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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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 99–100–4]

Export Certification; Canadian Solid Wood Packing Materials Exported From the United States to China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations for the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. Prior to the interim rule, the packing materials had to be certified as having been heat treated in the United States. The interim rule allowed certification of packing materials that were heat treated in Canada if that treatment was certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. The interim rule was necessary to facilitate the exportation of the large volume of U.S. goods shipped to China using Canadian-origin coniferous solid wood packing materials.

EFFECTIVE DATE: The interim rule became effective on July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Thomas, Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8367.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 11, 2001, and published in the **Federal Register** on July 17, 2001 (66 FR 37114–37117, Docket No. 99–100–3), we amended the export certification regulations in 7 CFR part 353 regarding the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. The interim rule allowed certification of packing materials that were heat treated in Canada if that treatment was certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. These changes were necessary to facilitate the exportation of the large volume of U.S. goods shipped to China using Canadian-origin coniferous solid wood packing materials.

Comments on the interim rule were required to be received on or before September 17, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

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

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

PART 353—EXPORT CERTIFICATION

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 353 and that was published at 66 FR 37114–37117 on July 17, 2001.

Authority: 7 U.S.C. 7711, 7712, 7718, 7751, and 7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1240 Filed 1–16–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–21–AD; Amendment 39–12598; AD 2002–01–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters that requires changes to the electrical power distribution system. This amendment is prompted by design deficiencies in the electrical systems. The actions specified by this AD are intended to prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter.

DATES: Effective February 21, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 21, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for BHTC Model 430 helicopters was published in the **Federal Register** on October 12, 2001 (66 FR 52072). That action proposed to

require, before further flight after March 31, 2002, accomplishing the electrical power distribution system changes in accordance with BHTC Alert Service Bulletin No. 430–01–19, dated February 22, 2001 (ASB).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 33 helicopters of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per helicopter to accomplish the changes to the electrical system, and that the average labor rate is $60 per work hour. The manufacturer states in its ASB that the parts will be provided at no cost before March 31, 2002. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $95,040.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–01–07 Bell Helicopter Textron Canada: Amendment 39–12598. Docket No. 2001–SW–21–AD.

Applicability: Model 430 helicopters, serial numbers 49002 through 49071, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight after March 31, 2002, perform the Accomplishment Instructions, paragraphs 1 through 124, of Bell Helicopter Textron Canada Alert Service Bulletin No 430–01–19, dated February 22, 2001, which is terminating action for the requirements of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the Accomplishment Instructions, paragraphs 1 through 124, of Bell Helicopter Textron Canada Alert Service Bulletin No 430–01–19, dated February 22, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 21, 2002.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–32R1, dated May 28, 2001.

Issued in Fort Worth, Texas, on January 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1055 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–56–AD; Amendment 39–12601; AD 2001–25–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–25–51, which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model MD900 helicopters by individual letters. This AD requires performing a dual power confirmation test on the Integrated Instrument Display System (IIDS) and inserting a revision to the Rotorcraft Flight Manual (RFM), as applicable. If the IIDS fails the power test, replacing it is required before further flight. Removing the temporary revision when the IIDS is replaced and inserting the applicable revision into the RFM is also required. This AD is prompted by the failure of the IIDS during a helicopter hover operation. The actions specified by this AD are intended to prevent total power failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter.

DATES: Effective February 1, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–51, issued on December 7, 2001, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–56–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The applicable service information may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at www.mdhelicopters.com. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Guy Dalla Riva, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5248, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On December 7, 2001, the FAA issued Emergency AD 2001–25–51 for MDHI Model MD900 helicopters, which requires performing a dual power confirmation test on the IIDS and inserting a revision to the RFM, as applicable. If the IIDS fails the power test, replacing it is required before further flight. Removing the temporary revision when the IIDS is replaced and inserting the applicable revision into the RFM is also required. That action was prompted by the failure of the IIDS during a helicopter hover operation. The failure was attributed to an error in the manufacturing process and a design deficiency. Failure of the IIDS, if not corrected, could result in the inability to monitor information and warning indications essential for the operation of the helicopter.

The FAA has reviewed MDHI Service Bulletin SB900–081R1, dated November 8, 2001 (SB), which describes procedures for inspecting and replacing the IIDS and inserting revisions into the RFM.

Since the unsafe condition described is likely to exist or develop on other MDHI MD900 helicopters of the same type design, the FAA issued Emergency AD 2001–25–51 to prevent total power failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter. The AD requires the following within 10 days:

- Perform an IIDS dual power confirmation test.
- If the IIDS continues to operate after the dual power confirmation test, insert into the RFM the applicable TEMPORARY RFM revisions that state the pilot must ''land as soon as possible'' after an IIDS failure.
- If the IIDS does not continue to operate, replace it with a specified IIDS before further flight. Insert into the RFM the applicable RFM revision that states the pilot must ''land as soon as practical'' after total power failure of the IIDS.
- Remove the TEMPORARY RFM revisions when the IIDS is replaced in accordance with this AD, and insert the applicable RFM revision into the RFM.

The actions must be accomplished in accordance with the SB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions previously described are required as indicated, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 7, 2001 to all known U.S. owners and operators of MDHI Model MD900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 53 helicopters of U.S. registry will be affected by this AD. It will take approximately 1 work hour per helicopter to perform the dual power confirmation test and 1 work hour to replace the IIDS, if necessary. The manufacturer has stated in the SB that they will provide replacement IIDS at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6360, assuming that the IIDS is replaced on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–56–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–25–51 MD Helicopters, Inc.: Amendment 39–12601. Docket No. 2001–SW–56–AD.

Applicability: Model MD900 helicopters, serial numbers (S/N) 900–00008 through 900–00107, with integrated instrument display system (IIDS), part number (P/N) 900A3720002–107, –109, –111, or –113, installed, certificated in any category.

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

Compliance: Required within 10 days, unless accomplished previously.

To prevent failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter, accomplish the following:

(a) Conduct a dual power confirmation test (power test) with external power ON or both generators on line in accordance with Section 2, Accomplishment Instructions, paragraphs 2.B.(1), 2.B.(2), and 2.B.(3), of MD Helicopters Service Bulletin SB900–081R1, dated November 8, 2001.

(1) If the IIDS continues to operate after the power test, insert into the Rotorcraft Flight Manual (RFM) the applicable TEMPORARY RFM revision stating that the pilot must ''land as soon as possible'' after an IIDS failure:

(i) TR01–001, dated November 2, 2001, into RFM CSP–900RFM–1 (Reissue 1), CSP–900ERFM–1, CSP–902RFM–1 (Reissue 1), or CSP–902RFM207E–1; and

(ii) TR01–002, dated November 28, 2001, into RFM CSP–902RFM–1 (Reissue 1), or CSP–902RFM207E–1.

(2) If the IIDS does not continue to operate after the power test, before further flight:

(i) Replace IIDS, P/N 900A3720002–107 with 900A3720002–115; 900A3720002–111 with 900A3720002–117; 900A3720002–109 with 900A3720002–119; or 900A3720002–113 with 900A3720002–121.

(ii) Insert into the RFM the applicable RFM revision, dated November 2, 2001, stating that the pilot must ''land as soon as practical'' after an IIDS failure:

(A) Revision 4 into RFM CSP–900RFM–1 (Reissue 1);

(B) Revision 1 into CSP–900ERFM–1;

(C) Revision 5 into CSP–902RFM–1 (Reissue 1); or

(D) Revision 2 into CSP–902RFM207E–1.

(b) After replacing the IIDS in accordance with this AD, before further flight, remove the TEMPORARY RFM revisions specified in paragraph (a)(1) of this AD if inserted into the RFM, and insert into the RFM the applicable RFM revision specified in paragraph (a)(2)(ii) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The power test shall be done in accordance with the Accomplishment Instructions, paragraphs 2.B.(1), 2.B.(2), and 2.B.(3), of MD Helicopters Service Bulletin SB900–081R1, dated November 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at www.mdhelicopters.com. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 1, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–51, issued December 7, 2001, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 9, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1054 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–34–AD; Amendment 39–12596; AD 2002–01–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes that are equipped with certain main landing gear (MLG) radius rods. This AD requires you to inspect the MLG radius rod cylinders for the required conductivity or hardness standard. This AD also requires you to replace any MLG radius rod cylinder that does not meet this standard. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations, could lead to loss of airplane control.

DATES: This AD becomes effective on February 11, 2002.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of February 11, 2002.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–34–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes equipped with certain main landing gear (MLG) radius rods.

The CAA reports, that the manufacturer of the MLG radius rods, APPH Ltd., incorrectly heat treated a batch of radius rod cylinders, part number (P/N) 184811. Incorrect heat treatment of the MLG radius rod cylinder causes the part to be below required design strength. This results in reduced structural integrity of the part.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the MLG. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes that are equipped with certain MLG radius rods. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 5, 2001 (66 FR 50894). The NPRM proposed to require you to inspect the MLG radius rods for the required conductivity or hardness standard, and replace any rod that does not meet this standard.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 250 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspection using the eddy current conductivity test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour per radius rod (2 per airplane) × $60 = $120.	No parts required	$120	$30,000

We estimate the following costs to accomplish the inspection using the Rockwell hardness test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours per radius rod (2 per airplane) × $60 = $600.	No parts required	$600	$150,000

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost for replacement of each main landing gear radius rod	Parts cost	Total cost per airplane
5 workhours × $60 = $300	$9,000	$9,300

Are There Differences Between This AD and the Service Information?

British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the inspections to British Aerospace Regional Aircraft. This AD does not require this action. The FAA recommends that each owner/operator submit this information. We are including a note in this AD to reflect this. British Aerospace and the British CAA will use this information to determine whether further action is necessary.

The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is ''within the next 30 calendar days after the effective date of this AD''.

Why is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the MLG is an unsafe condition; however, it is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it is for an airplane with 500 hours TIS. A calendar time for compliance will ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–05 British Aerospace: Amendment 39–12596; Docket No. 2001–CE–34–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with a main landing gear (MLG) radius rod, APPH Ltd. part number 1847–A through 1847–L, 1848–A through 1848–F, or 1862–A through 1862–L.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

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

Actions	Compliance	Procedures
(1) Inspect, using an eddy current conductivity tester, or the Rockwell hardness test, the left and right main landing gear (MLG) radius rods, part numbers (P/N) 1847–A through 1847–L, 1848–A through 1848–F, and 1862–A through 1862–L, for correct conductivity or hardness standard specified in the referenced service information.	Within the next 30 calendar days after February 11, 2002 (the effective date of this AD).	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.
(2) If the results of the inspection are greater than 46% International Aluminum & Copper Standards (IACS) using the eddy current conductivity test, or less than 79 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod that meets the conductivity or hardness standard specified in the referenced service information.	Within the next 90 calendar days after the inspection required in paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.

Actions	Compliance	Procedures
(3) If the results of the inspection are equal to or greater than 41.5% IACS but less than or equal to 46% IACS using the eddy current conductivity test, or equal to or greater than 79 but less than or equal to 87 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod that meets the conductivity or hardness requirements specified in the referenced service information.	Within the next 180 calendar days after the inspection required in paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.
(4) If the results of the inspection are greater than 36.5% IACS and less than 41.5% IACS using the eddy current conductivity test, or greater than 87 and less than 90 using the Rockwell hardness test, no replacement of the MLG radius rod is required.	Not applicable	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001.
(5) Do not install, on any affected airplane, a P/N 1847–A through 1847–L, 1848–A through 1848–F, or 1862–A through 1862–L MLG radius rod, unless it has been inspected and is found to meet the conductivity or hardness standard specified in the referenced service information.	As of February 11, 2002 (the effective date of this AD).	In accordance with British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001.

Note 1: The compliance time of this AD differs from that specified in British Aerospace Alert Service Bulletin 32–A–JA–010740, Revision 2, Issued July 23, 2001. This AD takes precedence over any other information.

Note 2: British Aerospace Alert Service Bulletin 32–JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the inspections to British Aerospace Regional Aircraft. The FAA highly recommends that each owner/operator submit this information. British Aerospace and the British Civil Airworthiness Authority (CAA) will use this information to determine whether further action is necessary. The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

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

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

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, and APPH Ltd. Service Bulletin 1862–32–08, dated July 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British AD Number 005–07–2001, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on February 11, 2002.

Issued in Kansas City, Missouri, on January 4, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–797 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–33–AD; Amendment 39–12600; AD 2002–01–09]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This AD requires you to inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material; replace any engine-driven pump with signs of fuel leakage or extruding gasket material; and inspect to ensure that the relief valve attachment screws are adequately

torqued and re-torque as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

DATES: This AD becomes effective on February 28, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 28, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA of an unsafe condition that may exist on Pilatus Models PC–7, PC–12, and PC–12/45 airplanes. The FOCA reports instances of fuel leaking from the engine-driven pump on the referenced airplanes. The compression set of the gasket and diaphragm after thermal cycling could cause the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing. This in turn relieves the torque of the relief-valve cover screws of the engine-driven pump, which could result in fuel leakage.

Information on the affected pumps follows:

—The affected engine-driven pumps are Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) as installed on Models PC–12 and PC–12/45 airplanes or Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) as installed on Model PC–7 airplanes;

—Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes; and

—These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

What Is the Potential Impact if FAA Took No Action?

Gasket material extruding from the engine-driven pump housing and relief valve attachment screws with inadequate torque, if not detected and corrected, could lead to fuel leakage and result in a fire in the engine compartment.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 24, 2001 (66 FR 53738). The NPRM proposed to require you to inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material; replace any engine-driven pump with signs of fuel leakage or extruding gasket material; and inspect to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 278 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspections and re-torque:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Not Applicable	$120	$120 × 278 = $33,360.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour X $60 per hour = $60	$3,900 per new pump	$3,960 per airplane.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of the inspections that will be required by this AD is ''within 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first.''

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The deterioration and potential extrusion of the gasket occurs over time and is not a condition of repetitive airplane operation. However, the relief valve attachment screws becoming inadequately torqued occurs as a result of airplane usage if the compression set of the gasket and diaphragm after thermal cycling causes the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing.

Therefore, to ensure that the unsafe condition defined in this document is detected and corrected in a timely manner, we are stating the compliance in both calendar time and hours TIS.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–09 Pilatus Aircraft Ltd.: Amendment 39–12600; Docket No. 2001–CE–33–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
PC–7	All manufacturer serial numbers (MSN) with a Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump.
PC–12 and PC–12/45	All MSN with a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump.

Note 1: Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes. These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

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

Actions	Compliance	Procedures
(1) For all airplanes: inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material.	Initially inspect within the next 20 hours time-in-service (TIS) after February 28, 2002 (the effective date the of this AD) or within the next 30 days after February 28, 2002 (the effective date of this AD), whichever occurs first.	In accordance with the Accomplishment Instructions section of either Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(2) For the Model PC–7 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with a Lear Romec part number RG9570M1/M engine-driven pump.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of Pilatus PC–7 Service Bulletin No. 28–006, dated August 10, 2001; and the appropriate maintenance manual.

Actions	Compliance	Procedures
(3) For the Models PC–12 and PC–12/45 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with one of the following and accomplish any specified follow-on action:. (i) a Lear Romec part number RG95701R1/M (Pilatus part number 968.84.51.106/M) engine-driven pump; or. (ii) a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump. Installation of this part requires you to accomplish the inspection and replacement, if necessary, specified in paragraphs (d)(1) and (d)(3) of this AD, respectively. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD. Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus PC–12 Service Bulletin No. 28–009, dated August 10, 2001; and the appropriate maintenance manual.
(4) For all affected airplanes: inspect to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of either Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(5) Do not install, on any affected Model PC–7 airplane, a replacement Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump.	As of February 28, 2002 (the effective date of this AD).	Not Applicable.
(6) If you install, on any Model PC–12 or PC–12/45 airplane, a part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump, you must accomplish the inspection and replacement, if necessary, as specified in paragraphs (d)(1) and (d)(3) of this AD, respectively. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus PC–12 Service Bulletin No. 28–009, dated August 10, 2001.

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

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

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 28, 2002.

Note 3: The subject of this AD is addressed in Swiss AD HB 2001–500 (PC–12 and PC–12/45) and Swiss AD HB–505 (PC–7), both dated August 24, 2001.

Issued in Kansas City, Missouri, on January 8, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–899 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8977]

RIN 1545–BA39

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Unexpected Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective January 17, 2002.

Applicability Date: For dates of applicability, *see* § 1.1441–6T(h)(6).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Payments of U.S. source income to foreign persons create a number of withholding and information reporting obligations for both the payor and the recipient of these payments under the Internal Revenue Code and associated Treasury regulations. Specifically, under section 871(a), nonresident alien individuals are subject to a 30 percent tax on certain items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Those items of income include interest, dividends, royalties, compensation, and other fixed or determinable annual or periodical income. The tax liability imposed under section 871(a) on the payment of such items of income is generally collected by way of withholding at the source pursuant to section 1441(a). Withholding agents are generally required to report payments of such income to the IRS on Form 1042–S.

The 30 percent rate of tax can be reduced under an income tax treaty. Under current Treasury regulations, a withholding agent may generally rely on a Form W–8BEN, ''Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,'' or Form 8233, ''Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual,'' provided by, or for, the foreign individual certifying eligibility for a reduced rate of tax under an income tax treaty.

Section 1.1441–1(e)(4)(vii) generally provides that a taxpayer identifying number (TIN) must be furnished on a Form W–8BEN or Form 8233 in order for a foreign individual to obtain the benefit of reduced withholding under an income tax treaty. *See* § 1.1441–6(b)(2)(ii). Treasury and the IRS have recently become aware, however, of certain unusual cases where an unexpected payment to a nonresident alien individual claiming treaty benefits arises on short notice. In general, a foreign individual receiving such an unexpected payment currently may be unable to obtain a TIN prior to payment. In such a case, unless the foreign individual already has a TIN, the withholding agent would be required to withhold tax at the 30 percent rate, rather than the treaty rate, and the foreign individual would be required to file for a refund in order to obtain the benefits of the income tax treaty.

To alleviate this filing burden on foreign individuals, IRS is putting in place administrative procedures that will allow certain withholding agents, who also are acceptance agents (as defined in § 301.6109–1(d)(3)(iv)) and who make unexpected payments to foreign individuals, to apply for and obtain an individual taxpayer identification number (ITIN) for such individuals on an expedited basis. However, Treasury and IRS recognize that, in certain circumstances, these expedited ITIN procedures will not be sufficient to ensure that foreign individuals receiving an unexpected payment can obtain the benefits of a reduced rate of withholding under an income tax treaty at the time of payment. Accordingly, these temporary regulations will allow, in limited circumstances, withholding agents to rely on a Form W–8BEN or Form 8233 that does not include a TIN for purposes of withholding at the reduced treaty rate.

The proposed rules are published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

These temporary regulations amend § 1.1441–1(b)(7) and § 1.1441–6(b)(1) and add new § 1.1441–6T(h) to provide a limited exception to the requirement that a foreign individual provide a TIN to its withholding agent before obtaining a reduced rate of withholding tax under an income tax treaty. As noted above, under the current regulatory framework, a foreign individual generally is required to put the individual's TIN on the Form W–8BEN or Form 8233 in order to claim a reduced rate of withholding based upon a tax treaty. If a foreign individual does not have a TIN, a withholding agent who is an acceptance agent, as defined in § 301.6109–1(d)(3)(iv), can aid the foreign individual in obtaining an ITIN.

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the IRS has decided to permit certain withholding agents to enter into special acceptance agent agreements with the IRS that will allow those withholding agents, in their capacity as acceptance agents, to seek ITINs through an expedited process for these foreign individuals claiming treaty benefits. It is anticipated that any withholding agent who qualifies as an acceptance agent under § 301.6109–1(d)(3)(iv) and who anticipates making unexpected payments will be allowed to enter into such an agreement. However, the IRS intends to allow the use of the expedited process only when an application for an ITIN using the standard process will not generate an ITIN in time for the payment.

These temporary regulations provide that, in limited circumstances, a withholding agent who has entered into such a special acceptance agent agreement may rely on a beneficial owner withholding certificate without regard to the requirement that it include a TIN. Generally, these temporary regulations provide that, in order for a withholding agent to rely on a beneficial owner withholding certificate that does

not contain a TIN, the withholding agent must be unable to obtain an ITIN for the foreign individual because the IRS is not issuing ITINs at the time of an unexpected payment to the individual or any time prior to the time of payment when the withholding agent had knowledge of the unexpected payment and the nature of the unexpected payment must be such that it cannot reasonably be delayed until the withholding agent could obtain an ITIN for the foreign individual through the use of the expedited process. The temporary regulations further provide that the IRS must receive the foreign individual's application for an ITIN on the first business day following payment. At this time, the IRS intends to issue ITINs through the expedited process from 6 a.m. until 11:30 p.m. E.S.T., except for weekends and holidays. The IRS intends to increase the availability of this expedited process in the future.

Except as provided in these regulations or in § 1.1441–6(c), a foreign individual will continue to be required to provide a TIN on a beneficial owner withholding certificate (Form W–8BEN or Form 8233) in order to obtain the benefit of a reduced rate of withholding under an income tax treaty.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations impose no new collection of information on small entities, therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1441–1T is added to read as follows:

§ 1.1441–1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).

(a) Through (b)(7)(i)(C) [Reserved]. For further guidance, *see* § 1.1441–1(a) through (b)(7)(i)(C).

(b)(7)(i)(D). The withholding agent has complied with the provisions of § 1.1441–6(d).

(b)(7)(ii) through (f)(2)(ii) [Reserved]. For further guidance, *see* § 1.1441–1(b)(7)(ii) through (f)(2)(ii).

§ 1.1441–6 [Amended]

Par. 3. In § 1.1441–6, the fifth sentence of paragraph (b)(1) is amended by adding the language ''and § 1.1441–6T(h)'' immediately following the language ''(c)(1) of this section.''

Par. 4. Section 1.1441–6T is added to read as follows:

§ 1.1441–6T Claim of reduced withholding under an income tax treaty (temporary).

(a) through (g) [Reserved]. For further guidance, see § 1.1441–6(a) through (g).

(h) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits*—(1) *General rule.* Except as provided in § 1.1441–6(c) or paragraph (h)(2) of this section, for purposes of § 1.1441–6(b)(1), a withholding agent may not rely on a beneficial owner withholding certificate, described in § 1.1441–6(b)(1), that does not include the beneficial owner's taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of § 1.1441–6(b)(1), a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner's TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109–1(d)(3)(iv) of this chapter (hereafter the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS), Philadelphia Service Center, because the IRS, Philadelphia Service Center is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (h)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W–7) that complies with the requirements of § 301.6109–1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109–1(d)(3)(iv)(A)(*4*) of this chapter, to the IRS, Philadelphia Service Center, during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (h)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) *Examples.* The rules of this paragraph (h) are illustrated by the following examples:

Example 1. G, a citizen and resident of Country Y, a country with which the U.S. has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the U.S. for the first time. During his visit, G visits Casino B, a casino that has entered

into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins $5000 in slot machine play at Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S.—Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W–7, including the required certification, for G, to the IRS, Philadelphia Service Center for an expedited ITIN. Pursuant to § 1.1441–6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the $5000 to G without withholding U.S. tax based on the treaty exemption.

Example 2. The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the $5000 payment to G.

Example 3. The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.—Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the U.S. has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P's first visit to the U.S. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P $5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S.—Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Z tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for P. On Tuesday, University U faxes a completed Form W–7, including the required certification, for P, to the IRS, Philadelphia Service Center, for an expedited ITIN. Pursuant to § 1.1441–6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay $5000 to P without withholding U.S. tax based on the treaty exemption.

(6) *Effective date.* This paragraph (h) applies to payments made after December 31, 2001.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for part 301 continues to read in part as follows:

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

Par. 6. In § 301.6109–1, paragraph (g)(3) is revised to read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(g) * * *

(3) [Reserved]. For further guidance, see § 301.6109–1T(g)(3).

* * * * *

Par. 7. Section 301.6109–1T is added to read as follows:

§ 301.6109–1T Identifying numbers (temporary).

(a) Through (g)(2) [Reserved]. For further guidance, see § 301.6109–1(a) through (g)(2).

(g)(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This paragraph (g)(3) applies to payments made after December 31, 2001.

(h) through (j)(2)(iii). For further guidance, see § 301.6109(h) through (j)(2)(iii).

Approved: December 21, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–1125 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 84 and 183

46 CFR Part 25

[USCG–1999–6580]

RIN 2115–AF70

Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: The Coast Guard is delaying the effective date of the final rule on Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels published in the **Federal Register** on November 1, 2001. The final rule requires domestic manufacturers of vessels to install only certified navigation lights on all newly manufactured uninspected commercial vessels and recreational vessels. This rule aligns the requirements for these lights with those for inspected commercial vessels and with requirements for all other mandatory safety equipment carried on board all vessels. The Coast Guard expects the resulting reduction in the use of noncompliant lights to improve safety on the water.

EFFECTIVE DATE: The final rule is effective on November 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–6580 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Randolph J. Doubt, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–6810 or by e-mail at *rdoubt@comdt.uscg.mil*. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, by telephone at 202–366–5149.

SUPPLEMENTARY INFORMATION: On November 1, 2001, the Coast Guard published a final rule entitled ''Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels'' in the **Federal Register** (66 FR 55086). The final rule, which was to become effective on November 1, 2002, directs manufacturers of uninspected commercial vessels and recreational vessels to install only navigation lights certified and labeled by a laboratory listed by the Coast Guard as meeting the technical requirements of the Navigation Rules.

Upon publication of the final rule, the Coast Guard noted that the implementation date may not provide enough time to complete the testing of navigation lights by laboratories listed by the Coast Guard to allow the recreational boat manufacturers to comply with the regulation. July 2002 is the date most of next year boat models will appear on show room floors. Photo boats for sales brochures will be built in March and April 2002 so that these brochures can be printed in time for the introductions. Actual new model year production will start in April and May 2002. Thus, boat builders must make their navigation light selections for the upcoming model year as early as February 2002. Each navigation light manufacturer will have to make tooling changes to meet the new marking requirements, and many will have to retest their applicable product line. Sufficient time is not available to do this by February 2002. The alternative would be to pull all unsold boats off the market on November 1, 2002, replacing them either with new boat models equipped with compliant navigation lights or modifying their navigation lights to meet the new marking and certification requirements. Most, if not all, agree that this latter alternative is not a reasonable course to take.

Based upon this concern, the Coast Guard is delaying the effective date of the final rule to November 1, 2003.

Accordingly, in FR Doc. 01–27320 published in the **Federal Register** on November 1, 2001, at 66 FR 55086, the effective date for the referenced final rule is changed from November 1, 2002, to November 1, 2003.

Dated: January 9, 2002.

Terry M. Cross,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 02–1252 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–112]

RIN 2115–AA97

Security Zone; San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone 50 yards around all cruise ships while entering or departing the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when these vessels are moored in the Port of San Juan. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico or his designated representative.

