000–1199	(869–042–00198–2)	25.00	Oct. 1, 2000
1200–End	(869–042–00199–1)	21.00	Oct. 1, 2000
50 Parts:			
1–199	(869–042–00200–8)	55.00	Oct. 1, 2000
200–599	(869–042–00201–6)	35.00	Oct. 1, 2000

Title	Stock Number	Price	Revision Date
600–End	(869–042–00202–4)	55.00	Oct. 1, 2000
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..