DATES: This regulation is effective from 12:01 a.m. on November 30, 2001 until 11:59 p.m. on February 28, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan CGD 07–01–112] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00969 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and written information via facsimile and electronic mail to inform mariners of this regulation.

For the same reasons, 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**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of San Juan, Puerto Rico, against cruise ships entering, departing and moored within this port. There may be Coast Guard, local police department or other patrol vessels on scene to monitor traffic through these areas. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico.

The security zone for a vessel entering the Port of San Juan is activated when the vessel is one mile north of the #1 buoy, at approximate position 18°28.3′ N, 66°07.6′ W, when entering the Port of San Juan. The zone for a vessel is deactivated when the vessel passes this buoy on its departure from the port. The Captain of the Port will also notify the public of these security zones via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) and Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan website at *http://www.msocaribbean.com.*

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) because vessels should be able to safely transit around the zone and may be allowed to enter the zone with the authorization of the Captain of the Port of San Juan.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Environmental

The Coast Guard considered the environmental impact of this rule and concluded 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.**

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, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships 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 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.

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. A new temporary § 165.T07–112 is added to read as follows:

§ 165.T07–112 Security Zone; Port of San Juan, Puerto Rico.

(a) *Regulated area.* Temporary moving security zones are established 50 yards around all cruise ships while entering or departing the Port of San Juan. These moving security zones are activated when the subject vessel is one mile north of the #1 buoy at approximate position 18°28.3′ N, 66°07.6′ W when entering the Port of San Juan and deactivated when the vessel passes this buoy on its departure from the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when these vessels are moored in the Port of San Juan.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective dates.* This section becomes effective at 12:01 a.m. on November 30, 2001 until 11:59 p.m. on February 28, 2002.

Dated: November 30, 2001.

J. A. Servidio,

Commander, U. S. Coast Guard, Captain of the Port.

[FR Doc. 02–1187 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 07–01–135]

RIN 2115–AA97

Security Zone; St. Croix, USVI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands. This security zone extends 3 miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. All vessels must receive permission from the U.S. Coast Guard Captain of the Port San Juan or the HOVENSA Facility Port Captain prior to entering this temporary security zone. This security zone is needed for national security reasons to protect the public and the port of HOVENSA from potential subversive acts.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD 07–01–135] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00968, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

DATES: This regulation is effective at 6 p.m. on December 19, 2001 until 11:59 p.m. on June 15, 2002.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Lefevers, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, 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**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels from coming within 3 miles of the HOVENSA facility unless specifically permitted by the Captain of the Port San Juan or the HOVENSA Facility Port Captain. The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, seven days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, seven days a week. The temporary security zone around the HOVENSA facility is outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

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) because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include 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.

This rule may affect the following entities, some of which may be small entities: owners of small charter fishing or diving operations that operate near the HOVENSA facility. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Environmental

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M14475.1D that 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.**

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 relationships 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 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.

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. A new temporary § 165.T07–135 is added to read as follows:

§ 165.T07–135 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* All waters 3 miles seaward of the HOVENSA facility waterfront outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port San Juan or a Coast Guard commissioned, warrant, or petty officer designated by him or unless authorized by the HOVENSA Port Captain who can be reached on VHF Marine Band Radio Channel 11(156.6 Mhz). The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz).

(c) *Effective dates.* This section is effective from 6 p.m. on December 19, 2001 until 11:59 p.m. on June 15, 2002.

Dated: December 19, 2001.

J.A. Servidio,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–1253 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301208; FRL–6818–6]

RIN 2070–AB78

Ethalfluralin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of ethalfluralin in or on canola seed and safflower seed. IR-4 requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective January 17, 2002. Objections and requests for hearings, identified by docket control number OPP–301208, must be received by EPA on or before March 18, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301208 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9368; and e-mail address: Jamerson.Hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301208. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 14, 2001 (66 FR 57082) (FRL–6808–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of pesticide petitions (PP 9E5037, 1E6326, and 1E6345) for tolerances by Interregional Research Project Number 4 (IR–4), 681 U.S. Highway Number 1, South, North Brunswick, New Jersey 08902–3390. This notice included a summary of the petitions prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.416 be amended by establishing tolerances for residues of the herbicide ethalfluralin, [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine, in or on canola seed and safflower seed at 0.05 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances, November 26, 1997) (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of ethalfluralin on canola seed and safflower seed at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by ethalfluralin are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 68 mg/kg/day LOAEL = 136 mg/kg/day based on low bilirubin and low kidney weights in males.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 27.5 mg/kg/day LOAEL = 80 mg/kg/day based on elevated alkaline phosphatase, slight fatty metamorphosis of the liver, increase cholesterol, and increased blood urea nitrogen (BUN).
870.3200	21–Day dermal toxicity in rabbits	NOAEL = 1,000 mg/kg/day - highest dose tested (HDT) LOAEL =>1,000 mg/kg/day no systemic effects were seen at the HDT.
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 50 mg/kg/day LOAEL = 250 mg/kg/day based on decreased body weight gain and dark urine. Developmental NOAEL = 1,000 mg/kg/day no systemic effects were seen at the HDT. LOAEL = >1,000 mg/kg/day no systemic effects were seen at the HDT.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 75 mg/kg/day LOAEL = 150 mg/kg/day based on abortions and decreased food consumption. Developmental NOAEL = 75 mg/kg/dayLOAEL = 150 mg/kg/day based on slightly increased resorptions, abnormal cranial development, and increase sternal variants.
870.3800	Reproduction and fertility effects in rats	Parental/Systemic NOAEL = 12.5 mg/kg/day LOAEL = 37.5 mg/kg/day based on decreased mean body weight gains in males in all generations. Reproductive NOAEL = 37.5 mg/kg/day HDT LOAEL = >37.5 mg/kg/day no systemic effects were seen at the HDT.
870.4100	Chronic toxicity dogs	NOAEL = 4 mg/kg/day LOAEL = 20 mg/kg/day based on increased urinary bilirubin, variations in erythrocyte morphology, increased thrombocyte count, and increased erythroid series of the bone marrow.
870.4300	Combined chronic toxicity/carcinogenicity in rats	NOAEL = 32.3 mg/kg/day HDT LOAEL = > 32.3 mg/kg/day no systemic effects were seen at the HDT. Mammary gland fibroadenomas were found in dosed female rats at statistically significant incidences in mid and high doses.
870.4300	Combined chronic toxicity/carcinogenicity in mice	NOAEL = 10.3 mg/kg/day LOAEL = 41.9 mg/kg/day based on focal hepatocellular hyperplasia in both sexes and increased liver, kidney, and heart weights in females. No increase in of neoplasms was attributed to the treatment.
870.5100	Bacterial reverse mutation test	Ethalfluralin was weakly mutagenic in activated strains TA1535 and TA100 of *Salmonella typhimurium*, but not in strains TA1537, TA1538, and TA98 in an Ames assay. In a modified Ames assay with *Salmonella typhimurium* and *Escherichia coli*, ethalfluralin was weakly mutagenic in strains TA1535 and TA100, with and without activation, and in strain TA 98 without activation, at the highest dose.
870.5300	*In vitro* mammalian cell mutation test	No mutagenicity was found in the mouse lymphoma assay for forward mutation.
870.5550	Unscheduled DNA synthesis in mammalian cells in culture	Ethalfluralin did not induce unscheduled DNA synthesis in rat hepatocytes.
870.5375	*In vitro* mammalian chromosome aberration test	In Chinese hamster ovary cells, ethalfluralin was negative without S9 activation, but it was clastogenic with activation.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics	Rats were treated orally with a single low dose, a single high dose, or repeated low doses of radiolabeled ethalfluralin. Absorption of ethalfluralin was estimated at 79–87% of the dose for all dose levels. Ethalfluralin was rapidly and extensively metabolized, and 95% of the chemical was excreted in urine and feces by seven days. The major route of elimination for the radiolabel was in the feces, 50.9–63.2%, and the levels remaining in the tissues after 72 hours were negligible.
870.7600	Dermal penetration	A Dermal penetration study with rhesus monkeys indicated that 2.8% of a dermal dose was absorbed through the skin.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^*: is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer=}$ point of departure/exposures) is calculated. A summary of the toxicological endpoints for ethalfluralin used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ETHALFLURALIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age	NOAEL = 75 mg/kg/day UF = 100 Acute RfD = 0.75 mg/kg/day	FQPA SF = 10 aPAD = acute RfD FQPA SF = 0.075 mg/kg/day	Oral developmental toxicity study in rabbits LOAEL = 150 mg/kg/day based on an increased number of resorptions and increased sternal and cranial variations.
Acute dietary general population including infants and children	None	None	None
Chronic dietary all populations	NOAEL= 4.0 mg/kg/day UF = 100 Chronic RfD = 0.04 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD FQPA SF = 0.004 mg/kg/day	1–year oral toxicity study in dogs LOAEL = 20 mg/kg/day based on altered red cell morphology and urinary bilirubin.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ETHALFLURALIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-term dermal (1 to 7 days) Intermediate-term dermal (1 week to several months)	None	None	A dermal penetration study with rhesus monkeys indicated that 2.8% of a dermal dose was absorbed through the skin. Although the developmental and fetotoxic effects (refer to toxicological effects for acute dietary for females above) would normally be used for this assessment, the dermal absorption rate of 2.8% precludes the need. Dermal absorption is too low to cause concern.
Short-term inhalation (1 to 7 days) Intermediate-term Inhalation (1 week to several months) Long-term inhalation (several months to lifetime) (Residential)	None	None	Ethalfluralin has a low inhalation toxicity category (III). The maximum attainable concentration (gravimetric) was tested in an acute inhalation toxicity study, and no deaths occurred to exposed rats. Clinical signs included hypoactivity, dyspnea, ataxia, chromodacryorrhea, poor grooming, and yellow urine; these were reversible after 4 days (LC_{50} 0.94 mg/L). This maximum attainable concentration is considered to be non-lethal. An inhalation risk assessment is not needed.
Cancer (oral, dermal, inhalation)	Ethalfluralin has been classified as a possible human carcinogen (Group C). Q_1^* = 8.9 x 10^{-2} (mg/kg/day)$^{-1}$	Negligible risk	2–year chronic carcinogenicity study in rats, showing an increased incidence of mammary gland fibroadenomas and combined adenomas/fibroadenomas in female rats.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA. The safety factor of 10X was retained until ethalfluralin is assessed by the Agency's FQPA Safety Factor Committee. Therefore, the 10X is subject to change when ethalfluralin is assessed in an upcoming Tolerance Reassessment Eligibility Decision (TRED).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.416) for the residues of ethalfluralin, in or on a variety of raw agricultural commodities. Tolerances for residues of ethalfluralin are established for dry beans and peas, the Cucurbits vegetable subgroup, peanuts, soybeans, sunflower seeds, and fat, meat, and meat by-products of goats. The tolerance level for all these commodities is 0.05 ppm. Time limited tolerances associated with section 18 requests have also been established for canola and safflower. Risk assessments were conducted by EPA to assess dietary exposures from ethalfluralin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document prepared for ethalfluralin. No percent crop-treated adjustment was made therefore, 100% crop treated was assumed. Further refinements (such as percent crop-treated adjustments and/or Monte Carlo analysis) would yield even lower estimates of acute dietary exposure.

ii. *Chronic exposure.*In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document. In addition, weighted average percent crop treated data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iii. *Cancer.* In conducting this cancer dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII. The following assumptions were made for the cancer exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are

ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document. In addition, weighted average percent crop treated data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop-treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 34% of dry beans and dry peas treated; 4% melons and cantaloups treated; 16% cucumbers treated; 15% watermelons treated and 1% soybeans treated.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which ethalfluralin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for ethalfluralin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of ethalfluralin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/ EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to ethalfluralin they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of ethalfluralin for acute exposures are estimated to be 2.3 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 0.05 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ethalfluralin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative

effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether ethalfluralin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, ethalfluralin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ethalfluralin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. In the developmental toxicity study in rats, the maternal (systemic) NOAEL was 50 milligram/kilogram/day (mg/kg/day), based on decreased body weight gain and dark urine at the LOAEL of 250 mg/kg/day. The developmental (fetal) NOAEL was 1,000 mg/kg/day (the highest dose tested, HDT).

In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 75 mg/kg/day, based on abortions and decreased food consumption at the LOAEL of 150 mg/kg/day. The developmental (fetal) NOAEL was also 75 mg/kg/day, based on a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants at the LOAEL of 150 mg/kg/day.

3. *Reproductive toxicity study*. In a 3–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 12.5 mg/kg/day, based on decreased mean body weight gains in males in all generations at the LOAEL of 37.5 mg/kg/day. The reproductive (pup) NOAEL was 37.5 mg/kg/day (the HDT).

In a 7–month multi-generation bridging study in rats, the parental NOAEL of 20 mg/kg/day was based on increased liver weights at the LOAEL of 61 mg/kg/day. The reproductive (pup) NOAEL was 61 mg/kg/day (the HDT).

4. *Prenatal and postnatal sensitivity*. There is qualitative evidence of increased susceptibility following *in utero* exposure to ethalfluralin in the developmental toxicity study in rabbits demonstrated by abortions and a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants in the pups. There was no indication of increased susceptibility following *in utero* exposure to ethalfluralin in the prenatal developmental toxicity study in rats.

5. *Conclusion*. There is a complete toxicity data base for ethalfluralin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

To date, ethalfluralin has not been assessed by the Agency's FQPA Safety Factor Committee. The Agency is in the preliminary stages of evaluating ethalfluralin for an upcoming Tolerance Reassessment Eligibility Decision (TRED) (Reports on FQPA Tolerance Reassessment Progress and Interim Risk Management Decisions). During this reassessment, the Agency's FQPA Safety Factor Committee will evaluate this chemical.

EPA's preliminary review of the studies bearing on risks to infants and children indicates that an additional safety factor of greater than 10X will not be needed to protect the safety of infants and children. Previously, when time-limited tolerances were established for residues of ethalfluralin in or on canola seed and safflower seed to support specific emergency exemptions the Agency concluded that an additional FQPA safety factor of 3X for assessing acute dietary risk and an additional FQPA safety factor of 1X for assessing chronic dietary risk would be adequate for protecting the safety of infants and children. This was based on a determination made by ad hoc FQPA Safety Factor Committee which based its decision on the results of the oral developmental toxicity study in rabbits.

Accordingly, for the purpose of acting on the petition for tolerances for residues of ethalfluralin in or on canola seed and safflower seed prior to completion of the ethalfluralin TRED, the FQPA safety factor of 10X was retained.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to ethalfluralin in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of ethalfluralin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An acute dietary endpoint was only identified for females. Using the exposure assumptions discussed in this unit for

acute exposure, the acute dietary exposure from food to ethalfluralin will occupy less than 1% of the aPAD for females 13 years and older. In addition, despite the potential for acute dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ETHALFLURALIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–50 years old)	0.075	<1	2.3	0.02	2,200

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to ethalfluralin from food will utilize less than 1% of the cPAD for the U.S. population and all other population subgroups included in DEEM™. There are no residential uses for ethalfluralin that result in chronic residential exposure to ethalfluralin. In addition, despite the potential for chronic dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.004	<1	0.05	0.02	140
Females 13–50	0.004	<1	0.05	0.02	120
Children	0.004	<1	0.05	0.02	40
Infants	0.004	<1	3.05	0.02	40

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population*. Using the exposure assumptions described in this unit for cancer exposure, EPA has concluded that exposure to ethalfluralin from food will result in an estimated lifetime cancer risk to the U.S. population of 5.8×10^{-7}. Currently there are no uses registered for ethalfluralin that will result in residential exposures. In addition, despite the potential for chronic (cancer) dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to pose greater than a negligible risk (the range of 10^{-6}), as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	Q1*	Cancer Risk Estimate (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	8.9×10^{-2} (mg/kg/day)$^{-1}$	5.8×10^{-7}	0.05	0.02	0.18

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to ethalfluralin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (GLC-ECD) is available in PAM II to enforce the tolerance expression. The

limit of detection in plant commodities is 0.01 ppm.

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for ethalfluralin. Mexico has established MRLs of 0.05 ppm in/on squash, cucumber, and melon. Canada has labels for uses on oilseed and pulse crops, wheat, field crop vegetables, barley, rapeseed, flax, canola, and mustard however, there are no published tolerances.

V. Conclusion

Therefore, tolerances are established for residues of ethalfluralin,[*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine], in or on canola seed and safflower seed at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301208 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 18, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301208, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public

Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: January 3, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.416 is amended as follows:

i. By alphabetically adding entries for the commodities ''canola, seed'' and ''safflower, seed'' to the table in paragraph (a) as set forth below.

ii. The text of paragraph (b) is removed and reserved.

§ 180.416 Ethalfluralin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Canola, seed	0.05
* * * * *	
Safflower, seed	0.05
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 02–701 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 82

RIN 0920–ZA00

Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Interim Final Rule; Reopening of Comment Period.

SUMMARY: The Department of Health and Human Services(DHHS), is reopening the comment period for the interim final rule for dose reconstruction for certain claims for cancer under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** of Friday, October 5, 2001. After considering these comments, comments previously received, and comments from the Advisory Board on Radiation and Worker Health (ABRWH) DHHS will publish a final rule.

DATES: Any public written comments not submitted at the meeting of the ABRWH must be received on or before Wednesday, January 23, 2002.

ABRWH must submit any comments and recommendations on the interim final rule to DHHS by Wednesday, February 6, 2002.

ADDRESSES: Submit written comments to: Attention—DoseReconstruction Comments, Department of Health and HumanServices, National Institute for Occupational Safety andHealth (NIOSH), Robert A. Taft Laboratories, MS–C34, 4676Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 533–8450, Fax: (513) 533–8285, e-mail: *NIOCINDOCKET@CDC.GOV.*

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director,Office of Compensation Analysis and Support, NationalInstitute for Occupational Safety and Health, 4676 ColumbiaParkway, Cincinnati, Ohio 45226, Telephone 513–841–4498(this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION: On October 5, 2001, HHS published an interim final rule establishing methods for radiation dose reconstruction to be conducted for certain cancer claims filed under EEOICPA, Public Law 106–398 [See FR Vol. 66, No. 194, 50978]. The notice included a public comment period that ended on November 5, 2001. However, DHHS is requesting the ABRWH to conduct a review of its dose reconstruction methods. ABRWH will be conducting its review during a meeting of the ABRWH scheduled for Tuesday, January 22, 2002 and Wednesday, January 23, 2002.

To permit HHS to consider the ABRWH review and any comments and recommendations of ABRWH in the rulemaking, DHHS will reopen the public comment period. This will also provide the public with the opportunity to participate in this review. The public comment period will be reopened to include the ABRWH meeting transcript and any statements submitted for the record of that meeting in the docket for this rule. DHHS will also accept additional public written comments submitted to its docket office on or beforeWednesday, January 23, 2002. The record for this rulemaking will close on Wednesday, February 6, 2002, by which time ABRWH must submit any comments and recommendations on the interim final rule to DHHS.

Dated: January 14, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1318 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 126

[USCG–2001–10164]

RIN 2115–AG17

Alternate Compliance Program; Incorporation of Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On October 23, 2001, we published a direct final rule (66 FR 53542). The direct final rule notified the public of our intent to incorporate Offshore Supply Vessels (OSVs) into the Alternate Compliance Program (ACP). This action will improve the flexibility of regulations governing OSVs by providing an alternative method for vessel design, inspection, and certification without compromising existing safety standards. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as January 22, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Lieutenant Benjamin Nicholson, United States Coast Guard Office of Design and Engineering Standards (G-MSE), at 202–267–0143, or e-mail him at *BNicholson@comdt.uscg.mil.*

Dated: January 10, 2002.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 02–1251 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300–1007–05; I.D. 120996A]

RIN 0648–AJ30

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations implementing the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule establishes guidelines to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), the identification of adverse effects to EFH, and the identification of actions required to conserve and enhance EFH. The regulations also detail procedures the Secretary (acting through NMFS), other Federal agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. The intended effect of the rule is to promote the protection, conservation, and enhancement of EFH.

If further changes to the EFH regulations are warranted in the future, NMFS will propose changes through an appropriate public process.

DATES: Effective on February 19, 2002.

ADDRESSES: Requests for copies of the Environmental Assessment (EA) or related documents should be sent to EFH Coordinator, Office of Habitat Conservation, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. The EA and related documents are also available via the internet at: *http://www.nmfs.noaa.gov/habitat*.

FOR FURTHER INFORMATION CONTACT: Jonathan Kurland, NMFS EFH Coordinator, 301/713–2325; fax 301/713–1043; e-mail jon.kurland@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq*.) as reauthorized by the Sustainable Fisheries Act, signed into law on October 11, 1996. NMFS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on November 8, 1996 (61 FR 57843) to solicit comments to assist NMFS in developing an approach for the proposed regulations. NMFS published a second ANPR on January 9, 1997 (62 FR 1306) to announce the availability of the ''Framework for the Description, Identification, Conservation, and Enhancement of Essential Fish Habitat'' (Framework) and to solicit additional public comment. The Framework provided a detailed outline for the proposed regulations. NMFS held 15 public meetings, briefings, and workshops across the nation during the public comment period on the Framework and issued a proposed rule on April 23, 1997 (62 FR 19723). NMFS held an additional 6 public meetings and numerous briefings nationwide during the comment period on the proposed rule and issued an interim final rule on December 19, 1997 (62 FR 66531). The interim final rule took effect on January 20, 1998.

NMFS decided to issue the regulations as an interim final rule in 1997 for two reasons. First, NMFS decided to provide an additional comment period to allow another opportunity for affected parties to provide input prior to the development of a final rule. Second, NMFS determined that it would be advantageous to implement the EFH provisions of the Magnuson-Stevens Act for a period of time via interim final regulations, which would afford an opportunity to gain experience adding EFH information to fishery management plans and carrying out consultations and coordination with Federal and state agencies whose actions may adversely affect EFH. NMFS planned to use the additional comments and its experience implementing the interim final rule to make any necessary changes in the final rule.

The comment period on the interim final rule closed on March 19, 1998 (63 FR 8607, February 20, 1998). On November 8, 1999, NMFS reopened the comment period (64 FR 60731) to announce its intention to proceed with development of a final rule and to request additional public comments on four specific issues: how to improve the regulatory guidance on the identification of EFH; how to improve the regulatory guidance on minimizing the effects of fishing on EFH; whether the final rule should provide additional guidance on using existing environmental reviews to satisfy EFH consultation requirements; and whether to revise in the final rule the requirement for Federal agencies to prepare EFH Assessments as part of the EFH consultation process.

In total, NMFS provided five separate public comment periods for this rulemaking totaling 270 days. NMFS also held numerous public meetings and briefings to explain the EFH requirements for interested parties and to solicit their input. Based on the comments received, as well as NMFS' experience implementing the interim final rule, NMFS identified a number of improvements that would clarify and simplify the regulations. NMFS incorporated those changes in the final rule.

Although NMFS is finalizing this rule, NMFS recognizes that there remains a great deal of interest in the EFH regulations from various stakeholders. There is a diversity of opinions on the best way to integrate habitat and ecosystem considerations into fishery management. NMFS is actively evaluating these issues, and will continue to work with stakeholders to use the best available scientific information regarding habitat and ecosystem principles in fishery management decisions. For example, NMFS will hold a workshop in the coming months to examine the concepts underlying ecosystem-based approaches to marine resource management, followed by a second workshop to develop technical guidelines for implementing an ecosystem-based approach to fishery management. NMFS is also developing new environmental impact statements that will reexamine the EFH sections of many FMPs. NMFS will evaluate the efficacy of the EFH final rule in light of these activities and will apply the lessons learned as appropriate. If further changes to the EFH regulations are warranted, NMFS will propose changes through an appropriate public process.

Overview of the EFH Regulations

The final rule retains the same overall structure as the interim final rule, with minor organizational and editorial changes to improve clarity. These clarifications do not constitute substantial changes to the rule. Subpart J of 50 CFR part 600 contains guidelines to assist Councils in developing the EFH components of FMPs. Subpart K of 50 CFR part 600 contains procedures for coordination, consultations, and recommendations for Federal and state agency actions that may adversely affect EFH. NMFS is finalizing both subparts together so that all interested parties will understand the implications of areas being identified as EFH. The final rule contains no major substantive changes from the interim final rule, although the final rule includes numerous clarifications, simplifications, and editorial improvements intended to make the regulations easier to use.

Under subpart J, Councils must identify in FMPs EFH for each life stage of each managed species in the fishery management unit. Councils should organize information on the habitat requirements of managed species using a four-tier approach based on the type of information available. Councils must identify as EFH those habitats that are necessary to the species for spawning, breeding, feeding, or growth to maturity. Councils must describe EFH in text and must provide maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Councils should identify EFH that is especially important ecologically or particularly vulnerable to degradation as ''habitat areas of particular concern'' (HAPC) to help provide additional focus for conservation efforts. Councils must evaluate the potential adverse effects of fishing activities on EFH and must include in FMPs management measures that minimize adverse effects to the extent practicable. Councils must identify other activities that may adversely affect EFH and recommend actions to reduce or eliminate these effects.

Subpart K contains procedures for implementing the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. NMFS will make available descriptions and maps of EFH to

promote EFH conservation and enhancement. The regulations encourage Federal agencies to use existing environmental review procedures to fulfill the requirement to consult with NMFS on actions that may adversely affect EFH, and they contain procedures for abbreviated or expanded consultation in cases where no other environmental review process is available. Consultations may be conducted at a programmatic and/or project-specific level. In cases where adverse effects from a type of actions will be minimal, both individually and cumulatively, a General Concurrence procedure further simplifies the consultation requirements. The regulations encourage coordination between NMFS and the Councils in the development of recommendations to Federal or state agencies for actions that would adversely affect EFH. Federal agencies must respond in writing within 30 days of receiving EFH Conservation Recommendations from NMFS. If the action agency's decision is inconsistent with NMFS' EFH Conservation Recommendations, the agency must explain its reasoning and NMFS may request further review of the decision. EFH Conservation Recommendations are non-binding.

Effect on Approved FMP EFH Provisions

The final rule modifies portions of the guidelines to Councils for developing the EFH components of FMPs (Subpart J of the rule). Although the changes do not constitute substantial revisions to the guidelines contained in the interim final rule, some of the clarifications and explanations in the final rule result in minor changes to the Secretary's interpretation of the mandatory contents of FMPs. Existing FMP EFH provisions were approved (or in some cases partially approved) by the Secretary pursuant to the interim final rule. Councils are not required to develop immediate amendments to those FMPs to address any changes in regulatory guidelines pursuant to this final rule. To the extent that changes to approved FMPs are necessary to meet the standards of the final rule, Councils should incorporate those changes during the next regular review and revision of FMP EFH provisions. Section 600.815(a)(9) of the final rule (renumbered from § 600.815(a)(11) of the interim final rule) states that Councils should conduct such reviews as recommended by the Secretary, but at least once every five years.

Related Documents

NMFS prepared a draft internal technical guidance manual for EFH in conjunction with the interim final rule. That guidance will be superseded with guidance for the final rule. The draft technical guidance, the Framework, the EA, and other related documents that led to this final rule are available via the internet or by mail upon request (see **ADDRESSES**).

Comments and Responses

NMFS received approximately 3,300 written comments during the two comment periods on the interim final rule. Commenters included Fishery Management Councils, Federal agencies, state agencies, fishery groups, environmental groups, non-fishing industry groups, other non-governmental organizations, academicians, citizens groups, and numerous individuals. The comments and responses discussed below are arranged by topic to parallel the organizational structure of the interim final rule.

1. Comments Asking for Additional Opportunity to Comment on the Rule or to be Involved in the Designation of EFH

Comment A: Several commenters requested that the public comment period be extended and development of the final rule be delayed to allow the public to better assess EFH implementation.

Response A: NMFS disagrees that additional time is needed for public comment. NMFS provided five separate public comment periods on the EFH regulations, for a total of 270 days, which generated more than 3,600 separate written public comments. NMFS published the regulations as an interim final rule for the express purpose of allowing additional comments and gaining experience implementing the EFH provisions of the Magnuson-Stevens Act before issuing a final rule. Since the public comments received during each comment period raised similar issues and concerns with the EFH regulations, NMFS has had ample opportunity to gain understanding of the range of topics and opinions raised by the public and has made many revisions to the EFH regulations to address public comments.

Comment B: Several commenters criticized NMFS for failing to engage non-fishing stakeholders in the development of the EFH regulations and for failing to develop mechanisms to consider non-fishing interests in the EFH regulations.

Response B: NMFS disagrees that non-fishing groups were not given the opportunity to be included in this rulemaking. NMFS held numerous public meetings, briefings, and workshops to engage all interested parties in the development of the EFH regulations and held five separate public comment periods. In addition, NMFS met with every stakeholder group that asked to discuss how the regulations might affect them, including many prominent non-fishing organizations. Many of the changes to the regulations, from the proposed rule to the interim final rule and from the interim final rule to the final rule, responded directly to non-fishing stakeholder concerns.

Comment C: Two commenters requested that NMFS suspend the designation of EFH for Pacific salmon until after final revisions to the EFH regulations are made, since the EFH provisions of the Pacific salmon FMP had not been completed at the time NMFS reopened the comment period on the interim final rule. These commenters also asked NMFS to reopen the comment period on the rule again after the Pacific salmon EFH designations are in effect for a period of time.

Response C: NMFS approved the designation of EFH for Pacific salmon on September 27, 2000 (65 FR 63047). The Magnuson-Stevens Act prescribes a strict time frame for Secretarial action on an FMP amendment following submission by a Council, including an opportunity for public comment on what action the Secretary should take. NMFS cannot delay Secretarial review, and sees no need for another formal comment period on the EFH regulations to gauge implementation of Pacific salmon EFH. Nevertheless, if problems arise related to Pacific salmon EFH, NMFS will address them as appropriate.

Comment D: Several non-fishing industry groups commented that NMFS did not make necessary information on the consultation process available to commenters when the comment period for the interim final rule was reopened in November 1999. Some of these commenters referred specifically to their pending Freedom of Information Act (FOIA) request for copies of documents related to the EFH consultation process and every individual consultation that had occurred to date.

Response D: NMFS' intent in reopening the public comment period on the interim final rule in November 1999 was to solicit comments from interested parties on four specific issues: the scope of EFH designations, documentation of measures to minimize adverse fishing impacts to EFH, the use of existing environmental review

procedures for EFH consultations, and the preparation of EFH Assessments (64 FR 60731). NMFS asked commenters to answer based on their individual experience under the interim final rule. NMFS did not request that commenters conduct a program review of the EFH consultation process, nor did NMFS ask for comments on the totality of experience gained through all of the consultations completed thus far. The information requested by the commenters under FOIA was not necessary to enable the commenters to provide answers to NMFS' questions regarding their experience under the interim final rule, and analysis of that information was not a prerequisite to providing informed comments.

Comment E: One commenter noted that the absence of lists of species managed under FMPs and prey species in the proposed and interim final rules made it more difficult to provide meaningful comment on the EFH regulations.

Response E: NMFS determined that providing lists of managed and prey species in the EFH regulations was unnecessary. NMFS' intent in soliciting public comment on the regulations was to seek input on the process of identifying EFH and implementing the other EFH provisions of the Magnuson-Stevens Act, and not on how to identify EFH for specific managed species. Furthermore, the list of managed species changes whenever Councils develop management plans for new species. Nonetheless, the EA that accompanied publication of the interim final rule contained a list of managed species, and this list has been updated in the revised EA. Since the list will continue to change over time, interested parties should contact the Councils to obtain the most updated information on managed species. EFH cannot be designated for non-managed prey species, so a list of such species is not directly relevant to the rule.

Comment F: Several non-fishing groups commented that Fishery Management Councils should include representation of non-fishing interests.

Response F: The Secretary appoints members of each Council from lists of individuals recommended by the Governors of applicable states. Section 302(b)(2)(A) of the Magnuson-Stevens Act states that the appointed members of each Council ''must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned.'' There is ample flexibility in this requirement to allow for a broad range of representation on Councils. For example, a rancher from Idaho formerly served as a member of the Pacific Fishery Management Council.

Comment G: One commenter noted that the rule contains no provisions to ensure that non-fishing interests receive timely notification of Council meetings.

Response G: There are ample mechanisms through which interested parties can obtain information regarding Council meetings, and it is unnecessary to ensure such notification in the EFH regulations. Section 302(i) of the Magnuson-Stevens Act requires timely public notice of Council meetings in local newspapers and the **Federal Register**. All Councils have internet sites, most of which post the schedule and agendas for upcoming meetings. Additionally, interested parties can call Councils directly to receive information on upcoming meetings, and many Councils maintain mailing lists and send agendas to interested parties. NMFS encourages all interested parties to participate in the Council process.

Comment H: Both fishing and non-fishing groups commented that NMFS should engage local stakeholders in the process of EFH identification.

Response H: NMFS agrees and continues to encourage public involvement in EFH identification via the Council process. Section 305(b)(1)(B) of the Magnuson-Stevens Act requires NMFS, in consultation with participants in the fishery, to provide recommendations and information to assist Councils in EFH identification. NMFS typically solicits this input from the public via the Council process. Each Council holds numerous meetings throughout the year that focus on habitat and other issues related to fishery management. These meetings include public scoping meetings and public hearings and are specifically designed to engage interested parties in fishery management decisions, including decisions related to EFH identification. Furthermore, many Councils have habitat advisory panels. NMFS encourages interested parties to seek membership on Council advisory panels.

2. General Concerns with the Rule

Comment A: Several non-fishing groups commented that the EFH regulations are too complex, ambiguous, and burdensome.

Response A: NMFS has attempted to improve the clarity of the EFH regulations by eliminating wordiness, increasing specificity of the language, improving the efficiency of certain procedures, and reorganizing several sections. These changes should make the regulations easier to use and should promote better understanding of how to implement the EFH provisions of the Magnuson-Stevens Act. Councils, Federal agencies, and other interested parties should benefit from the modifications that were made to the EFH regulations.

Comment B: Two non-fishing industry groups expressed concern that their comments on the proposed rule were not addressed and asked NMFS to revisit their initial concerns. The comments questioned NMFS' authority to address non-fishing activities and said that the EFH coordination, consultation, and recommendation requirements of the regulations are burdensome and duplicative.

Response B: NMFS considered all comments received on the proposed rule, but did not accept all of the recommendations for changes to the rule. NMFS responded to the cited comments in the preamble to the interim final rule at 62 FR 66539–66540 and 66543. NMFS revisited these concerns while developing the final rule and concluded that, with the exception of changes described herein to clarify and streamline portions of the rule, no additional changes are warranted.

Comment C: One commenter questioned NMFS' approach to implementing the EFH provisions in light of the commenter's concerns about the U.S. Fish and Wildlife Service's efforts to protect bull trout under the Endangered Species Act.

Response C: Bull trout are not managed under the Magnuson-Stevens Act and the commenter's concerns are unrelated to the EFH regulations.

3. Comments in Favor of Implementing the Rule Without Substantial Changes

Comment A: Numerous commenters, primarily from conservation groups, expressed concern about the extended comment period and delay in promulgating the final rule, and questioned NMFS' commitment to implementing the EFH regulations. Many commenters urged NMFS to finalize the EFH regulations immediately without weakening them.

Response A: NMFS has been implementing the EFH regulations since January 1998, 30 days following publication of the interim final rule. The final rule benefitted from public comments on ways to improve the EFH regulations, and it incorporates many of the suggestions NMFS received.

Comment B: Several commenters supported the rule but expressed

concern that the EFH regulations impose an additional burden on the already heavy workload of NMFS personnel without offering new budgetary or staff resources. These commenters were concerned that resources may be diverted from other priorities to EFH, or that insufficient NMFS staff levels may slow the EFH consultation process.

Response B: NMFS agrees that the EFH mandate will impose additional work on NMFS staff and has taken this into consideration in crafting the final rule to minimize duplication and maximize efficiency. For example, NMFS encourages agencies to use existing environmental review procedures to complete EFH consultations. Additionally, NMFS has created options such as the General Concurrence and programmatic consultations that will help streamline the EFH consultation process. NMFS has redirected staff from other tasks as necessary to fulfill the new requirements of the Magnuson-Stevens Act.

Comment C: Several individuals and organizations from Alaska remarked that the future of fishing in Alaska depends on marine habitat, and thus the rule is important for Alaska fisheries.

Response C: NMFS agrees. The final rule is intended to benefit marine, estuarine, and riverine habitats of federally managed species and help promote sustainable fisheries in Alaska and nationwide.

4. Comments Regarding Definition of Terms in the Rule

Comment A: Several commenters questioned NMFS' interpretation of the statutory definition of EFH, wherein NMFS interpreted the meaning of several key terms: ''waters,'' ''substrate,'' necessary,'' and ''spawning, breeding, feeding, and growth to maturity.'' Some commenters asked whether, for purposes of identifying EFH, the term ''waters'' may include wetlands or riparian areas in proximity to waters occupied by a managed species. Other commenters suggested that NMFS remove the interpretation that ''waters'' and ''substrate'' can include biological properties, stating that the references to biological features inappropriately expand the definition of EFH. Two commenters thought that the interpretation of ''substrate'' should explicitly include historically important substrate areas that may have been modified by human activity. One commenter said that the word ''structures,'' which is part of the interim final rule interpretation of the word ''substrate,'' should not refer to human-made structures such as oil platforms, but only to natural structures that support fish. Several commenters took the opposite view and wanted the rule to encourage identifying artificial reefs, jetties, and shipwrecks as EFH. Other commenters objected to the narrowed interpretation of ''necessary'' in the interim final rule and recommended that NMFS return to the approach in the proposed rule where ''necessary'' meant the habitat required to support a sustainable fishery and a health ecosystem.

Response A: NMFS is not modifying its interpretation of the statutory definition of EFH in the final rule. The final rule retains the language in § 600.805(b)(2) of the interim final rule stating that EFH may be identified in waters of the United States, as defined in 33 CFR 328.3, which includes wetlands. EFH is limited to aquatic areas, so it may not include riparian habitats. As explained in the preamble to the interim final rule at 62 FR 66533, NMFS disagrees that interpreting ''waters'' and ''substrate'' to include ''biological properties'' and ''biological communities'' respectively is an impermissible expansion of the statutory definition of EFH. Certain biological properties of water and substrate are fundamental components of habitat and are necessary to maintain the function of habitat for fish. NMFS is not modifying the interpretation of ''substrate'' to discuss historically important substrate areas because the potential identification of historic habitats as EFH is addressed adequately in § 600.815(a) of the rule. NMFS is not modifying the interpretation of ''substrate'' to exclude human-made structures, because in some cases such structures can provide valuable habitat for managed species. As discussed in the preamble to the interim final rule at 62 FR 66534, structures such as artificial reefs, jetties, and shipwrecks may be identified as EFH in an FMP if they meet the criteria for EFH identification in the rule. The interpretation of ''necessary'' in the final rule continues to include the clarifying phrase ''and the managed species' contribution to'' a healthy ecosystem because it would be inappropriate for the rule to suggest that EFH must include habitats for species other than managed fish.

Comment B: Many commenters objected to or asked for clarification of the definition of ''adverse effect'' in §§ 600.810(a) and 600.910(a). Most of these commenters said the definition is vague and can be interpreted too broadly to include even effects that are of no consequence or significance to EFH. One commenter asked to what extent an activity must reduce the quality and/or quantity of EFH to trigger action. Some commenters thought that the example of a loss of prey being an adverse effect to EFH exceeds the proper interpretation of what constitutes EFH. These commenters felt that prey is not part of EFH so should not be referenced in a definition of ''adverse effect.'' One commenter recommended that the definition of ''adverse effect'' in the rule address only statistically significant adverse effects and provide for documentation of probabilities of error when predicting adverse effects. Another commenter focused on the statutory requirement for Federal agencies to consult with NMFS regarding actions that may adversely affect EFH and said NMFS' definition of ''adverse effect'' illegally negates the statutory duty of other agencies to decide what effects are adverse.

Response B: NMFS is modifying the definition of ''adverse effect'' in response to comments. The revised definition retains the original standard that an adverse effect is any impact that reduces the quality and/or quantity of EFH. The definition clarifies the types of alterations that may be included and explains that such modifications to habitat are only considered adverse effects if they reduce the quality and/or quantity of EFH. The definition also clarifies that adverse effects to EFH may result from actions occurring within EFH or outside of EFH. NMFS disagrees with the comments that loss of prey is beyond the appropriate scope of adverse effects to EFH. The revised definition specifically mentions the loss of or injury to prey species and their habitats as potential adverse effects to EFH because, as mentioned above, prey can be a vital component of habitat for managed species. NMFS disagrees that only statistically significant adverse effects should be considered because the Magnuson-Stevens Act contains no such limitations. A much more inclusive definition of ''adverse effect'' is necessary in the regulations to clarify what kinds of potential effects should be addressed in FMPs and in the coordination, consultation, and recommendation process for Federal and state agency actions. Federal agencies retain the discretion to make their own determinations as to what actions may fall within NMFS' definition of ''adverse effect.''

Comment C: One commenter said that the definition of ''healthy ecosystem'' should not say that such areas should be similar to undisturbed ecosystems, because hardly any ecosystem could be characterized as pristine or entirely undisturbed. Another commenter asked

for an explanation of the terms ''species richness'' and ''resilience'' within the definition of ''healthy ecosystem.''

Response C: NMFS does not agree that the regulations should omit the reference to undisturbed ecosystems. The definition of ''healthy ecosystem'' in the rule refers to comparing ecological features of ecosystems. Saying that healthy ecosystems should be similar to comparable undisturbed ecosystems is intended to convey that the basic functions of such ecosystems have not been altered by anthropogenic events, and not that such ecosystems are entirely pristine. The term ''species richness'' refers to biodiversity. The term ''resilience'' refers to the ability of a healthy ecosystem to withstand a certain level of environmental stress yet maintain its ecological functions.

Comment D: One commenter inferred that best professional judgment will be necessary to evaluate available data and identify EFH, and asked for a definition of ''best professional judgment'' in the final rule. The commenter asked what process NMFS envisions for gathering a range of scientific opinions and how NMFS will overcome the disadvantages of expert panels.

Response D: NMFS decided not to add a definition of ''best professional judgment.'' The regulations do not specifically call for using such judgments, so a definition is unnecessary. NMFS recognizes that professional opinion must be factored into EFH-related decisions by Councils, Federal agencies, and NMFS, but NMFS sees no need to define a separate process for considering professional opinions related to EFH as opposed to professional opinions on other matters.

Comment E: One commenter said that NMFS had overstepped its authority by referring to EFH ''protection'' when the Magnuson-Stevens Act uses the words ''conservation and enhancement'' of EFH.

Response E: NMFS reviewed the EFH regulations carefully to ensure that word usage reflected the intent of the Magnuson-Stevens Act. For instance, language in § 600.815(a)(2)(ii)(A) of the interim final rule was revised in the final rule (now in § 600.815(a)(1)(iv)(A)) to replace ''protected'' with ''identified'' as follows: ''Councils should interpret this information in a risk-averse fashion, to ensure adequate areas are identified as EFH for managed species.'' In other cases, use of the term ''protection'' was appropriate. For example, § 600.905(a), which reads, ''The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH'' is consistent with section (2)(b)(7) of the Magnuson-Stevens Act, which states that one of the Act's purposes is to ''promote the protection of EFH in the review of projects conducted under Federal permits, licenses, or other authorities that affect such habitat.''

5. Comments on the Purpose and Scope of the Rule

Comment A: Numerous commenters endorsed the use of the precautionary principle in identifying EFH. Several said that EFH should be identified for all marine fish species, and not just those managed under an FMP. Other commenters said that EFH designations should consider all relevant ecosystem components, including prey for managed species. A few commenters thought the regulations should call for identifying all areas as EFH until proven otherwise.

Response A: NMFS addressed similar comments from the proposed rule in the preamble to the interim final rule at 62 FR 66534. The Magnuson-Stevens Act requires that each FMP describe and identify EFH, and it is not appropriate to extend this requirement to species not managed under an FMP. NMFS agrees that EFH designations should account for pertinent features of the ecosystem such as prey, as noted in the interpretation of EFH in § 600.10. However, only the habitat necessary to managed species may be considered EFH. The final rule retains language in § 600.815(a) stating that Councils should interpret habitat information in a risk-averse fashion when identifying EFH. NMFS does not agree that all areas should be identified as EFH until proven otherwise, because EFH designations must be based on available scientific information indicating that the specified habitat is necessary for the managed species.

Comment B: Some commenters objected to the interim final rule restricting EFH designations to the outer limits of the U.S. Exclusive Economic Zone (EEZ), and thought that Councils should be required to address adverse effects to EFH in waters beyond the EEZ.

Response B: As explained in the preamble to the interim final rule at 62 FR 66535, areas beyond the EEZ cannot be identified as EFH, and Federal agencies need not consult with NMFS regarding the effects of actions on habitats beyond the EEZ. However, Councils may promote the protection of managed species' habitats outside the EEZ, and NMFS will use that information as appropriate in discussions regarding international actions.

Comment C: One commenter said that NMFS should delete from § 600.805(b) the language saying that a Council may describe, identify, and protect the habitat of species not in a fishery management unit, but such habitat may not be considered EFH. The commenter said that under the Magnuson-Stevens Act, Councils may only develop FMPs for identified species and may not act to describe, identify, or protect the habitat of other species. The commenter also said that Councils have no authority under the Magnuson-Stevens Act to protect the habitat of any fish.

Response C: The preamble to the interim final rule at 62 FR 66534 notes that the Magnuson-Stevens Act does not preclude Councils from identifying habitat (other than EFH) of a fishery resource under its authority even if the species is not managed under an FMP. Council action to protect the habitats of managed or non-managed species is limited to protecting habitats from fishing activities. Councils have no authority to protect habitats from other activities, although they may comment to state and Federal agencies on non-fishing activities under section 305(b)(3) of the Act.

Comment D: One organization commented that the regulations should consider recreationally important species, including the economic value of recreational fisheries, in any actions taken pursuant to the rule.

Response D: NMFS agrees. EFH must be identified for all species in the fishery management unit of an FMP, including recreationally important species. Actions taken by a Council, NMFS, or a Federal or state action agency to address threats to EFH should account for the recreational as well as commercial value of fishery resources dependent on EFH. However, no specific changes to the rule are necessary to provide for consideration of recreational fisheries.

Comment E: A few commenters urged regional flexibility in the regulations so Councils can develop their own EFH designations and procedures for tracking actions that may adversely affect EFH.

Response E: NMFS agrees. The final rule contains national guidelines for Councils but provides sufficient flexibility to account for the variety of managed species and to address regional variations in the availability of scientific information and differences in Council operating procedures nationwide.

6. Comments on Using an Ecosystem or Watershed Approach to Resource Management

Comment A: A number of commenters representing non-fishing interests stated that the Magnuson-Stevens Act does not authorize a risk-averse or ecosystem approach to EFH. These commenters thought that the focus should be limited to fish species and not ecosystem principles.

Response A: NMFS provided a detailed response to this comment in the preamble to the interim final rule at 62 FR 66532–66533, and the response remains the same. In summary, the Magnuson-Stevens Act provides authority for the link between EFH and the managed species' contribution to a healthy ecosystem in a number of places. Ecosystem concepts are common in the statutory definitions of ''fishery resources,'' ''conservation and management,'' and ''optimum.'' The fact that the Magnuson-Stevens Act directs the Councils to address the degradation and loss of EFH from both fishing and non-fishing activities through conservation and enhancement measures further reflects support for the ecosystem-based management of marine and anadromous fisheries. Ecosystem management encourages sustainable resource use and recognizes the uncertainties inherent in management and the need to make risk-averse decisions. This regulation embraces those concepts and urges Councils to seek environmental sustainability in fishery management, within the current statutorily prescribed fishery management framework (i.e., management by FMPs).

Comment B: A number of commenters from Louisiana stated that the rule places too much emphasis on species managed under FMPs, to the detriment of activities that are designed to protect and restore the coastal ecosystem. The commenters expressed concern that the focus on habitat for federally managed species would undermine the importance of ecosystem components besides federally managed fish species and potentially hinder Louisiana's extensive efforts to restore coastal wetlands as authorized under the Coastal Wetlands Planning, Protection, and Restoration Act (also known as the Breaux Act).

Response B: The rule is intended to promote the conservation and enhancement of EFH for federally managed species through means other than traditional harvest management. The EFH provisions are designed to encourage a broader, ecosystem approach to meet the requirements of the Magnuson-Stevens Act. NMFS recognizes the importance of Louisiana's coastal restoration efforts and is an active partner in implementing the Breaux Act. Although the final rule requires Federal agencies to consult with NMFS on any activity ''that may adversely affect EFH,'' including habitat restoration projects, EFH and ecosystem restoration can be compatible. NMFS works closely with other agencies and the private sector to ensure that restoration projects proceed expeditiously while considering and minimizing any temporary or permanent adverse effects to EFH. The rule recognizes the importance of ecosystem restoration and states that EFH may be designated for certain historic habitats for which restoration is technologically and economically feasible.

Comment C: Commenters from Louisiana wanted NMFS to examine the state's coastal management program and its relationship to the rule. These commenters asked NMFS to exempt from the final rule Louisiana's state programs and Federal activities in Louisiana with existing review procedures, and/or place an emphasis on programmatic consultations and General Concurrences for these actions.

Response C: NMFS highlighted its interaction and coordination with the states and state coastal zone management programs in the preamble to the interim final rule at 62 FR 66536. NMFS has no authority to exempt Federal and state actions in Louisiana from the EFH consultation and recommendation requirements of the Magnuson-Stevens Act. As outlined in Subpart K, NMFS encourages Federal action agencies to combine EFH consultations with other environmental review processes and to complete programmatic consultations and General Concurrences where appropriate.

7. Comments on the Guidance for Description and Identification of EFH in Fishery Management Plans

Comment A: Where the rule states that ''EFH can be inferred'' based on a species' distribution among habitats and on information about the species' habitat requirements and behavior, one commenter wanted the rule to require that the Councils clearly identify instances when EFH is designated based on these inferences.

Response A: The rule provides guidance to the Councils to evaluate all available information and use specified criteria to identify EFH. In some cases, Councils may need to use their best scientific judgement. To help explain how Councils identify EFH in FMPs, including cases where EFH is based on inferences, the final rule includes new language advising Councils to explain the analyses conducted to distinguish EFH from all habitats potentially used by a species. Councils must also demonstrate that the identification of EFH is based on the best scientific information available.

Comment B: Several groups of commenters expressed concern about the guidance in § 600.815(a)(2)(ii)(B) of the interim final rule that states all habitats, including historic habitats, ''should be considered essential'' if a species is overfished and habitat loss or degradation may be contributing to the species being overfished. One of these commenters stated that this was unreasonable because not all habitat used by an overfished species is essential. Another commenter wanted NMFS to require that the Councils establish a stronger link between the loss of habitat and its contribution to overfishing before it is considered essential. Several commenters wanted this provision deleted from the rule entirely, while others wanted to see all habitat for overfished species identified as EFH. One commenter evaluated the provisions for designating EFH for overfished species in the context of the Endangered Species Act (ESA). This commenter stated that the EFH provisions appear inconsistent with the way in which NMFS evaluates habitat in the ESA. The commenter noted that in NMFS' implementation of the ESA, the agency recognizes that currently available habitat is sufficient for conservation for some species. These commenters stated that identifying EFH in areas historically used by fish may not be the best means to ensure the conservation and enhancement of EFH.

Response B: NMFS agrees that it might not always be appropriate to identify as EFH all current habitats as well as certain historic habitats. NMFS has changed the guidance related to determining EFH for overfished species, now in § 600.815(a)(1)(iv)(C), to state that all habitats currently used by the species ''may be considered essential'' (versus ''should be considered essential'') if a species is overfished and habitat loss or degradation may be contributing to the species being overfished. Councils should make this determination on a case-by-case basis.

All FMP conservation and management measures, including identifying the limits of EFH for overfished species, must be based on the best scientific information available. As addressed in the preamble to the interim final rule at 62 FR 66537, the rule advocates a risk-averse approach to

identifying EFH because of the uncertainty in our knowledge of habitat and its relation to fisheries production. Councils should take particular care when inadequate information exists on overfished stocks to ensure that habitat losses do not hinder the stock rebuilding.

EFH and the habitat components of the ESA are authorized under different legislative mandates and have unique objectives. EFH must be designated for all federally managed species. Conservation and enhancement measures for EFH, if implemented by the agencies with relevant jurisdiction, should help prevent the need to list species under the ESA.

Comment C: One commenter wanted the guidance in § 600.815(a)(2)(ii)(F) of the interim final rule to be deleted from the regulations. This commenter stated that the Magnuson-Stevens Act only authorizes designation of existing habitat as EFH and does not provide the authority to identify EFH for degraded or inaccessible habitat.

Response C: NMFS responded to similar comments in the preamble to the interim final rule at 62 FR 66534, and upon further consideration takes the same position. The provision of the rule that allows the designation of inaccessible or degraded habitat as EFH is consistent with the EFH provisions of the Magnuson-Stevens Act. Section 2 of the Magnuson-Stevens Act recognizes that habitat losses have resulted in a diminished capacity to support sustainable fisheries and that the protection of habitat is necessary to prevent overfishing and rebuild overfished stocks. The restoration of degraded or inaccessible habitats may therefore be necessary to maintain or rebuild sustainable fisheries.

Comment D: Several commenters wanted the final rule to restrict EFH designation to the habitat required to maintain commercial fisheries at optimal yield or another quantitative measure of the status of a stock.

Response D: NMFS provided a detailed response to this comment in the preamble to the interim final rule at 62 FR 66533, and, upon further consideration, still takes the same position. The Magnuson-Stevens Act states that one of its purposes is to provide for the preparation and implementation of FMPs that will achieve and maintain the optimal yield from each fishery. Therefore, NMFS has linked the guidelines for identifying EFH to sustainable fisheries as is appropriate under the Magnuson-Stevens Act. The rule states that FMPs should identify sufficient EFH to support a population adequate to maintain a sustainable fishery and the managed species' contributions to a healthy ecosystem. When considering the EFH requirements of a managed species, the rule advises Councils to describe and identify enough habitat to support the total population, of which optimal yield is a subset, not just the individual fish that are removed by fishing.

Comment E: Several commenters wanted the final rule to establish incentives for improving the data available for identifying EFH. These commenters thought a research agenda should be developed to collect the information needed to identify EFH with Level 2, 3, and 4 data.

Response E: NMFS agrees that a prioritized EFH research agenda would be beneficial. The final rule asks the Councils to set priority research needs to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the development of conservation and enhancement recommendations. The rule also encourages the Councils to strive to describe habitat based on the highest level of detail (i.e., Level 4). Additionally, the final rule says that Councils and NMFS should periodically review and revise the EFH components of FMPs based on available pertinent information. NMFS is working within the constraints of available funding to conduct additional research to improve the designations of EFH.

Comment F: One port authority stated that the EFH designations should undergo a formal rulemaking process.

Response F: NMFS disagrees. Councils identify EFH within the existing statutory and regulatory process for FMP development and amendment, which provides numerous opportunities for public involvement. All Council deliberations on fishery management measures are open to the public, and all Council meeting agendas are published in the **Federal Register**. Additionally, NMFS publishes notices of availability and solicits public comments for FMPs and amendments received for Secretarial review. NMFS also publishes a public notice of decision in the **Federal Register.**

Comment G: A member of the recreational fishing community commented that the rule should be revised to require the identification of EFH for species assemblages, not individual species. Another commenter asked that Councils describe EFH separately within each FMP rather than making broad regional designations.

Response G: The final rule clarifies that every FMP must describe and identify EFH for each life stage of each managed species, but if appropriate, EFH may be designated for assemblages of species or life stages that have similar habitat requirements. If an FMP designates EFH for species assemblages, it must include a justification and scientific rationale.

Comment H: One Council stated that the specification that tables must be used to describe EFH may constrain the development of useful EFH descriptions. The Council stated that textual EFH descriptions would be more helpful.

Response H: NMFS agrees, and the final rule does not require that EFH be described in tables. The final rule clarifies that FMPs must describe and identify EFH in text and should use text and tables as appropriate to summarize information on variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity.

Comment I: Many commenters stated that the final rule should allow the Councils to identify EFH within state and Federal waters. One commenter wanted to see EFH designations based on the biological needs of each species, not geographic or political boundaries.

Response I: NMFS agrees, and addressed these comments in the preamble to the interim final rule at 62 FR 66535. The Magnuson-Stevens Act requires Councils to describe and identify EFH based on the biological requirements of all life stages of the managed species, with no limitations placed on the geographic location of EFH. EFH may be designated in state or Federal waters, but may not be designated beyond the United States exclusive economic zone.

Comment J: One commenter from a non-fishing industry group expressed concern that EFH might be designated in upland areas where fish habitat does not exist. One commenter from a conservation group and a commenter from a fishing group recommended that Councils be allowed to designate EFH in riparian corridors and on other dry lands that influence the productivity of aquatic areas.

Response J: EFH is defined in the Magnuson-Stevens Act as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH regulations interpret this definition by defining ''waters'' and ''substrate.'' ''Waters'' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate. ''Substrate'' includes

sediment, hard bottom, structures underlying the waters, and associated biological communities. EFH can only be designated in aquatic areas. EFH cannot be designated in riparian habitat or on dry land, although actions in these areas that may adversely affect EFH do require consultation with NMFS. The definition of ''adverse effect'' in the final rule clarifies that adverse effects to EFH may result from actions occurring within EFH or outside of EFH.

Comment K: Several commenters, including fishing and non-fishing groups and some government agencies, expressed concern that the EFH designations made under the interim final rule are extremely broad. Non-fishing groups commented that NMFS arbitrarily designated all habitat as EFH rather than designating ''necessary'' or ''essential'' habitats, as the statute requires. In contrast, one commenter thought that the guidance in § 600.815(a)(2)(ii) of the interim final rule that asks the Councils to identify EFH as the habitats areas ''valued most highly'' and ''most commonly used'' was not sufficiently inclusive to capture all the areas that should be identified as EFH.

Response K: Councils were justified in designating broad areas as EFH based on the guidance in the interim final rule. For many species there is little available scientific information linking the biological requirements of managed species to specific habitats. In such cases the rule encourages Councils to interpret available information in a risk-averse fashion. Moreover, NMFS is undertaking research in several regions to obtain additional scientific information. As further information becomes available, EFH designations will be refined.

NMFS has also taken steps to clarify in the final rule that EFH identification should emphasize necessary habitats for fish, based on available information. To reduce confusion about what habitats generally should be considered essential, the final rule omits language from the interim final rule saying that ''habitats of intermediate or low value may also be essential, depending on the health of the fish population'' because this concept is covered elsewhere in the rule. The final rule also clarifies that if sufficient information is available, EFH should be identified as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species. Furthermore, the final rule encourages Councils to identify EFH based on the highest level of information available, and states that EFH should not be designated if there is no information available and if habitat usage cannot be inferred from other means, such as information on a similar species.

Comment L: Two conservation groups expressed concern about specific elements of Amendment 14 to the Pacific Coast Salmon FMP.

Response L: These comments were not relevant to the EFH regulations.

8. Comments on the Sources and Quality of Information Used to Identify EFH

Comment A: Commenters representing fishing and non-fishing interests and environmental groups wanted to see NMFS use all good quality information to identify EFH. Some of these commenters wanted the standard of ''best scientific information'' to be replaced with a standard of ''best available information from all sources,'' including fishing interests. Some commenters also wanted this standard of information to extend to NMFS' EFH Conservation Recommendations.

Response A: Section 600.815(a)(1)(ii)(B) of the final rule reflects that Councils should use information from the best available sources to identify EFH, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. As stated in the preamble to the interim final rule at 62 FR 66536, NMFS intended to have the Councils use the best available information from a variety of sources, and the Magnuson-Stevens Act requires NMFS to consult with participants in the fishery before submitting its recommendations to the Councils to assist in developing the EFH components of FMPs. However, all information should be evaluated with regard to reliability, so the final rule clarifies that Councils should consider different types of information according to its scientific rigor. NMFS intends to continue using the best available sources of information to develop EFH Conservation Recommendations to Federal and state agencies.

Comment B: One marine conservation group thought the requirement that Councils must demonstrate their use of best available science in the identification of EFH may place an inappropriate burden of proof on the Councils.

Response B: The final rule maintains the requirement that Councils demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2. Section 301(a) of the Magnuson-Stevens Act requires all fishery management plans, and any regulation promulgated to implement such plans, to be consistent with the national standards. National standard 2 requires that fishery conservation and management measures be based on the best scientific information available. Applying this standard to the identification of EFH is appropriate and necessary to comply with the Magnuson-Stevens Act.

Comment C: A commenter representing non-fishing industry interests wanted the final rule to require the Councils to record, and make available for public review and comment, the scientific basis for all Council decisions. Another commenter wanted to require a list of all judgments for which data were not available and recommended that this list of data gaps be used to set a research agenda.

Response C: All Council deliberations on fishery management measures are open to the public, and adopted measures must be based on the best scientific information available. The final rule clarifies that FMPs should identify species-specific habitat data gaps. The final rule also clarifies that FMPs should contain recommendations for research needed to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the development of conservation and enhancement measures for EFH.

9. Comments on the Four-Level Approach for Organizing EFH Data

Comment A: As discussed separately above, NMFS received numerous general comments in favor of implementing the regulations without substantial changes, many of which mentioned specific support for the approach used in the interim final rule for organizing information used to designate EFH.

Response A: The final rule retains the four-level approach for organizing information used to designate EFH. However, the final rule clarifies that Level 1 information encompasses a variety of types of distribution data, which may be derived from systematic presence/absence sampling and/or may include information collected opportunistically. Since distribution data are lacking for a number of managed species, especially in Alaska, the final rule clarifies that habitat use for a given species or life stage may be inferred, if appropriate, based on information on a similar species or another life stage. The final rule also clarifies that if there is no information on a given species or life stage, and habitat usage cannot be inferred from

other means, EFH should not be designated.

Comment B: One commenter recommended that NMFS develop an incentives program or funding mechanism to encourage data collection to support identifying EFH with Level 3 or 4 data, as described in the interim final rule. Another commenter said that EFH should be categorized and prioritized according to its availability, vulnerability, and utilization.

Response B: For most species managed under the Magnuson-Stevens Act, available information on habitat requirements falls into Levels 1 or 2 (distribution or relative abundance data). NMFS agrees that having Level 3 or 4 data (rates of habitat-related growth, reproduction, or survival, or production rate data) would enable the Councils to refine the designations of EFH. NMFS is pursuing budget initiatives and partnerships with others to encourage the development of this type of information. Regarding the characterization and prioritization of EFH, NMFS agrees that the categories mentioned by the commenter are valid considerations for evaluating habitats. However, NMFS does not agree that the regulations should require EFH to be categorized, because requisite information to categorize EFH in this fashion is not available in many cases. Where Councils have more information on the ecological importance or vulnerability of portions of EFH, they may identify those areas as Habitat Areas of Particular Concern.

Comment C: One commenter said that further mechanisms are necessary to delineate important habitats based on habitat characteristics rather than the distribution of fish species. The commenter recommended adding to the regulations guidance that is complementary to the four-level approach but is based on an assessment of ecological significance and function of habitat.

Response C: NMFS agrees that where sufficient information is available, EFH designations should specify those habitat features that contribute most to the growth, reproduction, and survival of managed species (Level 3) or, ideally, those habitats with the highest production rates (Level 4) for each species. The final rule clarifies that this type of information, if available, should be used to identify EFH as the habitats supporting the highest growth, reproduction, survival, and/or production rates within the geographic range of a species. Currently, however, in most cases the best available scientific information is fish distribution (Level 1) or relative abundance (Level 2) data. Additional guidance linking EFH to habitat function, beyond the clarification mentioned above, is not necessary at this time because the rule already explains how to use Level 3 and 4 information to identify habitats with the highest ecological function for managed species.

10. Comments on the Guidelines for Determining the Limits of EFH

Comment A: One commenter representing waterfowl management efforts said that the importance of long-term sustainability of coastal wetlands habitat is overshadowed by the narrow focus of the EFH regulations on achieving optimal yield from a fishery.

Response A: As explained in the preamble to the interim final rule at 62 FR 66533, the Magnuson-Stevens Act states that FMPs must achieve the optimum yield from each fishery on a continuing basis, and determinations of optimal yield should take into account the protection of marine ecosystems. There is no inherent inconsistency between the overall objectives of promoting the conservation of coastal wetlands for waterfowl and promoting the conservation of EFH that is necessary to support a sustainable fishery and the managed species' contribution to a healthy ecosystem (including avian predators of managed species). However, specific wetlands management activities may not always advance both these objectives, and should be evaluated on a case-by-case basis.

Comment B: An alliance of Pacific northwest conservation groups commented that habitats that were historically used by salmon but are currently degraded or inaccessible should be included in EFH.

Response B: NMFS agrees that EFH should include historic habitats in certain circumstances. The final rule retains language in § 600.815(a) allowing the inclusion of such habitats as EFH, provided that the habitats are necessary to support rebuilding the fishery and that restoration is technologically and economically feasible.

Comment C: One organization commented that the Magnuson-Stevens Act defines EFH in terms of life history characteristics for managed species, whereas the interim final rule interprets EFH in terms of productivity.

Response C: The guidelines for determining the limits of EFH emphasize the habitat functions that have the most benefits to fish during the life stages contained in the statutory definition of EFH: spawning, breeding, feeding, and growth to maturity. Thus, the guidelines refer to habitats that support the highest productivity of managed species at each life stage. The regulations must make this connection between species and productivity to offer guidance on how to identify EFH based on the habitat needs of managed species at each life stage.

Comment D: One commenter asked who will determine whether it is economically feasible to restore degraded or inaccessible habitat in connection with the provision of the interim final rule that allows Councils to identify such areas as EFH.

Response D: The final rule retains language from the interim final rule saying that the Secretary and the appropriate Council(s) determine whether, for purposes of potentially identifying degraded or inaccessible aquatic habitat as EFH, restoration of such habitats is technologically and economically feasible. Through the Magnuson-Stevens Act process for developing FMPs and amendments, there are numerous opportunities for public comment on any proposal to designate degraded or inaccessible habitat as EFH, including the economic feasibility or infeasibility of restoration.

11. Comments on the Relationship Between EFH and Critical Habitat

Comment A: Several commenters said that EFH should be restricted to waters and substrate only and must always be greater than or equal to ''critical habitat'' identified for managed species that are listed as threatened or endangered under the ESA. Several other commenters thought it was inappropriate for the interim final rule to state a relationship between EFH and ''critical habitat'' that will always apply for ESA listed species. These commenters thought that the extent of EFH for listed species should be left to the Councils to decide on a case-by-case basis.

Response A: In the preamble to the interim final rule at 62 FR 66537, NMFS responded to similar comments that were critical of the corresponding provision in the proposed rule, and noted that the interim final rule contained modifications to help distinguish between EFH and critical habitat. NMFS maintained that it is appropriate for the rule to state that EFH will always be greater than or equal to the aquatic portions of critical habitat because, for example, important adult marine habitats for endangered salmonids have not been identified as critical habitat. Upon further consideration of this issue, NMFS agrees that there could conceivably be some

circumstances where this relationship between EFH and critical habitat might not be appropriate, so the word ''always'' is not appropriate in this provision of the regulations. The term ''will'' in the EFH regulations is used descriptively and does not denote an obligation to act, but apparently the use of ''will'' in combination with ''always'' implied to some readers a mandatory requirement. Therefore, the final rule states that areas described as EFH ''will normally'' (rather than ''will always'') be greater than or equal to aquatic areas that have been identified as critical habitat. NMFS agrees with the commenters who stated that EFH must be limited to aquatic areas.

Comment B: One commenter addressed the explanation in the preamble to the interim final rule at 62 FR 66537 stating that directed fishing of listed species is not permitted. This commenter said that rather than focus on non-fishing related threats to managed species that are listed under the ESA, NMFS should control indirect fishing effects on listed runs (which NMFS assumes to mean bycatch).

Response B: Salmon managed under the Pacific Coast Salmon FMP and the Atlantic Salmon FMP are the only species that currently are both listed under the ESA and managed under the Magnuson-Stevens Act. The 1996 amendments to the Magnuson-Stevens Act included a new requirement that fishery management measures minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of bycatch. Amendment 14 to the Pacific Coast Salmon FMP addresses this requirement by providing guidance for minimizing salmon bycatch and bycatch mortality, and by establishing salmon bycatch reporting specifications. The Atlantic Salmon FMP minimizes bycatch by prohibiting the possession of Atlantic salmon in the EEZ. The Magnuson-Stevens Act also requires evaluation of threats to EFH from non-fishing activities, so NMFS cannot divert all efforts to bycatch reduction at the expense of addressing threats from activities other than fishing.

12. Comments on the Effects of Fishing on EFH

Comment A: Some commenters expressed concern that the EFH regulations imply that fishing is the major, if not only, cause of habitat degradation.

Response A: NMFS disagrees with the commenters' perception of the interim final rule. Fishing and non-fishing activities have potential adverse effects on habitat and the regulations address both. The regulations provide guidance to Councils and procedures for Federal agencies on how to address adverse effects from non-fishing activities on EFH. The Magnuson-Stevens Act specifically requires that FMPs minimize to the extent practicable adverse fishing effects on EFH, so the regulations also include sections that focus on habitat impacts from fishing.

Comment B: One commenter expressed concern that the EFH provisions are being used arbitrarily to prevent the use of certain fishing gears, rather than to protect EFH based on scientific information.

Response B: NMFS disagrees with the commenter's opinion. The EFH provisions require Councils to minimize to the extent practicable the adverse effects on EFH caused by fishing. The Magnuson-Stevens Act and the EFH regulations address impacts caused by fishing activities in general and do not target specific gear types. Councils must evaluate the effects of all fishing activities (e.g., each gear type) on EFH, and fishery management measures must be based on the best scientific information available.

Comment C: One commenter from the commercial fishing community remarked that the size and duration of time/area closures, mentioned in the EFH regulations as an option for managing adverse effects from fishing, must be considered carefully since these management measures can impact the socioeconomic status of fishermen and their families.

Response C: NMFS agrees. By including the language ''to the extent practicable'' in the requirement to minimize adverse fishing impacts, Congress intended for fishery managers to take both ecological and socioeconomic effects of measures into consideration in determining whether it is appropriate to adopt particular management measures. The final rule clarifies the guidance to Councils for determining whether it is practicable to minimize an adverse effect from fishing, and states that Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation.

13. Comments on the Evaluation of the Effects of Fishing

Comment A: One commenter expressed concern about the quality of information that Councils were using to conduct assessments of the effects of fishing on EFH as required by the interim final rule, and recommended that NMFS provide Councils with a standard of review for non-scientific information such as ''gray'' literature, videos, and anecdotal information. Other commenters suggested that NMFS provide guidance to Councils for how to fulfill their obligation to minimize adverse fishing effects on EFH to the extent practicable when information is lacking.

Response A: NMFS agrees that further guidance is warranted to explain how Councils should consider available information. The final rule clarifies the requirement for Councils to examine the effects of fishing on EFH, and refers to this analysis as an ''evaluation'' rather than an ''assessment'' to avoid confusion with the requirement to perform an EFH Assessment during consultations as described in Subpart K. The final rule retains language from the interim final rule advising Councils to complete the evaluation using the best scientific information available, as well as other appropriate information sources, as available. When information is lacking, or when Councils use non-peer-reviewed or non-scientific information to augment the evaluation, the final rule states that Councils should consider the different types of available information according to its scientific rigor.

Comment B: Several commenters said that Councils did not adequately evaluate adverse effects from fishing in their EFH FMP amendments and urged NMFS to establish specific requirements, such as requiring Councils to classify the level of impacts according to gear type, to guide Councils in completing fishing impact evaluations.

Response B: The EFH regulations require Councils to evaluate the potential adverse effects of fishing activities on EFH so that Councils will be informed when making decisions regarding minimization of adverse effects to EFH from fishing. NMFS did not fully approve those EFH FMP amendments that did not meet this requirement.

Based upon experience implementing the interim final rule, NMFS agrees that the regulations should clarify the requirements for conducting fishing impact evaluations, and NMFS has modified the rule accordingly. Specifically, the final rule requires Councils to describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing

activity adversely affects EFH. The final rule also clarifies that Councils should consider the cumulative impacts of multiple fishing activities on EFH in the fishing impact evaluation.

Comment C: Two commenters recommended that the EFH regulations be revised to advise Councils to document and assess in FMPs all management actions taken prior to the enactment of the EFH provisions that benefit habitat before recommending new measures to conserve and enhance EFH.

Response C: NMFS agrees that it is useful for Councils to document and consider any past management actions that provide habitat protection. The final rule recommends that Councils list past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH in the evaluation of fishing impacts on EFH.

14. Comments on the Threshold That Requires Councils to Minimize Adverse Effects of Fishing on EFH

Comment A: One commenter questioned use of the words ''prevent'' and ''mitigate'' in the portion of the EFH regulations that states, ''Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable...'' The commenter indicated that use of these words is inappropriate since the Magnuson-Stevens Act only authorizes Councils to ''minimize'' adverse fishing effects on EFH.

Response A: NMFS disagrees. By using the words ''prevent'' and ''mitigate'' in this provision of the EFH regulations, NMFS' intent is to give Councils the flexibility to adopt the approach that is most suitable to meet the statutory obligation to minimize adverse fishing effects on EFH. For instance, it might be more effective for Councils to act to prevent particularly damaging adverse effects rather than allowing all types of effects to occur with some degree of minimization.

Comment B: The interim final rule stated that Councils must minimize to the extent practicable adverse effects on EFH from fishing if there is evidence that a fishing practice is having an identifiable adverse effect on EFH. Some commenters from conservation groups were pleased that NMFS replaced the word ''substantial'' (from the proposed rule) with ''identifiable,'' stating that ''identifiable'' is closer to the intent of the statute in terms of indicating the threshold at which Councils must take action to minimize adverse fishing effects to EFH. Others expressed concern that the word ''identifiable'' is inappropriate since this language does not appear in the Magnuson-Stevens Act and may still raise the threshold for action above that set by the Act. Commenters also expressed concern that the need to demonstrate an ''identifiable'' adverse effect might lead the Councils to inaction. Furthermore, commenters questioned the meaning of the descriptors for the term ''identifiable,'' offered in both the preamble to the interim final rule and the draft technical guidance manual, that ''identifiable means both more than minimal and not temporary in nature.'' Some commenters recommended that the EFH regulations require Councils to demonstrate adverse impacts scientifically and make the specific connection between adverse impacts and reduced stock productivity before taking action to minimize these impacts.

Response B: As discussed in the preamble to the interim final rule at 62 FR 66538, NMFS' intent was to provide guidance to Councils for determining when to act to minimize adverse fishing effects to EFH. Such action is warranted to regulate fishing activities that reduce the capacity of EFH to support managed species, not fishing activities that result in inconsequential changes to the habitat. In response to commenters' concern over the word ''identifiable'' in the interim final rule, NMFS modified this section to read, ''Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature'' based on the Councils' evaluation of the potential adverse effects of fishing. Temporary impacts are those that are limited in duration and that allow the particular environment to recover without measurable impact. Minimal impacts are those that may result in relatively small changes in the affected environment and insignificant changes in ecological functions.

It is not appropriate to require definitive proof of a link between fishing impacts to EFH and reduced stock productivity before Councils can take action to minimize adverse fishing impacts to EFH to the extent practicable. Such a requirement would raise the threshold for action above that set by the Magnuson-Stevens Act. The final rule encourages Councils to use the best available science as well as other appropriate information sources when evaluating the impacts of fishing activities on EFH, and to consider different types of information according to its scientific rigor.

Comment C: Several conservation groups criticized Councils for not adopting any new measures to minimize adverse effects from fishing activities and requested that NMFS require in the EFH regulations that new measures be taken to comply with the Magnuson-Stevens Act. Many of the same groups commented that NMFS should develop documentation requirements for Councils to demonstrate compliance with the requirement to minimize adverse fishing impacts to EFH to the extent practicable.

Response C: The final rule clarifies that Councils should document compliance with the requirement to minimize to the extent practicable adverse effects on EFH caused by fishing. When there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, Councils should identify in FMPs a range of potential new actions that could be taken to address adverse effects on EFH; include an analysis of the practicability of potential new actions; and adopt any new measures that are necessary and practicable. However, new measures may not be necessary in all cases. The final rule requires that FMPs explain the reasons for Councils' conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

Comment D: One commenter suggested that NMFS revise the EFH regulations to require Councils to adopt framework measures to address fishing impacts.

Response D: NMFS disagrees with this suggestion. It is not necessary or appropriate to add a requirement to the EFH regulations that Councils use framework measures as the mechanism to address fishing impacts. Rather, Councils should decide which administrative approach is most appropriate to use to meet the requirements of the EFH provisions.

Comment E: Several conservation groups recommended that each fishing activity be prohibited until it can be demonstrated that the activity does not adversely affect EFH.

Response E: NMFS disagrees. The approach suggested by the commenters would not be consistent with the statutory requirement to minimize adverse effects on EFH ''to the extent practicable'' and would have significant adverse socioeconomic impacts. The EFH provisions of the Magnuson-Stevens Act and the EFH regulations provide adequate mechanisms to evaluate the effects of fishing activities on EFH and ensure the minimization of adverse impacts on such habitat.

Comment F: Two commenters recommended that NMFS provide clearer guidance on how to interpret the term ''practicable'' and how Councils should carry out practicability analyses to comply with the statutory requirement to minimize to the extent practicable adverse effects on EFH caused by fishing. Another commenter noted that the phrase ''consistent with national standard 7'' in the section on conducting practicability analyses is unnecessary since all actions must be consistent with national standard 7 under the Magnuson-Stevens Act.

Response F: The final rule clarifies the guidance for considering practicability. The revised language eliminates redundancy and advises Councils to consider long- and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation. The final rule retains a reference to national standard 7 to provide context for the consideration of the costs and benefits of potential management measures.

Comment G: One commenter requested that NMFS reinsert the words ''the marine ecosystem'' in place of ''EFH'' in the following passage from § 600.815(a)(3)(iv) of the interim final rule: ''Councils should consider whether, and to what extent, the fishing activity is adversely impacting EFH...'' The commenter stated that the language used in the proposed rule was a more accurate reflection of the spirit of the Magnuson-Stevens Act.

Response G: NMFS disagrees. The Magnuson-Stevens Act requires Councils to address the effects of fishing on EFH, not on the entire marine ecosystem. The final rule incorporates editorial changes to eliminate redundancy, and therefore omits language cited by the commenter. The cited paragraph appears at § 600.815(a)(2)(iii) of the final rule.

Comment H: One commenter suggested that the EFH regulations clarify that Councils must address the effects of fishing covered under one FMP on EFH covered under another FMP.

Response H: NMFS agrees. The final rule clarifies that each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. The final rule also clarifies that each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity regulated under the FMP or other Federal FMPs.

Comment I: Several commenters recommended that NMFS revise the EFH regulations to indicate what constitutes grounds for disapproval of the portion of FMPs pertaining to minimization of fishing impacts.

Response I: Disapproval is warranted if an FMP or amendment is not consistent with the national standards, other provisions of the Magnuson-Stevens Act, or other applicable law. The EFH regulations provide guidance on meeting the EFH requirements of the Act, and failure to follow the guidance may lead to disapproval or partial approval of an FMP or amendment. It is unnecessary to state the grounds for disapproval in the regulations.

Comment J: One commenter recommended that NMFS require Councils to coordinate with states and other authorities to provide conservation recommendations when Council-managed fisheries adversely affect EFH outside Federal jurisdiction.

Response J: The Magnuson-Stevens Act does not authorize NMFS to require Councils to coordinate with or provide recommendations to states or other authorities, although Councils have authority under the Act to provide recommendations to states regarding actions that may affect the habitat of species under Council jurisdiction. When Council-managed fisheries adversely affect EFH in state waters, the Council should coordinate with the affected state(s) when developing management strategies.

15. Comments on the Identification of Specific Industries with Potential Adverse Effects on EFH

Comment A: Two commenters thought that the final rule should identify specific industries that adversely impact EFH.

Response A: During the comment period for the proposed rule, many commenters objected to their particular industries or activities being highlighted as having potential adverse effects on EFH. Many pointed out that non-fishing activities do not always adversely impact fish habitat. Some industries pointed out that they are involved in restoration efforts and that some of their activities have been documented as producing positive effects on fisheries, not adverse effects. In the preamble to the interim final rule at 62 FR 66540, NMFS acknowledged that many industries take certain actions specifically to improve fish habitat even if other activities conducted by the industry may adversely affect fish habitat. Therefore, the final rule avoids singling out specific industries or activities that have the potential to adversely affect EFH.

Comment B: One port authority asked NMFS to clarify that ''non-water dependent activities,'' as used in the interim final rule, excludes port development and maintenance activities. The commenter's request extended to other location-dependent activities such as bridge and utility/cable-line installation and maintenance.

Response B: Although NMFS has removed from the regulations the reference to specific non-water dependent activities, any Federal action that may adversely affect EFH is subject to consultation regardless of water dependency.

Comment C: Several non-fishing industry commenters asked NMFS to explain its authority for asking the Councils to identify non-fishing activities, and stated that the Magnuson-Stevens Act appears only to provide authority to identify fishing activities.

Response C: NMFS addressed this concern in the preamble to the interim final rule at 62 FR 66539–66540 and continues to disagree that its authority is limited to addressing fishing activities. One of the stated purposes of the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect, or have the potential to affect, such habitat. These projects include non-fishing activities. Section 303(a)(7) of the Magnuson-Stevens Act requires FMPs to address the effects of fishing on EFH and identify other actions to encourage the conservation and enhancement of EFH. The statute does not limit these measures to pertain only to fishing activities. A necessary first step to identifying conservation and enhancement measures is to identify adverse effects.

Comment D: One commenter representing non-fishing industry interests wanted the final rule to require that FMPs document actual adverse effects to EFH, rather than potential adverse effects.

Response D: NMFS disagrees. Documentation of actual adverse effects in most cases depends on site-specific factors, whereas the intent of this portion of the rule is to identify the types of activities that can commonly cause adverse effects. The final rule omits language stating that FMPs must identify activities that ''have the potential to adversely affect EFH'' and instead says that FMPs must identify activities ''that may adversely affect EFH.'' This change will make the standard for identifying threats to EFH consistent with the standard for actions

that require consultation under section 305(b)(2)of the Magnuson-Stevens Act.

16. Comments on Cumulative Impacts Analysis

Comment A: Many commenters, primarily environmental organizations and some individual commenters, wanted the final rule to mandate that the FMPs contain a cumulative impacts analysis of fishing and non-fishing activities on EFH.

Response A: NMFS agrees that FMPs should provide an analysis of cumulative impacts, but does not agree that such an analysis should be mandatory. The final rule clarifies that, to the extent feasible and practicable, FMPs should analyze how the cumulative impact of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale.

Comment B: Commenters representing non-fishing interests asked that cumulative impact analysis concentrate on a more clearly defined and focused group of watershed activities. The commenters also wanted to know what time period the cumulative impact analysis should address and why cumulative risk assessments would be conducted at all, since they are likely to be time consuming and expensive.

Response B: NMFS has clarified the cumulative impacts analysis language in the final rule. A cumulative impacts analysis is intended to evaluate the effect on EFH of impacts occurring within a watershed or marine ecosystem that may result from individually minor but collectively significant actions. It should consider the effects of all actions that affect the quantity and/or quality of EFH spanning a time frame deemed appropriate by the Councils. The resulting analysis will improve NMFS' and the Councils' ability to examine actions within a watershed or marine ecosystem that adversely affect EFH and will highlight the potential for future concerns. The final rule retains language stating that the FMPs should contain such an analysis to the extent feasible and practicable.

Comment C: One commenter requested that the word ''minor'' be removed from the description of what can cause cumulative impacts from § 600.815(a)(6) of the interim final rule.

Response C: NMFS disagrees. The intent of a cumulative impacts analysis is to address potential effects of actions that may appear minor individually, yet have more serious consequences when viewed in the aggregate. Thus, the final rule retains language stating that cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time.

Comment D: One commenter stated that the final rule should require the Councils to gather data to analyze cumulative impacts and that the quantity and quality of data should guide the conclusions on cumulative impacts. The commenter also wanted the FMPs to indicate which impacts are supported by data.

Response D: National standard 2 requires that all conservation and management measures, including those that arise from a cumulative impacts analysis, be based upon the best scientific information available. NMFS agrees that the quantity and quality of available data should guide Councils' conclusions on cumulative impacts, although Councils should also consider that cumulative impacts may not be easily discernable from available data.

17. Comments on the Guidance for Identifying Actions to Encourage the Conservation and Enhancement of EFH

Comment A: Two commenters addressed the guidance for general conservation and enhancement recommendations found in § 600.815(a)(7)(ii) of the interim final rule. One of the commenters focused on the statement that ''Activities that may result in significant adverse effect on EFH should be avoided where less environmentally harmful alternatives are available.'' The commenter questioned the use of the term ''significant'' here as opposed to ''identifiable'' in § 600.815(a)(3) of the interim final rule and said that NMFS appears to be condoning an increased level of habitat disturbance for non-fishing activities. The commenter also suggested replacing ''should be avoided'' with ''will be avoided'' in this sentence. Another commenter, representing non-fishing interests, wanted NMFS to delete the reference to ''protecting'' EFH in this portion of the regulations.

Response A: In the final rule NMFS deleted a large portion of the section entitled ''Conservation and enhancement'' that appeared in the interim final rule at § 600.815(a)(7), including the language referenced by the commenters. The deleted paragraphs contained general recommendations and options for EFH conservation and enhancement to assist Councils in developing the required provision of FMPs discussing measures to conserve and enhance EFH. However, NMFS determined that such general recommendations do not need to be codified in regulations and that including this information in the final rule could lead to confusion since the general recommendation might not apply equally in all areas. The shortened section dealing with conservation and enhancement recommendations appears in the final rule at § 600.815(a)(6).

Comment B: One commenter wanted NMFS to clarify that habitat creation should be reserved for mitigating habitat losses or restoring native fish populations and should not alter natural habitats.

Response B: As discussed above, the rule no longer contains any general recommendations for habitat creation or other methods to conserve and enhance EFH. Conservation and enhancement recommendations in FMPs must include options to avoid, minimize, or compensate for adverse effects to EFH. If appropriate, habitat creation may be a means of compensating for lost or degraded habitat. However, converting naturally functioning systems to another type of habitat warrants justification within an ecosystem context.

Comment C: One state commenter asked for clarification on how the Councils will evaluate the effectiveness of each recommended mitigation measure (i.e., conservation and enhancement option). The commenter asked that the FMPs include feedback mechanisms to assess the effectiveness of, and establish a monitoring program for, recommended mitigation measures.

Response C: The final rule does not require Councils to evaluate the effectiveness of each recommendation in FMPs for EFH conservation and enhancement. Council recommendations, however, should be based on the best scientific information available. NMFS and Councils may suggest monitoring requirements or other appropriate measures in their recommendations on state and Federal agency actions under sections 305(b)(3) and (4) of the Magnuson-Stevens Act.

Comment D: One commenter representing non-fishing interests wanted NMFS to delete the requirements of § 600.815(a)(5) of the interim final rule that require Councils to identify non-fishing activities that may adversely affect EFH. Several commenters representing non-fishing interests wanted NMFS to delete the language in § 600.815(a)(7)(i) of the interim final rule that refers to conservation and enhancement measures for non-fishing activities. The commenters thought that the language addressing non-fishing activities exceeded the statutory authority of the Magnuson-Stevens Act and should be limited to fishing activities. The

commenters also stated that since the rule does not require listing conservation and enhancement recommendations for fishing activities, then it cannot do so for non-fishing activities.

Response D: NMFS disagrees and maintains that it has statutory authority to address non-fishing activities. NMFS has clarified the language in the final rule that discusses the identification of non-fishing activities that may adversely affect EFH in § 600.815(a)(4) and conservation and enhancement recommendations in § 600.815(a)(6), but these modifications did not change the substantive requirements of the rule. One stated purpose of the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect, or have the potential to affect, such habitat. These projects include non-fishing activities. Section 303(a)(7) of the Magnuson-Stevens Act requires FMPs to address the effects of fishing on EFH and identify other actions to encourage the conservation and enhancement of EFH. The statute does not limit these measures to fishing activities only. Likewise, section 305(b)(2) of the Magnuson-Stevens Act requires consultation for any federal action that may adversely affect EFH regardless of whether it is a fishing or non-fishing activity.

Comment E: Several non-fishing interests wanted the final rule to require the Councils to report on current conservation and enhancement practices and use data to identify how further conservation and enhancement of EFH is possible with additional measures. One commenter said that FMPs should document existing conservation measures before recommending new measures.

Response E: Councils must recommend appropriate measures for conservation and enhancement of EFH. These measures may include new recommendations or existing, routine practices of industry or other organizations that minimize potential harm to fish habitat. All Council recommendations should be based on the best scientific information available.

Comment F: A port authority asked that the Councils be required to consider the economic impacts to non-fishing maritime interests of making recommendations for minimizing adverse effects to EFH. The commenter pointed out that the rule requires the Councils to consider whether it is practicable to recommend conditions to minimize adverse effects from fishing. Given the economic importance of ports, the commenter thought that the Councils should apply the same standard of practicability to other recommendations for minimizing adverse effects to EFH from port maintenance and development activities.

Response F: As explained in the preamble to the interim final rule at 62 FR 66540, non-fishing and fishing impacts are held to different standards in the EFH regulations because of differences in the applicable provisions of the Magnuson-Stevens Act. Section 303(a)(7) of the Magnuson-Stevens Act requires that FMPs minimize effects of fishing on EFH to the extent practicable, and NMFS and the Councils manage fishing activities through regulations that must consider costs and benefits of required management measures. The requirement in Section 303(a)(7) of the Magnuson-Stevens Act for Councils to recommend conservation and enhancement measures for non-fishing activities does not mention practicability, and it is the responsibility of the agencies with relevant jurisdiction to determine whether it is practicable to implement Council recommendations. Nevertheless, Council recommendations should be reasonable.

18. Comments on Habitat Areas of Particular Concern

Comment A: Some commenters requested that NMFS delete all references to Habitat Areas of Particular Concern (HAPCs), saying that in encouraging Councils to designate HAPCs, NMFS is going beyond the scope of the EFH provisions since the Magnuson-Stevens Act does not specifically authorize the development of a subset of habitat within EFH. One commenter asked NMFS to clarify how the designation of HAPCs will be used to protect EFH, and specifically, how it will affect implementation of the consultation process. Other commenters urged NMFS to require Councils to designate HAPCs for all species and to hold HAPCs to a higher standard of protection.

Response A: NMFS disagrees that development of HAPCs as a subset of EFH goes beyond the scope of the Magnuson-Stevens Act. The statutory definition of EFH is broad, encompassing all habitat necessary for fish to carry out their basic life functions. HAPCs provide a mechanism to acknowledge areas where more is known about the ecological function and/or vulnerability of portions of EFH.

The designation of HAPCs is a valuable way to highlight priority areas within EFH for conservation and management. For example, a General Concurrence that is proposed for actions affecting HAPCs should be subject to a higher level of scrutiny than a General Concurrence not affecting HAPCs. Proposed fishing activities that might threaten HAPCs may likewise receive a higher level of scrutiny. NMFS has no authority to regulate activities other than fishing that may adversely affect EFH or HAPCs, so NMFS cannot impose protective measures for HAPCs through the consultation process. However, NMFS may recommend such measures to the applicable Federal or state action agency.

NMFS cannot require Councils to designate HAPCs. Any higher degree of protection for areas designated as HAPCs would result from having more available information about the function or sensitivity of the habitat, or the human-induced threats to the habitat, which may justify more stringent or precautionary management approaches.

Comment B: Some commenters recommended that the EFH regulations be revised to direct Councils to use HAPCs as the principal means to meet the requirements of the EFH provisions.

Response B: While HAPCs help to focus EFH conservation priorities, HAPCs are localized areas that are especially vulnerable or ecologically important. Healthy populations of fish require not only these relatively small habitats, but also other suitable areas that provide necessary habitat functions to support larger numbers of fish. HAPCs can highlight valuable and/or vulnerable habitats, but alone are not intended to comprise the areas necessary to support healthy stocks of fish throughout all of their life stages.

Comment C: One commenter requested that NMFS add a provision to the EFH regulations to allow stakeholders to petition NMFS to designate HAPCs.

Response C: It is not appropriate to add an HAPC petitioning provision to the rule, because HAPCs should be proposed through the Council process. NMFS encourages interested parties to participate in the identification of HAPCs through the Council process. Council meetings occur regularly throughout the year and are open to the public.

Comment D: The interim final rule listed four criteria for identifying HAPCs. One commenter requested that NMFS change the term ''criteria'' to more accurately reflect that the four items are ''considerations.''

Response D: NMFS agrees and has changed ''criteria'' to ''considerations.''

Comment E: One commenter requested that NMFS revise the first

consideration for HAPCs to distinguish between current and historical importance of ecological function provided by a particular habitat. The commenter also noted that this consideration should be expanded to include a determination as to whether the area in question serves more than one ecological function.

Response E: NMFS disagrees that a revision to this portion of the rule is necessary. The HAPC consideration regarding ecological importance may include both currently and historically important areas, provided that restoration of historic habitat functions is technologically and economically feasible. Additionally, Councils have flexibility to identify areas as HAPC that provide one or more important ecological functions.

Comment F: One commenter requested that NMFS define the word ''rarity'' in the fourth consideration for HAPC designation.

Response F: The fourth consideration for HAPC designation is the rarity of the habitat type. NMFS disagrees that a definition of ''rarity'' in the rule is needed, but suggests that Councils consider as rare those habitats that are less common than other habitats in a particular geographic area.

Comment G: One commenter recommended that the EFH regulations be revised to require Councils to address all four HAPC considerations to designate an area as an HAPC.

Response G: NMFS disagrees. Councils may designate HAPCs based on one or more of the four specified considerations, because any one of the considerations may provide sufficient basis for distinguishing a subset of EFH from the remainder of EFH.

Comment H: One commenter recommended that the EFH regulations be revised to require Councils to use information sources that meet a high scientific standard to designate HAPCs.

Response H: National standard 2 states that conservation and management measures shall be based upon the best scientific information available. This standard applies to all fishery management actions, including HAPC designation, and the final rule reemphasizes this point. Section 600.815(a)(1)(ii)(B) states, ''Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information.'' The final rule further clarifies that Councils should consider different types of information according to its scientific rigor. Since HAPCs are a subset of EFH, the same standard applies to HAPC designation.

Comment I: One Council requested that NMFS rename HAPCs ''EFH-HAPCs'' to distinguish them from HAPCs identified by the Council prior to enactment of the EFH provisions of the Magnuson-Stevens Act.

Response I: The final rule does not change the terminology for HAPCs because doing so would likely result in unnecessary confusion. Councils had the ability to identify particularly important habitat areas prior to the development of the EFH regulations, and may now identify such areas in the context of EFH. If a Council chooses to refer to HAPCs identified under the EFH regulations as ''EFH-HAPCs,'' it may do so. NMFS encourages the Councils to determine whether their previous identification of important habitats should be designated as HAPCs under the final rule.

Comment J: One commenter questioned why the draft technical guidance manual would not be reopened for public review and comment given that it elaborates on the considerations on which to base HAPC designations.

Response J: The rationale for not soliciting additional public comment on the guidance is discussed in the preamble to the interim final rule at 62 FR 66532. The draft technical guidance will be superseded with appropriate guidance for the final rule.

Comment K: One Council stated that all mid-Atlantic estuaries should be considered as HAPCs because they function as spawning grounds and/or nursery areas for many managed species.

Response K: The rule allows Councils to designate HAPCs in FMPs based on the ecological importance of an area of EFH, its sensitivity to anthropogenic degradation, whether it is or will be subject to stress from development, or its rarity. The commenting Council may designate HAPCs as appropriate using these guidelines.

19. Comments on New FMPs, FMP Amendments, and Updates

Comment: A Council suggested that the final rule encourage updating the EFH information in FMPs whenever better information becomes available, rather than just once every five years. Several conservation groups commented that the regulations should require that new FMPs and modifications to existing FMPs continue to comply with the EFH requirements of section 303(a)(7) of the Magnuson-Stevens Act. Another commenter asked for clarification of what constitutes new information worthy of updating the EFH portions of an FMP. The same commenter recommended that NMFS amend the regulations regarding Stock Assessment and Fishery Evaluation (SAFE) reports at 50 CFR 600.315(e) to require the inclusion of EFH information, rather than keeping such information optional as in the current regulations.

Response: NMFS agrees that the EFH components of FMPs should be revised as warranted based on available pertinent information. The final rule clarifies this point and encourages Councils to outline the procedures that will be used to review and update EFH information. The final rule also explains some of the types of information that Councils should review. The final rule does not establish a threshold level of information that should prompt revisions to an FMP because such decisions are best made on a case-by-case basis. Regarding SAFE reports, the regulations describing these reports do not list mandatory contents, but list information that ''should'' or ''may'' be included. NMFS does not intend to make EFH information a required part of SAFE reports since Councils should be able to report on their review of EFH information using other means if appropriate.

20. Comments on Development and Review of NMFS EFH Recommendations to Councils

Comment: One commenter said that in NMFS' recommendations to Councils regarding the EFH components of FMPs, NMFS should include a description of the extent and quality of the best available scientific information.

Response: NMFS' recommendations to Councils under § 600.815(c) may take one of two forms: suggestions for the EFH components of an FMP that precede a Council's development of a draft EFH document, or a technical and policy review of a draft EFH document prepared by a Council. In cases where NMFS' recommendations precede a Council's development of a draft EFH document, the recommendations typically will include a review of the best available science. In cases where the recommendations constitute a review of a draft Council document, it may not be necessary for the recommendations to describe the available science if that information is summarized adequately in the Council's document. Therefore, the final rule does not contain language specifying that NMFS' recommendations should address the extent and quality of the best available scientific information. Nevertheless, national standard 2

requires fishery management measures to be based upon the best scientific information available.

21. Comments on the Effect of EFH Designations on other Agencies and Other Uses of Aquatic Areas

Comment A: One commenter requested that NMFS delete reference to the word ''state'' in the sentence in § 600.905(a) of the EFH regulations that reads, ''The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.'' The commenter said that use of the word ''state'' is inappropriate since the Magnuson-Stevens Act only applies to the review of Federal actions.

Response A: NMFS disagrees. References to state actions is appropriate in this case since sections 305(b)(3) and (4) of the Magnuson-Stevens Act include provisions for NMFS and Councils to provide recommendations to state agencies on actions that could harm EFH.

Comment B: One commenter suggested that NMFS defer to the U.S. Army Corps of Engineers on matters related to dredging and contaminated dredged material.

Response B: NMFS has coordinated extensively with the Corps of Engineers on matters related to dredging and dredged material disposal and will continue to do so in the future. However, the Corps must consult with NMFS regarding its actions that may adversely affect EFH, and NMFS must provide EFH Conservation Recommendations on actions that would adversely affect EFH. NMFS and the Corps may in some cases disagree about potential impacts to EFH or appropriate measures to avoid, minimize, or offset such impacts.

Comment C: One commenter requested that NMFS clarify that owners of structures designated as EFH are not required to maintain them for the sole purpose of providing EFH.

Response C: NMFS does not have the authority to require owners of structures designated as EFH to maintain them as EFH.

Comment D: One commenter opposed designation of heavily industrialized areas, such as active ports, as EFH, stating that EFH designation would be in direct conflict with the purpose of such areas.

Response D: The Magnuson-Stevens Act requires Councils to identify as EFH those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity, regardless of whether those habitats occur in an industrialized area. NMFS disagrees that EFH designation is necessarily in conflict with heavily industrialized areas, since many active ports and other industrial areas continue to provide useful habitat for managed species.

Comment E: Several commenters expressed concern that EFH designations would affect the rights of private landowners.

Response E: NMFS addressed this concern in the preamble to the interim final rule at 62 FR 66535, and the response remains the same. EFH designation has no effect on the rights of private landowners.

Comment F: One commenter recommended that the EFH identification process should recognize existing treaties, statutes, compacts, decrees, and other laws and regulations that apply to areas under consideration for EFH designation so that the public is aware that EFH identification does not supersede other existing laws, interests, rights, or jurisdictions.

Response F: NMFS agrees that the identification of EFH in an area and any applicable regulations do not supersede the regulations, rights, interests, or jurisdictions that pertain to such an area under treaties, compacts, decrees, and other laws.

Comment G: One commenter requested that NMFS add language to the rule to recognize that non-fishing activities provide important economic and security benefits to the nation. The commenter suggested that NMFS direct the Councils to seek ways to provide for these activities while conserving EFH.

Response G: NMFS recognizes the value and contributions of non-fishing activities to the general public, but disagrees with the suggestion. NMFS and Councils have authority under the Magnuson-Stevens Act to provide recommendations to Federal and state agencies to minimize the adverse effects of non-fishing activities on EFH. It would be inappropriate to include in the EFH regulations a requirement for Council or NMFS positions on non-fishing activities to balance competing public interest factors. Council and NMFS recommendations on non-fishing activities under the Magnuson-Stevens Act are non-binding and are intended to address effects on EFH and fishery resources. Action agencies must consider the overall public interest, including the public benefits of the proposed action, when deciding whether to adopt these recommendations.

22. Comments on the Authority to Issue Regulations Regarding EFH Coordination, Consultation, and Recommendations

Comment A: A number of non-fishing industry groups questioned NMFS' authority to establish procedures by regulation for the EFH coordination, consultation, and recommendation process. These commenters questioned the need for such procedures and asserted that the Magnuson-Stevens Act does not authorize NMFS to establish requirements for other agencies as part of the EFH consultation process.

Response A: NMFS addressed similar comments in the preamble to the interim final rule at 62 FR 66542, and continues to maintain that it has the authority to issue regulations to implement the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. Section 305(d) of the Magnuson-Stevens Act confers upon the Secretary the authority to promulgate such regulations as may be necessary to carry out any provision of the Act. Regulations are necessary to implement Sections 305(b)(1)(D) and 305(b)(2)-(4) of the Magnuson-Stevens Act so that all affected parties will understand the Secretary's interpretation of these sections of the Act and the processes and information needs associated with carrying out the specific statutory requirements. Without such regulations, there likely would be considerable confusion, inconsistency, and inefficiency amongst Federal agencies, state agencies, Councils, and NMFS regarding the implementation of these sections of the Act.

Comment B: Several non-fishing industry groups identified specific provisions of the interim final rule that they believed illustrate that NMFS has exceeded its authority. With regard to the preparation of EFH Assessments, some commenters said that the Magnuson-Stevens Act gives NMFS no authority to require other agencies to provide specific information or otherwise prescribe how they should consult with NMFS regarding EFH. Some commenters felt that EFH consultations can be addressed through existing environmental review processes under other laws (such as the National Environmental Policy Act) with no additional EFH-specific information. Some commenters said that the requirement for a finding by NMFS is not authorized by the Magnuson-Stevens Act and should not be necessary before an existing environmental review process can be used for EFH consultations. Others said

that it is inappropriate for NMFS to suggest time frames that Federal agencies should follow as part of the EFH consultation process. A few commenters said NMFS has no authority to require other agencies to use the best scientific information available regarding potential adverse effects of an action on EFH, suggesting that action agencies may simply notify NMFS of proposed actions and leave the evaluation to NMFS.

Response B: Subpart K of the regulations details the procedures and information determined by the Secretary to be necessary to carry out the specific requirements of Sections 305(b)(1)(D) and 305(b)(2)-(4) of the Magnuson-Stevens Act in an efficient and effective manner. As noted in the preamble to the interim final rule at 62 FR 66542, information in an EFH Assessment is necessary to enable NMFS to fulfill its statutory requirement to provide EFH Conservation Recommendations to Federal agencies. This cooperative exchange of information and recommendations between NMFS and Federal agencies is vital for effective consultation regarding actions that may adversely affect EFH, and is inherent in the requirement for Federal agencies to consult with NMFS.

The Magnuson-Stevens Act does not provide for an exemption from EFH consultations if another environmental review is required for an action, and other environmental reviews generally do not address specific habitat considerations for managed species of fish and shellfish. However, NMFS encourages Federal agencies to combine EFH consultations with other environmental reviews. When Federal agencies choose this approach to EFH consultation, the regulations require a finding by NMFS that the selected process provides specific EFH-related information in a timely way. A finding is necessary to ensure that consultations are implemented effectively and efficiently. It is appropriate for NMFS to require the EFH Assessment information and a finding because otherwise consultations using different environmental review processes might not fulfill the requirements of Section 305(b)(2) of the Magnuson-Stevens Act.

The final rule continues to provide time frames for abbreviated and expanded consultation, and continues to include language allowing NMFS and a Federal action agency to agree to use a compressed schedule in cases where shorter time frames are appropriate. The inclusion of time frames in the regulations helps to make consultations efficient, and NMFS recognizes the need to be flexible when consultation using those time frames is not practicable for other agencies.

Regarding the requirement for Federal agencies and NMFS to use the best available scientific information, NMFS' intent is to promote an open exchange of information regarding the effects of actions on EFH. Federal agencies may have scientific information about their actions that is not readily available to NMFS, so providing this information will help to make consultations efficient.

Comment C: A national association involved in the construction trades requested that NMFS rescind or suspend the consultation and coordination provisions of the interim final rule until an open, constructive dialog has occurred with all interested parties.

Response C: NMFS has provided numerous opportunities for constructive dialog as part of this rulemaking. NMFS held five public comment periods, 21 public meetings, and numerous briefings and meetings with individual groups, including representatives of the construction trades and other non-fishing industries. NMFS received many written comments as well as extensive verbal feedback from these groups and others interested in the EFH regulations, and NMFS has carefully considered these comments. Based in part on this productive exchange of information, NMFS decided to proceed with the final rule.

23. Comments on Coordination for the Conservation and Enhancement of EFH

Comment: One commenter criticized the section of the interim final rule that says NMFS will compile and make available to other agencies information on the locations of EFH, and that NMFS will provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. The commenter said there is no authority for what the commenter characterized as NMFS' aggressive provision of information to other agencies, and implied that NMFS is seeking to reopen approved Federal programs. The same commenter said that the final rule should allow for public access to the information NMFS provides to Federal agencies under this section of the regulations.

Response: Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with and provide information to other Federal agencies to further the conservation and enhancement of EFH. The interim final rule addressed this requirement by stating that NMFS would provide pertinent information to Federal and state agencies. NMFS does not consider this to be improper; rather, it is an attempt to promote awareness of EFH and opportunities for conservation of EFH, as required by the Act. The final rule clarifies that EFH consultation is not required for Federal actions that were completed prior to the approval of EFH designations by the Secretary. The final rule also states that NMFS will make available to Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions.

24. Comments on Federal Actions Subject to EFH Consultation

Comment A: One commenter, concerned about potentially large workload requirements on Councils, NMFS, and action agencies, recommended that NMFS restrict the consultation requirements to those actions that will adversely affect EFH, rather than those that may. The commenter also recommended that NMFS establish realistic procedures and requirements for EFH consultation.

Response A: The Magnuson-Stevens Act requires Federal agencies to consult on any action that may adversely affect EFH, and NMFS cannot change this requirement by regulation. The final rule clarifies the approaches for conducting EFH consultation and simplifies the development of General Concurrences to improve the efficiency of the consultation process.

Comment B: One commenter recommended that the taking of species under special permits, such as for research and monitoring, not be subject to consultation. Another commenter recommended that projects designed to restore, improve, or protect fish habitat be excluded from consultation.

Response B: Any Federal action that may adversely affect EFH requires consultation, and NMFS cannot grant waivers for specific types of actions. The action agency must determine whether the approved action may adversely affect EFH and, if so, consult with NMFS. Not all activities result in adverse effects on EFH. Research or monitoring activities may cause no adverse effects at all, or may result in minimal impacts that could be addressed through a General Concurrence. Restoration or similar projects for beneficial purposes may still result in habitat disruption or alteration, both short- and long-term, and are subject to consultation if they may adversely affect EFH. In such cases, consultation provides an opportunity for NMFS to make EFH Conservation

Recommendations to reduce or eliminate any adverse effects.

Comment C: One commenter requested clarification on how NMFS intended to handle consultations regarding Federal programs delegated to states.

Response C: The rule requires consultation on Federal programs delegated to non-Federal entities at the time of delegation for those programs that result in activities that may adversely affect EFH. For programs that were delegated prior to the approval of EFH designations by the Secretary, EFH consultation is required when the delegation is reviewed, renewed, or revised. The delegation itself, and any review, renewal, or revision of the delegation, are Federal actions, and the Federal agency may consult with NMFS using any of the approaches for conducting consultation (§ 600.920(a)(2)) applicable for a particular delegation. Such consultations can be performed on a national or regional basis, as appropriate.

Comment D: Three commenters questioned the guidance on actions requiring EFH consultation, and specifically the guidance regarding consultation for existing or completed actions. One specifically requested clarification regarding the need for consultation on Federal reviews of actions.

Response D: The final rule clarifies that EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary. In addition, the rule clarifies that consultation is required on renewals, reviews, or substantial revisions of actions only if the renewal, review, or revision may adversely affect EFH.

Comment E: One non-fishing industry trade association commented that in many cases there are statutory constraints on Federal delegations of authority to states that may prevent the delegating agency from addressing other concerns, such as EFH. The commenter said that such actions therefore should not be subject to EFH consultation.

Response E: Federal agency delegations are subject to consultation if they may adversely affect EFH, regardless of whether the agency has the discretion to condition the delegation. Many agencies provide for interagency review of these actions specifically to incorporate other concerns, and condition the delegations accordingly. If a particular agency is incapable of addressing such concerns because of statutory constraints, such information should be provided as part of the EFH Assessment during consultation. Additionally, the final rule retains a provision that NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

Comment F: One commenter representing agricultural interests said that NMFS should establish a causal link between agricultural practices and effects to EFH before requesting consultation or providing EFH Conservation Recommendations. The commenter expressed concern that there is no clear threshold of significance or likelihood of adverse effect on EFH to trigger consultation or recommendations from NMFS or a Council.

Response F: The Magnuson-Stevens Act contains no requirement for definitive proof of an adverse effect to EFH before triggering the requirements for consultation and recommendations. Section 305(b)(2) of the Act requires Federal agencies to consult with the Secretary regarding any action or proposed action that may adversely affect EFH. Section 305(b)(3) of the Act authorizes Councils to comment on any Federal or state agency action that may affect the habitat, including EFH, of a fishery resource under Council jurisdiction, and requires such comments when a Council believes the action would substantially affect the habitat of an anadromous fishery resource. Section 305(b)(4)(A) of the Act requires NMFS to provide conservation recommendations for any Federal or state agency action that would adversely affect EFH.

Comment G: One sport diving association expressed concern about the loss of artificial reefs, jetties, shipwrecks, and other shoreline fish habitat as a result of large-scale sand replenishment projects and recommended a number of measures to address these concerns through the EFH consultation process.

Response G: If artificial structures are identified as EFH in a fishery management plan, NMFS will address potential adverse effects through the consultation process.

25. General Comments on the Coordination, Consultation, and Recommendation Procedures

Comment A: A number of non-fishing industry commenters said that the interim final rule creates a duplicative regulatory review process and recommended that NMFS exempt all activities currently subject to habitat review under other statutes from EFH consultations.

Response A: The Magnuson-Stevens Act requires consultation on all Federal actions that may adversely affect EFH. While other laws also have environmental review requirements, no other mandate specifically evaluates potential adverse effects on habitats for commercially and recreationally important species of fish. Section 2(b) of the Act states that one of Congress' purposes was ''to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.'' Therefore, an important purpose of EFH consultations is to provide information to action agencies to ensure consideration of potential impacts to EFH. NMFS has no authority to exempt any Federal actions from the consultation requirements, but has provided flexibility in the rule to combine EFH consultations with other environmental reviews to avoid duplication.

Comment B: Two non-fishing interests suggested that EFH consultation provides little benefit given the comprehensive protections already in place through other environmental review processes.

Response B: Congress indicated through the EFH provisions of the Magnuson-Stevens Act that existing environmental reviews are not adequate for the conservation and management of fishery resources of the United States. Direct and indirect habitat losses have been and continue to be serious threats to the long-term sustainability of many fisheries. Fish habitat has received limited consideration in the assessment of environmental impacts for activities authorized or supported by Federal agencies. The EFH provisions enable NMFS to work cooperatively with other agencies to promote the conservation of EFH.

Comment C: Four non-fishing industry organizations recommended that the final rule make clear that EFH consultations are an information exchange process, not a separate regulatory review, and may be documented in an informal manner. A separate forestry association commenter recommended that EFH consultations be verbal since they are not binding.

Response C: NMFS disagrees with these suggestions. The EFH provisions of the Magnuson-Stevens Act require more than a simple information exchange. Federal agencies must consult with NMFS regarding actions that may adversely affect EFH and must provide detailed written responses to NMFS' EFH Conservation Recommendations. An informal process without documentation would not fulfill these

statutory requirements. Moreover, documenting EFH consultations in writing reduces the chances for errors and misunderstandings.

Comment D: One commenter suggested that NMFS write a clear explanation about the minimum steps an action agency must take to comply with this rule.

Response D: The final rule simplifies and more clearly explains the approaches for conducting EFH consultations, the level of detail and mandatory contents of an EFH Assessment, the preparation of General Concurrences, and the process for programmatic consultations. Because the rule provides flexibility for Federal action agencies to choose a particular consultation approach depending on the nature and scope of the actions that may adversely affect EFH and the opportunities for combining EFH consultation with other environmental review procedures, there is no single set of minimum steps.

Comment E: One Federal agency recommended that the final rule contain a provision allowing more flexibility regarding the timing for notification and consultation through the use of memoranda of agreement at the field level.

Response E: NMFS disagrees that memoranda of agreement are necessary. However, the final rule retains language allowing Federal agencies to combine EFH consultations with other environmental reviews, and specific time frames may be developed in findings signed by NMFS at the regional level. In cases where EFH consultation is handled separately through abbreviated or expanded consultation, the rule also allows NMFS and action agencies to use a compressed schedule, which may be agreed upon at the field level.

Comment F: One commenter expressed a need for greater clarification regarding the EFH and ESA consultation requirements and recommended a single point of contact for both programs.

Response F: NOAA is implementing a one-stop-shopping approach to coordinate EFH, ESA, and other consultative requirements in an efficient and effective manner. As part of this approach NOAA staff will assist other agencies and the public in meeting all applicable NOAA consultative requirements, which in many cases (but not all) will mean that there is one principal NOAA point of contact. In addition, the interim final rule encouraged consolidating EFH consultations with other environmental reviews and incorporating EFH Assessments into documents prepared for other purposes, such as ESA biological assessments. This language has been retained in the final regulations.

Comment G: Several states and non-fishing interests asked for clarification on how to meet the EFH requirements, including meshing multiple state and Federal environmental reviews when undertaking activities with Federal permits or funding. These commenters wanted the EFH requirements combined with existing Federal and state environmental programs.

Response G: The final rule retains provisions from the interim final rule that encourage Federal agencies to consolidate EFH consultations with other environmental reviews. Further details on the operational procedures for combining EFH consultations with other environmental reviews should be provided in findings developed by NMFS pursuant to § 600.920(f)(3) (renumbered from § 600.920(e)(3) in the interim final rule). NMFS has developed over 40 such findings with Federal agencies to date. Regarding NMFS' EFH Conservation Recommendations to state agencies, the rule continues to state that NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

Comment H: Two commenters recommended that the final rule provide clarification on how NMFS and the Councils will coordinate in developing recommendations on Federal and state actions to ensure that agencies are not forced to choose between NMFS and Council recommendations.

Response H: The final rule includes a new subsection (§ 600.925(d)) stating that NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment and that NMFS will share pertinent information with the Council on such actions. However, Councils have independent authority under section 305(b)(3) of the Magnuson-Stevens Act to comment on Federal and state actions.

Comment I: One commenter recommended that the rule be strengthened to prevent the segmentation of approvals for a single overall project in a specific geographic area that includes EFH.

Response I: NMFS has no authority to prevent or restrict project approvals by other agencies. Under most circumstances, approaching project approvals in a piecemeal fashion is contrary to the environmental assessment requirements of statutes such as the National Environmental Policy Act and Clean Water Act, which call for the review of single and complete projects versus the sequential review of smaller phases of a larger project.

Comment J: Several environmental organizations expressed concern that there will be instances where an action should not go forward because its adverse impacts are so significant. These commenters expressed particular concern for actions that have no available alternatives and for which mitigation will not eliminate significant adverse impacts.

Response J: Section 305(b)(4)(A) of the Magnuson-Stevens Act directs NMFS to provide EFH Conservation Recommendations to Federal or state agencies on actions that would adversely affect EFH. The EFH Conservation Recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. NMFS could recommend that a particular Federal action should not be allowed. However, NMFS will not ask state or Federal agencies to take actions beyond their statutory authority and EFH Conservation Recommendations are not binding.

26. Comments Regarding Participation in the Consultation Process

Comment A: One Federal agency commenter advocated its participation as an active technical team member in the process of developing EFH consultative procedures.

Response A: NMFS will continue to work closely with Federal agencies when developing agency-specific procedures for EFH consultation, such as findings regarding the use of existing environmental review processes to handle EFH consultations.

Comment B: One commenter requested clarification regarding the types of entities that a Federal agency may designate as a non-Federal representative for EFH consultation purposes, and expressed concern about the potential resource expenditures for non-Federal representatives to perform these duties.

Response B: The rule places no restrictions on which entities a Federal agency may designate as non-Federal representatives for EFH consultation purposes. However, the Federal agency remains ultimately responsible for compliance with the EFH consultation provisions of the Magnuson-Stevens Act, including any costs associated with consultation. Federal agencies can reduce costs and maximize the

efficiency of required environmental analyses by combining EFH consultations with other environmental reviews.

Comment C: Two non-fishing industry associations recommended that the rule provide an opportunity for Federal permit applicants to be involved in EFH consultations, beyond the possibility of designation as a non-Federal representative. One of these commenters said that NMFS should provide public notices of consultations, individual notices to stakeholders that are likely to be affected, and opportunities for affected stakeholders to request a hearing following the issuance of any recommendations.

Response C: The Magnuson-Stevens Act requires that Federal agencies consult on actions that may adversely affect EFH. Permit applicants and other parties are under no such obligation and should confer with the applicable action agency to identify any opportunities for their involvement. It is not appropriate to provide public or personalized notices of consultations or opportunities for hearings regarding EFH Conservation Recommendations because the recommendations from NMFS are advisory in nature and because these additional steps would be inefficient, time consuming, and beyond the statutory requirements for EFH consultation.

27. Comments on EFH Assessments

Comment A: A large number of environmental groups and individual commenters wanted NMFS to retain in the regulations the requirement to prepare an EFH Assessment. Similarly, these commenters wanted the final rule to ensure that EFH Assessments are required for Federal land-based actions that may adversely affect EFH. These commenters argued that the EFH Assessment is a necessary and appropriate mechanism to evaluate effects to EFH during the consultation process.

Response A: The final rule maintains the requirement to prepare an EFH Assessment for any Federal action that may adversely affect EFH, regardless of whether the action is land-based or directly within waters designated as EFH. For actions covered by a General Concurrence, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation.

Comment B: Many commenters addressed the required contents of an EFH Assessment. Many environmental groups and individual commenters asked that NMFS expand the required contents of an EFH Assessment to include mitigation measures, but some cautioned that the effectiveness of many mitigation measures is unproven. Many of the commenters thought the EFH Assessment should include the additional information requirements in § 600.920(g)(3) of the interim final rule if available rather than just ''if appropriate.'' Several commenters wanted to know when the inclusion of additional information is needed and whether it related to the need for expanded consultation. One Fishery Management Council believed that a literature review should be included in the mandatory contents of an EFH Assessment.

Response B: The final rule clarifies that the level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the Federal action. Relatively simple actions involving minor adverse effects on EFH may have very brief EFH Assessments. Actions that pose a more serious threat to EFH, or involve more complex potential adverse effects, warrant a more detailed EFH Assessment. Since an expanded consultation is meant to address actions with substantial adverse effects, in many cases it would be appropriate for expanded consultations to include the additional information in an EFH Assessment. However, there also may be cases where some of the additional information (e.g., an alternatives analysis) is warranted for an abbreviated consultation. The level of information in an EFH Assessment depends on the action, and it is not appropriate to require additional information such as literature reviews and the results of on-site inspections for every EFH Assessment.

Comment C: An industry association representing non-fishing interests wanted clarification on whether project applicants would be required to support a more detailed evaluation and incur the costs of developing Level 3 or 4 data when EFH had been identified by Level 1 or 2 data.

Response C: The description of data levels in the rule notes the type of information that the Councils will use to describe and identify EFH, whereas EFH Assessments do not require data collection for the purposes of identifying and describing EFH. The consultation requirements of the regulations apply to the Federal action agency and neither the action agency nor project applicant will be asked to collect Level 3 or 4 data as a consultation requirement. The Federal agency, however, might in some cases request information from the applicant for a Federal permit, license, or grant when the agency is completing an EFH Assessment.

Comment D: One commenter thought a written EFH Assessment should be required only when an existing environmental review procedure could not be used and indicated that otherwise the EFH Assessment requirement would be too burdensome.

Response D: The final rule maintains the requirement to prepare a written EFH Assessment for every Federal action that may adversely affect EFH. As described in the preamble to the interim final rule at 62 FR 66543, to promote efficiency, when existing environmental review processes are available the EFH Assessment should be integrated into the same processes and documents that are used to satisfy other review requirements. NMFS encourages the use of existing environmental review procedures, but such procedures must include the information that comprises an EFH Assessment to support the consultation requirement set forth in section 305(b)(2) of the Magnuson-Stevens Act.

Comment E: Some commenters wanted the final rule to reflect that a prior EFH Assessment could only be incorporated by reference into a new EFH Assessment if the Council(s) and NMFS determine it is adequate.

Response E: Prior approval from NMFS or a Council is not necessary before a Federal agency incorporates by reference a completed EFH Assessment from another action. However, to make consultations efficient and to avoid requests for additional information, NMFS encourages action agencies to ensure that EFH Assessments include all necessary information.

Comment F: One commenter cited the provision of the interim final rule regarding additional information that should be included in EFH Assessments, and recommended deleting the language that encouraged providing an alternatives analysis ''particularly when an action is non-water dependent.'' Furthermore, this commenter thought nothing in the Magnuson-Stevens Act suggests that non-fishing, non-water dependent activities should be covered by the rule.

Response F: NMFS has deleted the reference to non-water dependent

activities from this section of the regulations because water dependency is not necessarily a more important consideration than others in determining the need for an alternatives analysis. NMFS disagrees, however, with the commenter's assertion that non-water dependent activities should not be covered by the rule. Section 305(b)(2) of the Magnuson-Stevens Act requires consultation for any federal action that may adversely affect EFH and does not distinguish between water and non-water dependent activities.

Comment G: A commenter asked NMFS to explain a statement in the response to comments on EFH Assessments in the preamble to the interim final rule at 62 FR 66545, which said that an action agency's conclusions regarding a potential adverse impact should be ''well supported by relevant research.'' The commenter asked that NMFS use the same standard when making EFH Conservation Recommendations.

Response G: The final rule contains additional language to clarify that the level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the federal action. Simple actions involving minor adverse effects on EFH would not necessitate that an action agency's conclusions be documented by citations to relevant research, whereas more complex actions and more detailed EFH Assessments could benefit from a review of pertinent literature. NMFS agrees that its EFH Conservation Recommendations must be based on the best scientific information available, and has modified § 600.920(d) accordingly.

28. Comments on the Use of Existing Consultation or Environmental Review Procedures

Comment A: One commenter stated that it was not NMFS' responsibility to make the implementation of all Federal laws more efficient.

Response A: In emphasizing the use of existing environmental review processes for EFH consultation, NMFS seeks to make more efficient the implementation of the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act, not all Federal laws.

Comment B: Many commenters expressed concern about significant project delays due to the requirements for EFH consultation, and argued that EFH consultation should occur within the normal approval times established by Federal agencies for their authorizations. Some of these commenters said that NMFS does not have the authority to set or influence time frames for EFH consultations.

Response B: The EFH regulations include numerous provisions to make EFH consultations efficient and effective, such as the use of existing environmental review procedures, General Concurrences, programmatic consultations, and options for using compressed schedules for abbreviated or expanded consultation. Regardless of the approach used for EFH consultation, NMFS will strive to provide its EFH Conservation Recommendations to action agencies within the normal public or agency comment periods for proposed actions.

Federal agencies are required by section 305(b)(2) of the Magnuson-Stevens Act to consult with the Secretary regarding actions that may adversely affect EFH. Section 305(d) of the Act authorizes the Secretary to promulgate such regulations as may be necessary to implement any provision of the Act. Accordingly, NMFS may establish time lines it considers appropriate to provide adequate notification and coordination regarding proposed actions and to allow sufficient time to prepare EFH Conservation Recommendations for actions that would adversely affect EFH. The rule allows NMFS and Federal agencies to agree to compressed consultation schedules in certain situations. In addition, existing environmental review processes may be used that allow shorter time frames for EFH consultation.

Comment C: Numerous individuals and ten conservation and fishery organizations stated that the regulatory language in the interim final rule for the use of existing environmental review procedures was adequate and should not be changed. Another two commenters requested that procedures for use of existing environmental review processes not be changed until additional experience has been gained with the use of these processes to determine whether they meet the requirements of the law.

Response C: The final rule includes only minor changes to the regulations regarding use of existing processes for EFH consultations. The changes are not substantive and are intended to clarify this portion of the rule.

Comment D: Numerous individuals and ten conservation and fishery organizations expressed concern that a specific review of potential impacts of activities that may adversely affect EFH was critical, and that NMFS should not rely wholly on other environmental review processes.

Response D: NMFS agrees, and the final rule clarifies that Federal agencies must provide NMFS with a written assessment of the effects of any action that may adversely affect EFH. While agencies may incorporate an EFH Assessment into documents prepared under another environmental review process, the assessment must still include all of the required information specified in the rule, which will ensure specific consideration of potential impacts to EFH. The final rule also explains that the level of detail in the EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse impacts on EFH.

Comment E: Three commenters recommended that the final rule require (rather than encourage) the use of existing environmental review processes for EFH consultations.

Response E: While NMFS strongly encourages the use of existing processes and has signed more than 40 findings to date with various Federal agencies at both the national and regional levels, the use of existing processes is not appropriate in all situations. An action may be so unique or infrequent that a stand-alone EFH consultation is the most efficient approach to meet the statutory requirements, or a Federal agency may prefer to complete EFH consultation prior to initiating another required consultation (e.g., under ESA). In addition, other approaches to EFH consultation, such as programmatic consultations and General Concurrences, may be more efficient for certain categories of actions.

Comment F: Three fishery or conservation organizations recommended that the rule be modified such that when using an existing process to complete EFH consultation, Federal agencies are required to notify NMFS of a proposed action according to the same time frames as in the existing process or 60–90 days prior to final agency action, whichever provides greater notice.

Response F: The final rule specifies that existing processes must provide NMFS with timely notification and states that whenever possible NMFS should have at least 60 days notice prior to a final decision, or at least 90 days if the actions would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter time frames provided they allow sufficient time for NMFS to develop EFH Conservation Recommendations. Any use of an existing environmental review process for EFH consultation requires that NMFS determine that the existing or modified process satisfies the

requirements of the Magnuson-Stevens Act, and if so, make a finding before the process may be used for EFH consultation. NMFS will not make findings for existing processes that do not provide adequate time to conduct EFH consultations.

Comment G: One commenter remarked that the rule sets forth extremely stringent criteria for the use of existing environmental review processes for EFH consultations, such that no existing processes are likely to meet these criteria and all will have to be modified significantly to satisfy the requirements.

Response G: Based on NMFS' experience implementing the interim final rule, this has proven not to be the case. To date NMFS has signed more than 40 findings with Federal agencies at both the regional and national level to use existing processes for EFH consultation. Numerous EFH consultations have been completed using a variety of other review processes pursuant to the National Environmental Policy Act; Clean Water Act; Rivers and Harbors Act; Marine Protection, Research, and Sanctuaries Act; Fish and Wildlife Coordination Act; and Endangered Species Act.

Comment H: One commenter supported the use of existing procedures but noted that their use does not mean that no additional resources or time would be needed to comply with the EFH consultation requirements, because existing procedures may not have considered the specific factors involved in addressing adverse affects to EFH.

Response H: NMFS agrees. Congress declared in section 2 of the Magnuson-Stevens Act that habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States and noted that a purpose of the Act is to promote the protection of EFH in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. The statutory mandates for Federal agencies to consult on activities that may adversely affect EFH and to respond to NMFS' EFH Conservation Recommendations were intended as new requirements. NMFS designed the approaches to EFH consultation detailed in the final rule to implement the EFH provisions in an efficient manner, using existing processes and other mechanisms to minimize additional workload.

29. Comments on the Use or Development of General Concurrences and/or Programmatic Consultations

Comment A: Two commenters asked NMFS to provide an update in the preamble to the final rule on the number of General Concurrences and programmatic consultations completed under the interim final rule and the overall status of NMFS' efforts to encourage the use of these two approaches to EFH consultations.

Response A: NMFS has completed one General Concurrence and five programmatic consultations to date. The General Concurrence applies to actions authorized by the Army Corps of Engineers New England District via programmatic general permits under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. The programmatic consultations cover certain Minerals Management Service petroleum development activities in the central and western Gulf of Mexico; certain Corps of Engineers nationwide permits; actions authorized by the Corps of Engineers Alaska District under general permits associated with the Anchorage Wetlands Management Plan; actions authorized by the Corps of Engineers Alaska District under general permits for water, wastewater, and sanitation facilities in Alaskan villages; and land management activities undertaken by the Bureau of Land Management and the Forest Service with the Oregon Coast, Lower Columbia River, and Willamette River Provinces of Oregon. NMFS is discussing several more General Concurrences and programmatic consultations with Federal agencies, and continues to advocate the use of these approaches to help reduce the number of actions that require individual consultations.

In the course of working with Federal agencies to identify opportunities for developing General Concurrences and programmatic consultations, it became apparent to NMFS that some parties were confused about the distinction between these two approaches to EFH consultation. General Concurrences may be developed for categories of similar actions that would cause no more than minimal adverse effects on EFH individually or cumulatively. No further consultation is generally required for actions that fall within a General Concurrence. Programmatic consultations also cover categories of actions, but are not limited to actions with minimal effects on EFH and may result in identifying effects that need to be addressed separately through project-specific consultation. To help clarify the difference between General Concurrences and programmatic consultations, and to provide clearer guidance on how to conduct programmatic consultations, the final rule discusses programmatic consultations in a distinct section.

NMFS also discovered through implementing the interim final rule that although General Concurrences are meant to be an efficient way of dispensing with consultations on actions that have minimal adverse effects, the process for issuing General Concurrences has actually hindered their development. The interim final rule required NMFS to consult with the appropriate Council(s) and provide an opportunity for public review prior to issuing a General Concurrence. These requirements stemmed from comments NMFS received on the Framework and proposed rule expressing concern that General Concurrences might allow more than minimal adverse effects to EFH without some degree of oversight.

For the General Concurrence that NMFS completed, NMFS coordinated with the affected Councils. However, NMFS found the process to be cumbersome and not very beneficial. Council meeting agendas are often very full, and because General Concurrences are intended to address minor threats to EFH, the Councils did not view the proposed General Concurrence as a high priority and were not able to accommodate it immediately on their meeting agendas. Also, a discussion of the proposed General Concurrence could not be added to Council agendas at the last minute if time permitted because the Magnuson-Stevens Act does not allow additions to Council meeting agendas without public notice or within 14 days before a meeting. Since Councils meet relatively infrequently, this led to delays. After NMFS briefed the Councils, NMFS sought public comment through Council meetings and a **Federal Register** notice, but received no comments. In other cases nationwide, NMFS considered developing General Concurrences but deferred action because the time-consuming process of soliciting Council and public input led to potential General Concurrences being eclipsed by other EFH priorities. In summary, while the intent behind General Concurrences was to improve efficiency and allow NMFS and other agencies to focus more effort on actions posing a greater threat to EFH, the cumbersome process of issuing General Concurrences has discouraged their use, with little

apparent benefit in terms of public and Council review.

NMFS modified the regulations to address these procedural inefficiencies while still keeping the public and Councils informed regarding General Concurrences. The final rule omits the requirements for public review and consultation with the appropriate Council(s), but contains a new provision stating that after completing a General Concurrence NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means. The final rule retains language allowing NMFS to review and revise General Concurrences as needed, so NMFS can make adjustments if necessary to ensure that General Concurrences only cover actions with minimal adverse effects to EFH.

Comment B: One conservation group commented that programmatic consultations do not ensure that individual projects or actions will be designed to minimize adverse effects, and thus consultation should occur at both the programmatic and project-specific level. Another organization commented that General Concurrences should not be used as an excuse to avoid project-specific consultations.

Response B: Neither programmatic consultations nor General Concurrences may be used to avoid abbreviated or expanded consultation if an action warrants individual review to evaluate potential adverse effects to EFH. The final rule clarifies that for a programmatic consultation, NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and will identify any potential adverse effects that require project-specific consultation because they could not be addressed programmatically. In some cases, however, it may be possible to address all reasonably foreseeable adverse effects to EFH with programmatic recommendations, so there would be no need for consultation on individual actions taken as part of the program. Likewise, General Concurrences can only be used for specified actions that have no more than minimal adverse effects on EFH, and any action that does not meet that standard would require separate consultation.

Comment C: One commenter asked for clarification of the programmatic consultation process.

Response C: NMFS agrees that clearer guidance is warranted for the programmatic consultation process. The final rule discusses programmatic consultation in a distinct subsection of § 600.920 to allow easier comparison to the other approaches to conducting EFH consultations, and provides more detail on the purpose of and process for programmatic consultations.

Comment D: One commenter said the process for developing General Concurrences is vague and may be burdensome.

Response D: As discussed above, NMFS discovered through implementation that the process in the interim final rule for developing General Concurrences was more complicated and time-consuming than NMFS intended. The final rule simplifies and clarifies this process by removing the requirements for public review and consultation with the appropriate Council(s).

Comment E: Many commenters said that NMFS should develop General Concurrences or programmatic consultations to cover actions related to the specific industries or activities in which the commenters are engaged, such as port development and operations, forest products, and petroleum development. Some of these commenters asked for clarification of proponents' responsibilities when advancing such a request.

Response E: The development of a General Concurrence or programmatic consultation is initiated by NMFS or a Federal agency, although other interested parties may bring to the attention of NMFS or a Federal agency specific types of actions that might be appropriate for one of these categorical approaches to EFH consultation. Affected industries or other groups are not required to provide specific information in support of such a request, although specificity regarding the actions to be covered and their potential effects to EFH would help NMFS and the action agency evaluate such proposals.

Comment F: A few commenters addressed the standards for determining whether a General Concurrence is appropriate for a given suite of actions. Two of these commenters asked for clarification of the standard that General Concurrences may be used for actions that would not cause greater than minimal adverse effects on EFH individually and cumulatively. A Federal agency recommended that NMFS should determine before issuing a General Concurrence not only that the actions would cause no more than minimal adverse effects, but also that coastal ecosystem health, including EFH, will generally benefit as a result of the Federal actions.

Response F: Given the wide variety of Federal actions that could adversely affect EFH, NMFS decided that rather than defining ''minimal adverse effects'' in the rule, it is best to determine separately for each contemplated General Concurrence whether the actions would cause greater than minimal adverse effects on EFH individually and cumulatively. In general terms, however, minimal effects are those that can be considered negligible in terms of their impact on the quality or quantity of EFH due to their limited scope and/or duration. Since EFH consultation covers effects to EFH specifically rather than effects to coastal ecosystems in general, it is not appropriate to state in the rule that General Concurrences must benefit coastal ecosystem health.

Comment G: One commenter said that it should be up to the Federal action agency to determine whether programmatic consultation is appropriate for a given circumstance, and suggested that it is improper for NMFS to tell Federal agencies how to consult.

Response G: NMFS disagrees. NMFS must determine what type of EFH consultation is appropriate for any given Federal action or group of actions so that NMFS can ensure the consultation is consistent with the Secretary's interpretation of the requirements of section 305(b)(2) of the Magnuson-Stevens Act. It is important to select the appropriate approach to EFH consultation so that the exchange of information between NMFS and the Federal agency considers potential effects to EFH at a suitable level of detail, resulting in NMFS having the information necessary to provide EFH Conservation Recommendations as required by section 305(b)(4)(A) of the Magnuson-Stevens Act. If a Federal agency attempts to use a method of consultation that NMFS determines is inappropriate for a given action or actions, NMFS will advise the agency as to which approach is best suited to handle the action(s). If a Federal agency nevertheless fails to consult properly for actions that would adversely affect EFH, NMFS will provide EFH Conservation Recommendations based on the information available.

Comment H: One commenter suggested that NMFS provide an example to illustrate how a Federal agency would track actions taken under a General Concurrence, as called for in the interim final rule. The commenter also recommended that the final rule require, rather than just suggest, annual reporting from each action agency.

Response H: Tracking actions covered by a General Concurrence is necessary to ensure that the cumulative effects of the actions are no more than minimal. The final rule retains language from the interim final rule stating that tracking should include the number of actions taken under a General Concurrence, the amount and type of habitat adversely affected, and the baseline against which the actions will be tracked. For example, for a particular General Concurrence tracking could entail a Federal agency providing NMFS with periodic reports specifying this information, comparing the condition of the EFH prior to the actions with its condition after the actions, and providing any revised estimates of the number or location of actions expected during the next reporting period. The final rule does not require such reporting on an annual basis because there may be circumstances where reporting on another time cycle would be equally effective.

Comment I: One commenter said that General Concurrences should also apply to Councils, so that Councils would not comment on individual Federal actions for which a General Concurrence has been issued.

Response I: General Concurrences are a means of obviating the need for Federal agencies to consult with NMFS individually on specified types of actions that would cause no more than minimal adverse effects on EFH. The Magnuson-Stevens Act does not require Federal agencies to consult with Councils regarding EFH, and General Concurrences do not apply to comments from Councils on Federal actions. As discussed above, the final rule modifies the process for NMFS to coordinate with Councils regarding the development of General Concurrences. NMFS will provide a copy of all General Concurrences to the appropriate Council(s). If the Councils agree that the actions covered by a General Concurrence would have no more than minimal adverse effects on EFH, it is unlikely that the Councils would comment on those actions. However, Councils have independent authority under section 305(b)(3) of the Magnuson-Stevens Act to comment on federal and state agency actions that may affect the habitat of fishery resources under Council jurisdiction.

30. Comments on the Expanded Consultation Process

Comment: Several commenters representing non-fishing interests wanted NMFS to clarify the thresholds for conducting EFH consultations and EFH expanded consultations. The commenters wanted NMFS to define the ''substantial adverse effects'' standard for actions requiring expanded consultation, and wanted examples of federal actions that would result in expanded consultation. Also, one commenter wanted to know who would be responsible for the costs of completing an EFH Assessment if an expanded consultation was required.

Response: Section 305(b)(2) of the Magnuson-Stevens Act requires federal agencies to consult with NMFS when any Federal action may adversely affect EFH. The EFH regulations require expanded consultation for Federal actions that would result in substantial adverse effects to EFH. Generally, the action agency determines the appropriate level of consultation, although if NMFS believes that a proposed action will have substantial adverse effects on EFH, NMFS may request expanded consultation. The determination of substantial adverse effects should be based on project-specific considerations, such as the ecological importance or sensitivity of an area, the type and extent of EFH affected, and the type of activity. Substantial adverse effects are effects that may pose a relatively serious threat to EFH and typically could not be alleviated through minor modifications to a proposed action. For example, a harbor development project that requires significant dredging and filling, channel realignments, or shoreline stabilization near EFH would likely be considered to have substantial adverse effects to EFH. Regardless of the type of consultation, the action agency is responsible for preparing an EFH Assessment.

31. Comments on Supplemental Consultation

Comment: Two commenters recommended that NMFS delete the section of the rule concerning supplemental consultation. One of these commenters said there is no provision in the Magnuson-Stevens Act to reopen a consultation. The other commenter thought this section was ambiguous and said that because of this provision action agencies and affected parties will not know whether consultations are final.

Response: The provision on supplemental consultation is a necessary and appropriate part of the regulations because it informs Federal agencies that changes to the factual basis behind a completed EFH consultation may warrant reinitiating the consultation. Supplemental consultation is not necessary unless a Federal agency substantially revises its plans for an action in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH Conservation Recommendations. It is reasonable to expect that a substantial change in circumstances may warrant review and potentially a change in EFH Conservation Recommendations.

32. Comments on NMFS' EFH Conservation Recommendations

Comment A: Several commenters asked for more information to clarify the role of EFH Conservation Recommendations. One commenter asked whether the recommendations NMFS will make on Federal or state actions that would adversely affect EFH are limited to the recommendations contained in FMPs for EFH conservation and enhancement. Another expressed confusion about the difference between EFH Conservation Recommendations and EFH Assessments.

Response A: The term ''EFH Conservation Recommendations'' in the final rule refers to recommendations provided by NMFS to a Federal or state agency pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS is required to provide these recommendations regarding any Federal or state agency action that would adversely affect EFH, and Federal agencies are required to provide a detailed written response to such recommendations under section 305(b)(4)(B) of the Act. Thus, EFH Conservation Recommendations have different legal connotations than other EFH-related recommendations called for under the Magnuson-Stevens Act, such as Council recommendations to Federal or state agencies under section 305(b)(3), or recommendations for EFH conservation and enhancement in FMPs pursuant to section 303(a)(7). The final rule capitalizes the term ''EFH Conservation Recommendations'' to help emphasize that these recommendations differ from other EFH-related recommendations discussed in the regulations.

EFH Conservation Recommendations are not limited to the recommendations contained in FMPs for EFH conservation and enhancement under section 303(a)(7) of the Act. For EFH consultations, NMFS' EFH Conservation Recommendations are based in part on EFH Assessments prepared by Federal agencies to describe the effects of agency actions on EFH.

Comment B: One commenter said that NMFS should release its EFH Conservation Recommendations in draft form and make them available for public comment before conveying the

recommendations to a Federal or state agency.

Response B: NMFS disagrees. Providing a comment period on EFH Conservation Recommendations could result in delays for Federal and state agencies that may be relying on NMFS' input to decide on appropriate measures to avoid or minimize adverse effects to EFH. Moreover, since EFH Conservation Recommendations are non-binding, they do not impose restrictions on proposed actions. If an action agency agrees with NMFS' EFH Conservation Recommendations but determines that adopting the recommendations may result in substantial changes to a proposed action, the agency may be required to seek additional public input under other laws before taking a final action that incorporates NMFS' recommendations.

Comment C: Several commenters asked NMFS to clarify the process for providing EFH Conservation Recommendations to state agencies. Three of these commenters suggested that the final rule say specifically that state agencies are not required to consult with NMFS. A state regulatory agency asked for clarification as to when NMFS will provide EFH Conservation Recommendations to state agencies. The same agency asked whether NMFS and the Councils will provide recommendations by category of activity or adverse impact (e.g., dredging or filling) or on a case-by-case basis.

Response C: The final rule includes a clarification that the Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. The final rule retains language stating that NMFS will use existing coordination procedures or establish new procedures to identify state agency actions that may adversely affect EFH and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies. In general, NMFS will strive to provide EFH Conservation Recommendations as appropriate on individual actions during the agency or public comment period. Councils may provide general recommendations in FMPs by category of activity or adverse impact under section 303(a)(7) of the Magnuson-Stevens Act, and may comment on individual actions under section 305(b)(3) of the Act.

Comment D: A number of non-fishing industries commented that NMFS has little or no experience or expertise to evaluate non-fishing activities and provide recommendations.

Response D: NMFS has commented on a variety of non-fishing threats to fish habitat under the Fish and Wildlife Coordination Act, National Environmental Policy Act, and other statutes since the agency was established in 1970. NMFS comments on thousands of such activities every year. Under section 305(b)(4)(A) of the amended Magnuson-Stevens Act, NMFS now is required to provide conservation recommendations for any Federal or state agency action that would adversely affect EFH. While NMFS may not have extensive expertise on all such threats to EFH, the information provided by Federal agencies through the consultation process in EFH Assessments will help NMFS to understand potential adverse effects and develop appropriate EFH Conservation Recommendations.

Comment E: One commenter referenced the section of the interim final rule that said Federal agencies and NMFS must use the best scientific information available regarding the effects of proposed actions on EFH. The commenter said that NMFS should also use the best scientific information available to support its mitigation recommendations.

Response E: NMFS agrees and has modified the regulations to add that Federal agencies and NMFS also must use the best scientific information available regarding the measures that can be taken to avoid, minimize, or offset adverse effects on EFH.

33.Comments on Federal Action Agency Responsibilities After Receiving NMFS' EFH Conservation Recommendations

Comment A: Three commenters recommended that NMFS delete the provision requiring that Federal agency responses that are inconsistent with EFH Conservation Recommendations must include the scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects. The commenters stated that NMFS has no authority to require a scientific justification, and pointed out that agencies may reject NMFS' recommendations on non-scientific grounds.

Response A: As noted in the preamble to the interim final rule at 62 FR 66546, section 305(d) of the Magnuson-Stevens Act gives the Secretary authority to issue regulations necessary to carry out any provision of the Act, including the provision that calls for a detailed written response to NMFS' EFH Conservation Recommendations and an explanation for not following the recommendations. In the regulations, NMFS interprets this statutory requirement to include explaining the basis for any disagreement over technical matters that are within NMFS' area of expertise. NMFS acknowledges that Federal agencies may disagree with EFH Conservation Recommendations for reasons that involve economic costs, public safety considerations, or other factors unrelated to the scientific merit of the recommendations, and the rule does not require a scientific justification in such cases.

Comment B: Several commenters said that NMFS does not have the authority to request further review of Federal agency decisions that are inconsistent with EFH Conservation Recommendations.

Response B: NMFS disagrees. The process for further review of Federal agency decisions that are inconsistent with NMFS' EFH Conservation Recommendations is integral to completing interagency consultation effectively under section 305(b)(2) of the Magnuson-Stevens Act. Interagency consultations by nature involve an exchange of information between agencies, and the process for further review provides a mechanism for resolving disagreements. NMFS has no authority to compel another Federal agency to hold final actions in abeyance pending the resolution of disputes about EFH. However, since NMFS does not anticipate requesting further review very frequently, NMFS hopes that Federal agencies will agree to defer final decisions temporarily if NMFS requests further review.

Comment C: One commenter said that the process for further review must preserve the autonomy of the action agency to decide whether to implement NMFS' recommendations.

Response C: NMFS agrees. NMFS' recommendations are non-binding. If a Federal agency ultimately decides not to accept one or more recommendations, the final rule and section 305(b)(4)(B) of the Magnuson-Stevens Act merely require the agency to explain in writing the reasons for not following the recommendations.

Comment D: Several commenters requested more information about the process for further review of Federal action agency decisions that are inconsistent with NMFS' EFH Conservation Recommendations. One of these commenters said the final rule should specify a time period within which disagreements must be resolved. Another asked for the final rule to specify sequential levels of review in each agency and procedures for suspending action agency decisions during higher level review. Two of the commenters asked for more detailed procedures for involving the Councils in

higher level review of action agency decisions.

Response D: The final rule does not include a time frame for resolving disagreements, nor does it specify sequential levels of review. Likewise, the final rule does not call for suspending action agency decisions pending higher level review. NMFS relies on other agencies to agree to further review of decisions that are inconsistent with NMFS' EFH Conservation Recommendations, including the procedures and time frames for such review. Procedures for Council involvement in higher level review are already discussed in the regulations, and may be elaborated upon if appropriate in any written procedures NMFS might develop to refine the process in the future.

34.Comments on Compliance with Applicable Laws and Executive Orders

Comment A: One commenter asked for clarification on the relationship between the interim final rule and Executive Order 12962 on Recreational Fisheries.

Response A: Although the EFH regulations and Executive Order 12962 both promote the themes of sustainability and interagency cooperation, there is no direct relationship between Executive Order 12962 and the Magnuson-Stevens Act EFH provisions. Executive Order 12962 was specifically designed to restore and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide. Executive Order 12962 established the National Recreational Fisheries Coordination Council (the Coordination Council) to develop and encourage partnerships between government and private sports fishing and boating groups to foster aquatic conservation that benefits recreational fisheries. The Coordination Council was to promote conservation awareness of aquatic restoration programs and evaluate the effects of Federal activities on recreational fishing. The EFH regulations pertain to all federally managed species without distinguishing between commercial and recreational fisheries. The EFH regulations establish procedures to identify important habitats and evaluate the effects of various actions on EFH, rather than on recreational or commercial fishing.

Comment B: Several commenters questioned whether NMFS had met its responsibilities under the Small Business Regulatory Enforcement Fairness Act (SBREFA), Title II of the Unfunded Mandates Reform Act, and Executive Order 12866.

Response B: The Regulatory Flexibility Act (RFA), as amended by SBREFA, requires federal agencies to prepare an initial and final regulatory flexibility analysis for a rule unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made such a certification to the Chief Counsel for Advocacy of the Small Business Administration, as required by 5 U.S.C. 605(b). Therefore, NMFS was not required to complete an initial or final regulatory flexibility analysis under RFA.

Under the Unfunded Mandates Reform Act, Federal agencies are required to enter a consultation process for any rulemaking that places responsibilities on another level of government (e.g., states) without paying the costs for carrying out these duties. Title II describes analyses and consultations that agencies must undertake for rules that may result in expenditures over $100 million in any year by state, local, and tribal governments, or the private sector. This rule will not require any expenditures by, nor place any responsibilities or duties on, state, local, or tribal governments, or the private sector. EFH consultations regarding Federal permits, licenses, or funding could lead the responsible Federal agency to restrict or limit the proposed action, which may result in indirect costs on the entity seeking the authorization or funding. However, any such requirements would be imposed at the discretion of the responsible Federal agency, and it would be speculative to evaluate such costs in conjunction with this rulemaking. Therefore, NMFS was not required to develop an assessment of the effects of this rule on other levels of government or the private sector.

The final rule has been determined to be significant for the purposes of Executive Order 12866. As such, NMFS submitted this rule to the Office of Management and Budget (OMB) for review and approval.

Comment C: One commenter thought the finding of no significant impact under the National Environmental Policy Act ignores the substantial amounts of staff time and other resources that Federal agencies will divert from other priorities to meet the EFH requirements.

Response C: NMFS completed a revised EA that addresses how the final rule could affect various parties, including Federal agencies. The provisions of the final rule related to Federal agency consultation with NMFS could result in an expenditure of time and resources that detracts from other activities. However, the rule implements a clear requirement in the Magnuson-Stevens Act for Federal agencies to consult with NMFS on any action that may adversely affect EFH. The rule provides guidance on required information for consultations and encourages agencies to combine the consultation process with existing environmental review procedures, so that consultations will be completed in an efficient and effective manner.

Changes from the Interim Final Rule

NMFS restructured parts of the section detailing the EFH contents of FMPs by providing a separate overview of the mandatory requirements and separating into distinct sections the guidelines for addressing general habitat information, information necessary to describe and identify EFH, and considerations for determining the limits of EFH. NMFS also restructured the section addressing fishing activities that may adversely affect EFH by separating into distinct sections the guidelines for evaluation of fishing activities and minimization of adverse effects. NMFS made these changes in response to commenters' concerns about a lack of clarity in the interim final rule, and based on NMFS' experience working with the Councils to add EFH information to existing FMPs.

NMFS reorganized parts of the coordination, consultation, and recommendation procedures by providing a separate summary of the five approaches for conducting EFH consultation; addressing the requirements for EFH Assessments before providing the procedures for each approach for EFH consultation; and placing the requirements for programmatic consultations in a distinct section. NMFS made these revisions in response to commenters' concerns that the consultation requirements were confusing and difficult to follow.

The changes to the rule are predominantly technical or administrative in nature and clarify intent or otherwise ease implementation of the EFH provisions of the Magnuson-Stevens Act. The following changes are listed in the order that they appear in the regulations. Grammatical or other minor changes are not detailed. Unless otherwise discussed below, the rationale for why changes were made from the interim final rule is contained in the Comments and Responses section.

In many cases throughout the final rule ''effect'' or ''affect'' replaces ''impact'' because the Magnuson-

Stevens Act uses ''affect'' in the applicable provision of the statute, and/or to reflect common usage of the terms in the fields of ecology and environmental assessment. Also, ''Federal agency'' or ''agency'' replaces ''Federal action agency'' or ''action agency'' in many places throughout the rule. This change eliminates redundancy and simplifies the text, particularly given that many sections of the rule only apply to Federal agencies with actions that may adversely affect EFH (i.e., Federal action agencies).

Throughout the final rule the phrase ''fishery management unit'' replaces the acronym ''FMU'' to improve understanding. ''Action'' replaces ''proposed action'' in many places to be inclusive of all types of agency actions. In several instances throughout Subpart J of the final rule ''life stage'' replaces ''life history stage'' to use the more common scientific term. In several places throughout Subpart K, ''existing environmental review process'' replaces ''existing consultation process'' to encompass environmental reviews that are not consultations per se.

In a number of places throughout the final rule, paragraphs have been renumbered and references to paragraphs and sections have been changed to reflect the renumbering.

In § 600.805, paragraph (a), ''EFH provisions'' replaces ''provision on EFH'' to improve clarity.

In § 600.805, paragraph (b), ''An FMP may'' replaces ''A Council may'' to clarify that FMPs are the appropriate vehicle to discuss habitat for species not included in the fishery management unit, if a Council chooses to do so.

In § 600.810, paragraph (a), NMFS modified the definition of ''adverse effect'' by deleting the parenthetical examples of direct and indirect effects and instead explaining that ''Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH.'' The definition also includes new language to clarify that ''Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.''

In § 600.810, paragraph (a), the definition of ''Council'' omits the word ''Secretarial'' to be consistent with the definition of this term in § 600.305(c) and 600.910(a).

In § 600.810, paragraph (a), the definition of ''habitat area of particular concern'' refers to areas identified pursuant to § 600.815(a)(8) rather than § 600.815(a)(9) because the final rule includes renumbered paragraphs.

In § 600.815, paragraph (a), a new paragraph (1) entitled ''Description and identification of EFH'' replaces the former paragraphs (1) ''Habitat requirements by life history stage'' and (2) ''Description and identification of EFH.'' As discussed above, the new organization clarifies the mandatory contents of FMPs by providing a separate overview and separating into distinct sections the guidelines for addressing general habitat information, information necessary to describe and identify EFH, and considerations for determining the limits of EFH. The language within this paragraph includes much of the language from corresponding sections of the interim final rule. Substantive changes are described below.

In § 600.815, paragraph (a), the description of Level 1 information (formerly § 600.815(a)(2)(i)(C)(*1*); now § 600.815(a)(1)(iii)(A)(*1*)) clarifies that distribution data need not necessarily be limited to systematic presence/absence sampling data. The word ''distribution'' replaces ''presence/absence'' and ''geographic range'' replaces ''distribution.'' The paragraph also includes a new sentence: ''Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage.''

In § 600.815, paragraph (a), a new paragraph (1)(iii)(B) says that in the absence of information to identify habitat usage by a given species or life stage, EFH should not be designated.

In § 600.815, paragraph (a), the former paragraph (2)(ii)(A) (now numbered (1)(iv)(A)) includes a new introductory sentence. The word ''described'' replaces ''obtained through the analysis'' and ''identified as EFH of managed species'' replaces ''protected as EFH for managed species.'' The words ''at each life stage'' now appear at the end of the sentence regarding Level 1 information. The sentence regarding Level 2 through 4 information appears in a different place in the paragraph to improve organization, and instead of saying the information should be used ''to identify the habitats valued most highly within the geographic range of the species'' the sentence includes new language to identify ''habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species.'' In the same paragraph ''distribution'' replaces ''presence/absence'' and the former ''identify those habitat areas most commonly used'' reads ''identify EFH as those habitat areas most commonly used'' because the purpose of the analysis is to identify EFH, if sufficient information is available. A new sentence advises Councils to explain the analyses conducted to distinguish EFH from all habitats potentially used by a species, which will improve understanding of the basis for the designations. The paragraph omits three sentences: ''Areas so identified should be considered essential for the species. However, habitats of intermediate and low value may also be essential, depending on the health of the fish population and the ecosystem. Councils must demonstrate that the best scientific information available was used in the identification of EFH, consistent with national standard 2, but other data may also be used for the identification.'' The first of these sentences is unnecessary since references to identifying EFH now appear earlier in the paragraph. The second sentence is unnecessary and confusing since other provisions of the rule allow Councils to identify EFH broadly if warranted, and in such cases the habitats would not be regarded as intermediate or low value. The third sentence is unnecessary and redundant with the requirements of the Magnuson-Stevens Act.

In § 600.815, paragraph (a), a new paragraph (1)(iv)(B) includes more specific guidance for the text descriptions of EFH.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(B) (now numbered (1)(iv)(C)), ''may'' replaces ''should'' so that the rule permits, but no longer strongly recommends, considering all habitats currently used by a species to be essential, as well as certain historic habitats, if a species is overfished and habitat factors may be contributing to the species being identified as overfished. Councils should make this determination on a case-by-case basis. In the same paragraph, ''should be reviewed and amended'' replaces ''should be reviewed, and the FMP amended'' because in many cases the identification of EFH can be amended via a framework adjustment rather than a full FMP amendment.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(C) (now numbered (1)(iv)(D)), ''Areas described as EFH will normally'' replaces ''EFH will always.''

The final rule omits the language that appeared as § 600.815 (a)(2)(ii)(D) of the

interim final rule to eliminate redundancy.

In § 600.815, paragraph (a), the former paragraph (2)(ii)(E) (now numbered (1)(v)(E)) omits ''or species assemblage'' and includes two new sentences to explain the conditions for designating EFH for species assemblages.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(F) (now numbered (1)(iv)(F)), ''stream or river blockages'' replaces ''fish blockages'' to be more accurate about the problem to be address by improved fish passage techniques. The text omits the words ''or quantity'' before ''measures'' to eliminate jargon and redundancy. The word ''necessary'' replaces ''essential'' to improve consistency with the Magnuson-Stevens Act.

In § 600.815, paragraph (a), in the former paragraph (2)(iii) (now numbered (1)(v)), the final rule contains new language to clarify the guidance for mapping EFH. The changes are intended to encourage more explicit and informative EFH maps in FMPs, based on NMFS' experience with maps produced using the guidance in the interim final rule. The new language requires that FMPs include maps that display, within the constrains of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. The new language also encourages Councils to map different types of habitat designated as EFH to the extent possible; to use maps to distinguish EFH from non-EFH areas; to confer with NMFS regarding national mapping standards; and to include maps of HAPCs.

Section 600.815, paragraph (a)(2) includes reorganized and expanded guidance regarding fishing activities that may adversely affect EFH (formerly addressed in paragraph (a)(3)). The final rule includes separate subsections on the evaluation of fishing activities and minimization of adverse effects, and explains in more detail the information that Councils should address in these portions of FMPs.

In § 600.815, paragraph (a), the former paragraph (3)(iv) (now numbered (2)(iii)) includes a new title, ''Practicability,'' and omits the phrase ''whether, and to what extent, the fishing activity is adversely impacting EFH, including the fishery'' to eliminate redundancy. The language also omits the phrase ''and whether the management measures are practicable, taking into consideration'' to eliminate redundancy. To clarify the intent of considering costs and benefits, the words ''the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation'' replace ''the long and short-term costs as well as benefits to the fishery and its EFH, along with other appropriate factors.'' A new sentence clarifies that Councils are not required to perform a formal cost/benefit analysis.

In § 600.815, paragraph (a), in the former paragraph (4)(i) (now numbered (2)(iv)(A)), ''damage to EFH'' replaces ''physical damage in EFH'' because adverse effects are not limited to physical effects.

Section 600.815, paragraph (3) is new. The paragraph clarifies that FMPs must identify threats to EFH from fishing activities that are managed under laws other than the Magnuson-Stevens Act, such as state managed fisheries or those fisheries managed by other agencies. The language addresses non-Magnuson-Stevens Act fishing directly, whereas the interim final rule more indirectly stated in § 600.815(a)(3)(ii) that FMPs must assess all fishing equipment types used in EFH.

In § 600.815, paragraph (a), the former paragraph (5) is now numbered (4). The title of the paragraph omits ''Identification of'' to reduce wordiness. The sentence ''FMPs must identify activities other than fishing that may adversely affect EFH'' replaces ''FMPs must identify activities that have the potential to adversely affect EFH quantity or quality, or both.'' This change clarifies that the requirement is to identify all adverse effects to EFH from non-fishing activities. The same paragraph omits language saying that FMPs should describe the EFH most likely to be adversely affected and should explain the mechanisms that may cause the effects, because this language is redundant with the sentence saying that FMPs should describe known and potential adverse effects to EFH. The paragraph also omits two sentences regarding geographical analysis of non-fishing impacts, because Councils should have the flexibility to analyze potential impacts using any suitable approach.

In § 600.815, the former paragraph (a)(6) is now numbered (a)(5). To provide context, the explanation of cumulative impacts appears at the beginning of the paragraph rather than later. The words ''the cumulative impacts of'' appear before ''fishing and non-fishing activities'' to emphasize that the focus is cumulative effects. To emphasize EFH over other fish habitat, the term ''the function of EFH'' replaces ''habitat function'' and ''EFH'' replaces ''the managed species' habitat.'' The paragraph omits the discussion of cumulative impacts from fishing that appeared in the interim final rule, because the final rule addresses cumulative impacts from fishing as part of the evaluation of fishing activities that may adversely affect EFH (§ 600.815(a)(2)(i)). The paragraph omits other language from the interim final rule that described suggested contents of cumulative impacts analyses and mapping for cumulative impacts, because Councils should have flexibility to evaluate cumulative impacts using any appropriate methods. The paragraph omits discussion of research needs pertaining to cumulative impacts because research needs are covered adequately in § 600.815(a)(9). The paragraph also omits language regarding schedules for research because Councils have no control over such schedules.

In § 600.815, the former paragraph (a)(7) is now numbered (a)(6). To more accurately reflect the statutory language, the text states that ''FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for'' adverse effects. The paragraph omits ''and promote the conservation and enhancement of EFH'' to better reflect the Councils' role as outlined in the EFH provisions of the Magnuson-Stevens Act. The paragraph also omits the general recommendations and options for conservation and enhancement that appeared in the interim final rule.

In § 600.815, the former paragraph (a)(8) is now numbered (a)(7). The words ''may be'' replace ''is'' because loss of prey does not always constitute an adverse effect on EFH and managed species. The first sentence omits the word ''a'' before ''managed species'' because adverse effects may apply to more than one species. To clarify that the consideration of effects to prey is consistent with the Magnuson-Stevens Act, the phrase ''because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding'' replaces ''because one component of EFH is that it be necessary for feeding.'' To clarify the conditions under which effects to prey should be considered, the phrase ''may be considered adverse effects on EFH if such actions reduce the quality and/or quantity of EFH'' replaces ''may be considered adverse effects on a managed species and its EFH.'' The word ''list'' replaces ''identify'' and ''discuss'' replaces ''generally describe'' to be clearer about how FMPs should address prey species and their habitat. The final rule omits

the sentence from the interim final rule saying that actions that cause a reduction of the prey species population should be described and identified. This language caused confusion about the scope of the required analysis, and was substantially redundant with other text in the paragraph.

In § 600.815, the former paragraph (a)(9) is now numbered (a)(8). The final rule combines the two introductory sentences from the interim final rule to be more concise, and the word ''considerations'' replaces ''criteria.''

In § 600.815, the former paragraph (a)(10) is now numbered (a)(9). The final rule includes much more concise text to explain that FMPs should identify the research and information needed to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

In § 600.815, the former paragraph (a)(11) is now numbered (a)(10). The final rule omits the words ''including an update of the equipment assessment originally conducted pursuant to paragraph (a)(3)(ii) of this section'' to eliminate redundancy. The final rule clarifies that Councils and NMFS should ''revise or amend EFH provisions as warranted based on available information.'' The final rule omits the language stating that ''each FMP amendment should include a provision requiring review and update of EFH information and preparation of a revised FMP amendment if new information becomes available'' and instead says that ''FMPs should outline the procedures the Council will follow to review and update EFH information.'' The final rule adds a sentence to provide guidance on the type of information the Councils and NMFS should examine when updating the EFH provisions of FMPs. These changes better reflect the process for revising FMPs based on a review of current information. The language in this section also clarifies that the Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation report. The new words ''all EFH'' clarify the type of information that needs to be reviewed at least once every five years.

In § 600.815, the final rule omits paragraph (b) of the interim final rule to eliminate redundancy with § 600.805(b)(1).

In § 600.815, the former paragraph (c) is now (b) and the heading includes the words ''for Councils'' to clarify that the EFH recommendations referred to in this paragraph are recommendations from NMFS to the Councils. The final rule adds new text explaining the intent and timing of NMFS' written recommendations to assist the Councils in identifying EFH and adverse affects to EFH, and incorporating EFH information into FMPs. The paragraph omits several sentences from the interim final rule that provided for public review of NMFS' written EFH recommendations.

In § 600.905, paragraph (c), ''NMFS'' replaces ''the Secretary'' to clarify that the NMFS is the agency responsible for working with the Councils. Additional language changes in this paragraph serve to simplify the language and reduce wordiness.

In § 600.910, paragraph (a), the final rule modifies the definition of ''adverse effect'' in the same manner as in § 600.810(a). The final rule omits the definition of ''Council'' provided in the interim final rule because the definition was originally meant to provide for NMFS' comments under section 305(b)(3) of the Magnuson-Stevens Act, allowing NMFS to comment as a Council for FMPs developed by the Secretary. This provision is unnecessary since NMFS comments will be provided under section 305(b)(4)(A).

In § 600.910, paragraph (a) also includes a new definition for ''anadromous fishery resource under Council authority'' to clarify that the term means an anadromous species managed under an FMP. The interim final rule discussed anadromous fishery resources in § 600.930(c), and NMFS explained that provision in the preamble to the interim final rule at 62 FR 66546. Upon further consideration, NMFS determined that § 600.930(c) and the preamble were not sufficiently clear as to what species should be considered anadromous fishery resources under Council authority for purposes of section 305(b)(3)(B) of the Magnuson-Stevens Act. Since Councils may not have sufficient expertise regarding non-managed anadromous species to provide the comments and recommendations that are required by section 305(b)(3)(B) of the Act, NMFS determined that the most appropriate interpretation of that section is for ''anadromous fishery resource under Council authority'' to mean those anadromous species managed under FMPs.

In § 600.915 the final rule adds the phrase ''and the general public'' and ''EFH'' replaces ''such habitat.''

In § 600.920, paragraph (a)(1), the phrase ''actions that were completed prior to the approval of EFH designations by the Secretary'' replaces the phrase ''completed actions.'' The second sentence of the paragraph adds the phrase ''if the renewal, review, or revision may adversely affect EFH'' to the end of the sentence. The final rule adds a reference to paragraph (j) of this section to refer to the procedures for programmatic consultation. The final rule includes new text that describes the requirement to complete EFH consultations for emergency Federal actions that may adversely affect EFH. This addition clarifies the requirement and timing for EFH consultations for Federal actions that must be carried out in an expedited manner due to emergency circumstances. If consultation is not practicable before taking an emergency action, Federal agencies may consult after-the-fact and NMFS may provide EFH Conservation Recommendations for measures to offset any unavoidable adverse effects to EFH.

The final rule omits § 600.920(a)(2) of the interim final rule and instead describes the five approaches for conducting consultation, and discusses procedures for programmatic consultation in a separate section. Section 600.920, new paragraph (a)(3), titled ''Early notification and coordination,'' encourages discussions of measures to conserve EFH for actions that may adversely affect EFH as early as practicable during project planning. In the interim final rule this language appeared in the procedures for abbreviated consultation but it applies equally to other types of consultation.

In § 600.920, paragraph (b), ''should'' replaces ''must'' to encourage, but not require, the lead agency to notify NMFS in writing that is representing another agency or agencies. New text provides additional clarification of when one Federal agency's EFH consultation may suffice for one of another Federal agency.

In § 600.920, paragraph (c), the final rule allows a non-Federal representative to conduct any type of EFH consultation.

In § 600.920, paragraph (d) adds a phrase clarifying that the best scientific information is needed regarding the effects of actions on EFH ''and the measures that can be taken to avoid, minimize, or offset such effects.≥

In § 600.920, paragraph (e) discusses EFH Assessments. This discussion was moved from § 600.920, paragraph (g) of the interim final rule to provide better organization and understanding of the provision.

In § 600.920, paragraph (e)(1) omits the language that suggested that EFH Assessments are unnecessary for some activities, and clarifies the preparation requirements for EFH Assessments associated with the development of General Concurrences and

programmatic consultations. Additional text clarifies that ''Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH because EFH consultation is not required for such actions.'' The final sentence omits that words ''consultation of'' to eliminate confusing language.

Section 600.920 adds a new paragraph (e)(2), titled ''Level of detail,'' to explain that the extent of information in an EFH Assessment should be based on the complexity and magnitude of the adverse affects of the action.

In § 600.920, paragraph (e)(3)(ii) adds ''potential adverse'' before ''effects'' and omits ''cumulative effects'' and ''associated species such as major prey species, including affected life history stages.'' This simplifies the rule and provides consistency with the definition of ''adverse effects'' provided in the final rule.

In § 600.920, paragraph (e)(3)(iii) ''conclusions'' replaces ''views'' to clarify that Federal agencies must indicate their opinions regarding the results or implications of the EFH Assessment.

In § 600.920, paragraph (e)(4)(iv) omits ''particularly when an action is non-water dependent.''

In § 600.920, former paragraph (e) is now paragraph (f) and the heading as been changed from ''Use of existing consultation/environmental review procedures'' to ''Use of existing environmental review procedures.''

In § 600.920, paragraph (f)(1) is newly titled ''Criteria'' rather than ''Purpose and criteria'' to better reflect the content of the paragraph. The paragraph now uses acronyms for ''National Environmental Policy Act'' and ''Endangered Species Act.'' The final rule adds reference to section 305(b)(4) of the Magnuson-Stevens Act and additional text to reflect that consultation under sections 305(b)(2) and 305(b)(4) of the Act, including abbreviated or expanded consultations, can be combined with existing environmental review procedures if the procedures meet or are modified to meet stated criteria.

In § 600.920, paragraph (f)(1)(i), to improve clarity ''Whenever possible'' replaces ''However'' and ''provided that'' replaces ''if.''

In § 600.920, paragraph (f)(1)(ii), the phrase ''the action agency must identify that section of the document as the EFH Assessment'' replaces the phrase ''that section of the document must be clearly identified as the EFH Assessment'' to clarify that it is the action agency's responsibility to identify an EFH Assessment when submitted as part of another document.

In § 600.920, paragraph (f)(1)(iii), ''can be used to satisfy'' replaces ''satisfies'' because even when using another environmental review process, specified procedures must be followed to fulfill the requirements of the Magnuson-Stevens Act. Also, the final rule adds reference to section 305(b)(4) of the Magnuson-Stevens Act to clarify that when consulting under section 305(b)(2), NMFS will use the process specified in a finding to provide EFH Conservation Recommendations. However, in the absence of a finding, if a Federal agency fails to consult under section 305(b)(2) of the Act, NMFS may provide EFH Conservation Recommendations under section 305(b)(4) either through another environmental review process or separately.

In § 600.920, paragraph (f)(2) is newly titled as ''NMFS response to Federal agency'' rather than ''EFH conservation recommendation requirements'' to better reflect the process described in this paragraph. The final rule replaces ''consultation'' with ''environmental review'' to clarify that the use of existing review processes is not limited to consultation processes. To eliminate redundancy, the final rule omits language reiterating the requirements of section 305(b)(4)(B) of the Magnuson-Stevens Act and the procedures for further review of Federal agency decisions. ''Will'' replaces ''shall'' since ''shall'' is used in the regulations only when quoting statutory language directly, to avoid confusion with the future tense, and ''will'' is used descriptively, as distinguished from denoting an obligation to act or the future tense. ''Action agency'' has been added to clarify from whom a response is needed pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act.

In § 600.920, paragraph (f)(3) includes a new phrase ''to combine the EFH consultation requirements with'' and removes the phrase ''can be used to satisfy the EFH consultation requirements.'' These and other minor changes to the paragraph clarify that existing or modified environmental reviews cannot substitute for an EFH consultation but can provide the format and process for an EFH consultation.

In § 600.920, paragraph (f) is now paragraph (g). Paragraph (g)(1) omits the word ''process'' to emphasize the end product rather than the process.

In § 600.920, paragraph (g)(2)(i) omits ''after consultation with the appropriate Council(s).'' The rule no longer requires NMFS to consult with the Councils before issuing a General Concurrence.

In § 600.920, paragraph (g)(2)(ii) includes the new phrase ''actions covered by a General Concurrence'' to clarify what activities need to be tracked. The final rule splits the second sentence into two sentences and restructures the language to improve clarity and remove redundancy. The final rule omits ''of habitat adversely affected'' and includes other minor edits to increase clarity and reduce wordiness. The addition of ''applicable'' clarifies that tracking information related to actions covered by a General Concurrence does not need to be made available to all Councils.

In § 600.920, paragraph (g)(2)(iv), ''proposed for actions that may adversely affect'' replaces ''developed for actions affecting'' to convey that the review for potential effect to HAPCs should occur while a proposed General Concurrence is being evaluated.

In § 600.920, paragraph (g)(3), ''an EFH Assessment containing a description'' replaces ''a written description'' to clarify that a Federal agency's request for a General Concurrence must include an EFH Assessment that evaluates the anticipated effects of the actions to be covered under the General Concurrence. The final rule omits the phrase ''and associated species and their life history stages,'' since this is implicit in an evaluation of effects to EFH. The final rule omits the phrase ''after consultation with the appropriate Council(s).'' The final rule also removes the phrase ''and that preparation of EFH Assessments for individual actions subject to the General Concurrence is not necessary'' to eliminate redundancy. ''Another type of'' replaces ''abbreviated or expanded'' to better describe the options available for consultation if a General Concurrence is not issued.

In § 600.920, paragraph (g)(4) is newly titled as ''Further consultation'' rather than ''Notification and further consultation.'' ''Request'' replaces ''require'' to more accurately reflect NMFS' role in asking for further consultation for actions covered under a General Concurrence.

In § 600.920, paragraph (g)(5) is newly titled as ''Notification'' rather than ''Public review.'' The rule no longer requires an opportunity for public or Council review before NMFS provides a Federal agency with a written statement of General Concurrence. The new paragraph states that NMFS will notify the appropriate Council(s) and make the General Concurrence available to the public.

In § 600.920, paragraph (g)(6) omits ''findings of'' to avoid confusion between establishing a finding pursuant to § 600.920(f)(3) of the final rule and issuing a General Concurrence under § 600.920(g).

Section 600.920(g) of the interim final rule addressed EFH Assessments. The final rule discusses EFH Assessments in § 600.920(e).

In § 600.920, paragraph (h)(2) is newly titled as ''Notification by agency and submittal of EFH Assessment'' rather then ''Notification by agency.'' Paragraph (h)(2) is combined with former paragraph (h)(3) and condensed to provide clearer guidance on notification and submittal of an EFH assessment.

In § 600.920, the former paragraph (h)(4)is now numbered (h)(3). The final rule provides new language regarding NMFS' response to an EFH Assessment to clarify that the type of response depends upon NMFS' determination of potential adverse effects to EFH. The final rule removes ''accurately'' to eliminate any suggestion that a Federal agency's EFH Assessment for abbreviated consultation might include inaccuracies. The paragraph adds the words ''in writing'' to clarify how NMFS will request that a Federal agency initiate expanded consultation for actions that may result in substantial adverse effects to EFH. The term ''additional'' replaces ''expanded'' to more accurately describe the type of consultation being discussed. The paragraph is restructured to state more succinctly that NMFS will provide EFH Conservation Recommendations, if appropriate. Also, the final rule deletes the sentence stating that ''NMFS will send a copy of its response to the appropriate Council.''

In § 600.920, the former paragraph (h)(5), which is now numbered (h)(4), omits ''complete'' and ''NMFS must receive it'' to reduce wordiness.

Section 600.920, paragraph (i)(2), is newly titled ''Notification by agency and submittal of EFH Assessment'' rather than ''Initiation.'' This paragraph omits ''completed'' to reduce wordiness. The paragraph includes the new phrase ''to facilitate review of the effects of the action on EFH'' to clarify why additional information identified under § 600.920(e)(4) should be submitted. To eliminate potential confusion with programmatic consultations, the paragraph omits the language that allowed a request for expanded consultation to encompass several similar individual actions within a given geographic area.

In § 600.920, paragraph (i)(3)(iv), the final rule omits the sentence stating that ''NMFS will also provide a copy of the recommendations to the appropriate Council(s).''

In § 600.920, paragraph (i)(4) omits ''complete'' to reduce wordiness, and contains new language clarifying that NMFS and Federal agencies may agree to conduct consultation early in the planning cycle for actions with lengthy approval processes.

In § 600.920, paragraph (j) is a new section on programmatic consultation.

In § 600.920, former paragraph (j) is now paragraph (k).

Section 600.920 paragraph (k)(1) replaces ''the appropriate Council'' with ''to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act'' to clarify which Councils must receive the Federal agency's written response to EFH Conservation Recommendations. The final rule adds ''from NMFS'' to more accurately parallel the statutory language requiring the Federal agency to provide its detailed written response within 30 days of receiving recommendations under section 305(b)(4)(A) of the Act. The final rule restructures the language from the interim final rule that required a response be provided at least 10 days prior to final approval of an action, if a decision by the Federal agency is required in fewer than 30 days. The new language requires a response at least 10 days prior to final approval only if the Federal agency's response is inconsistent with any of NMFS' EFH Conservation Recommendations, because there is no need for a 10–day review period if the Federal agency accepts NMFS' recommendations.

In § 600.920, paragraph (k)(2), ''NMFS may develop written procedures'' replaces ''Memoranda of agreement or other written procedures will be developed'' to reflect that any form of written procedures may be developed as necessary to further define review processes. The word ''may'' replaces ''will'' because written procedures may not be necessary in all cases. Also, the paragraph omits ''with Federal action agencies'' to reduce wordiness.

In § 600.925, paragraph (a) omits ''EFH conservation recommendations'' and ''suggest'' and adds ''recommend'' to be clearer and more concise.

In § 600.925, paragraph (b) omits the redundant statement that the recommendations fulfill the requirements of section 305(b)(4)(A) of the Magnuson-Stevens Act. The paragraph also omits the statement that ''NMFS will provide a copy of such recommendation to the appropriate Councils.''

In § 600.925, paragraph (c)(1) clarifies with new text that ''the Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH.'' ''NMFS will'' replaces ''each NMFS region should'' to convey more clearly that NMFS intends to use existing coordination procedures when making recommendations to state agencies. The final rule omits the unnecessary reference to other statutes in describing the use of existing coordination procedures. ''To determine'' replaces ''for determining.'' The final rule omits the sentence stating the ''NMFS will provide a copy of such recommendation to the appropriate Council(s).''

In § 600.925, paragraph (c)(2), the phrase ''is authorized, funded, or undertaken'' replaces ''requires authorization or funding'' to better reflect the requirements of the Magnuson-Stevens Act.

In § 600.925, paragraph (d) is a new paragraph, titled ''Coordination with Councils,'' that describes how NMFS will coordinate with each Council to identify actions on which the Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act.

Section 600.930 includes new language describing the statutory authority for Council comments and recommendations to Federal and state agencies.

In § 600.930, paragraph (a), the words ''habitat, including EFH, of a species under its authority'' replace ''EFH of a species managed under its authority'' to better reflect the statutory authority for Councils to comment on Federal or state actions. The phrase ''actions of concern that would adversely affect EFH'' replaces ''actions that may adversely impact EFH'' to convey more clearly that the Regional Administrator would screen the actions.

In § 600.930, paragraph (b), a change from passive to active voice clarifies that ''Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies.''

The final rule omits § 600.930, paragraph (c) of the interim final rule because that paragraph is redundant with the new definition of ''anadromous fishery resource under Council authority'' in § 600.910(a).

Classification

The NOAA Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to the National Environmental Policy Act (NEPA)

NMFS prepared a new EA for the final rule, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. The regulations contain guidelines to the Councils for incorporating EFH information into FMPs in accordance with the Magnuson-Stevens Act, and procedures to be used by NMFS, the Councils, and Federal action agencies to satisfy the coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. Any specific effects of the EFH provisions of individual FMPs will be addressed in NEPA documents prepared for the approval of those FMP provisions. A copy of the EA is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be significant for the purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. As discussed in the response to comments above, NMFS received comments on the interim final rule questioning whether the agency had met its responsibilities under applicable laws requiring economic analyses. These comments did not cause any change in the certification regarding effects on small entities. As a result, NMFS was not required to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 601 *et seq.*). The rule provides guidelines to the Councils for developing the EFH components of FMPs in compliance with the Magnuson-Stevens Act, and the guidelines do not have the force of law. Should Councils establish fishing regulations as a result of the guidelines, those actions may affect small entities and could be subject to the requirement to prepare regulatory flexibility analyses at the time the Councils propose them. The rule also establishes consultation procedures and a process for NMFS to provide EFH Conservation Recommendations to Federal and state action agencies. However, because compliance with NMFS recommendations is not mandatory, any effects on small businesses would be speculative.

This final rule does not include policies that have federalism implications as that term is defined in Executive Order 13132. This rule establishes procedures for consultation between Federal agencies and NMFS when Federal actions may adversely affect EFH. States are not required to consult regarding EFH. The rule requires NMFS to provide conservation recommendations for any Federal or state actions that would adversely affect EFH. The Councils may comment and make recommendations on Federal and state actions that may affect EFH and must comment and make conservation recommendations concerning any Federal or state activity that is likely to substantially affect the habitat of an anadromous fishery resource under Council authority. Neither NMFS' nor the Council's recommendations are mandatory, and states are not required to respond to the recommendations. Similarly, the rule does not require any expenditures by, nor place any responsibilities or duties on, state, local, or tribal governments. Therefore, in accordance with the provisions of the Unfunded Mandates Reform Act, NMFS was not required to develop an assessment of the effects of this rule on other levels of government or the private sector.

NMFS determined that this rule does not have reasonably foreseeable coastal effects and that this action is consistent to the maximum extent practicable with the approved coastal management programs for the coastal states. Therefore, a Coastal Zone Management Act consistency determination is not needed. EFH provisions of FMPs should be provided to state coastal zone consistency coordinators for review prior to approval by the Secretary.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act (PRA). The PRA requires OMB clearance for most planned information collections. The only information collection that derives from the rule is the requirement for Federal agencies to prepare EFH Assessments for actions that may adversely affect EFH. OMB clearance is not required for a collection of information from Federal agencies.

The rule provides guidance to the Councils on how to designate EFH and establishes a consultation process for Federal actions that may adversely affect EFH. This action will not result in a taking of private property and does not have takings implications. Accordingly, NMFS was not required to complete a Federal takings assessment.

This rule does not contain policies that have tribal implications as that term is defined in Executive Order 13175.

This rule will not have a significant adverse effect on the supply, distribution, or use of energy, and preparation of a Statement of Energy Effects under Executive Order 13211 is not required. EFH consultations result in non-binding conservation recommendations. EFH consultations regarding Federal permits, licenses, or funding could lead the responsible Federal agency to restrict or limit proposed actions, which potentially may affect entities seeking authorization or funding for projects involving energy supply, distribution, or use. However, any such requirements would be imposed at the discretion of the responsible Federal agency, and it would be speculative to evaluate the effects of such requirements in conjunction with this rulemaking.

List of Subjects in 50 CFR Part 600

Administrative practice and procedures, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations.

Dated: January 7, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON–STEVENS ACT PROVISIONS

1.The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2.In § 600.10, the definition for ''Essential fish habitat'' is revised to read as follows:

§ 600.10 Definitions.

* * * * *

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: ''Waters'' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; ''substrate'' includes sediment, hard bottom, structures underlying the waters, and associated biological communities; ''necessary'' means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and ''spawning, breeding, feeding, or growth to maturity'' covers a species' full life cycle.

* * * * *

3. Subparts J and K of part 600 are revised to read as follows:

* * * * *

Subpart J—Essential Fish Habitat (EFH)

Sec.

600.805 Purpose and scope.
600.810 Definitions and word usage.
600.815 Contents of Fishery Management Plans.

Subpart K—EFH Coordination, Consultation, and Recommendations

600.905 Purpose, scope, and NMFS/Council cooperation.
600.910 Definitions and word usage.
600.915 Coordination for the conservation and enhancement of EFH.
600.920 Federal agency consultation with the Secretary.
600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.
600.930 Council comments and recommendations to Federal and state agencies.

Subpart J—Essential Fish Habitat (EFH)

§ 600.805 Purpose and scope.

(a) *Purpose.* This subpart provides guidelines for Councils and the Secretary to use in adding the required EFH provisions to an FMP, i.e., description and identification of EFH, adverse effects on EFH (including minimizing, to the extent practicable, adverse effects from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered.* An EFH provision in an FMP must include all fish species in the fishery management unit (FMU). An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic.* EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3, and in the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that may adversely affect such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

*Council*includes the Secretary, as applicable, when preparing FMPs or amendments under sections 304(c) and (g) of the Magnuson-Stevens Act.

Ecosystem means communities of organisms interacting with one another and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to section 304(e)(1) of the Magnuson-Stevens Act.

(b) *Word usage.* The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Description and identification of EFH*—(i) *Overview.* FMPs must describe and identify EFH in text that clearly states the habitats or habitat types determined to be EFH for each life stage of the managed species. FMPs should explain the physical, biological, and chemical characteristics of EFH and, if known, how these characteristics influence the use of EFH by the species/life stage. FMPs must identify the specific geographic location or extent of habitats described as EFH. FMPs must include maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found.

(ii) *Habitat information by life stage.* (A) Councils need basic information to understand the usage of various habitats by each managed species. Pertinent information includes the geographic range and habitat requirements by life stage, the distribution and characteristics of those habitats, and current and historic stock size as it affects occurrence in available habitats. FMPs should summarize the life history information necessary to understand each species' relationship to, or dependence on, its various habitats, using text, tables, and figures, as appropriate. FMPs should document patterns of temporal and spatial variation in the distribution of each major life stage (defined by developmental and functional shifts) to aid in understanding habitat needs. FMPs should summarize (e.g., in tables) all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. The information should be supported with citations.

(B) Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. Councils should consider different types of information according to its scientific rigor. FMPs should identify species-specific habitat data gaps and deficits in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation). FMPs must demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2.

(iii) *Analysis of habitat information.* (A) The following approach should be used to organize the information necessary to describe and identify EFH.

(*1*) *Level 1: Distribution data are available for some or all portions of the geographic range of the species.* At this level, only distribution data are available to describe the geographic range of a species (or life stage). Distribution data may be derived from systematic presence/absence sampling and/or may include information on species and life stages collected

opportunistically. In the event that distribution data are available only for portions of the geographic area occupied by a particular life stage of a species, habitat use can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior. Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage.

(*2*) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., density or relative abundance) are available for the habitats occupied by a species or life stage. Because the efficiency of sampling methods is often affected by habitat characteristics, strict quality assurance criteria should be used to ensure that density estimates are comparable among methods and habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(*3*) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life stage).

(*4*) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(B) Councils should strive to describe habitat based on the highest level of detail (i.e., Level 4). If there is no information on a given species or life stage, and habitat usage cannot be inferred from other means, such as information on a similar species or another life stage, EFH should not be designated.

(iv) *EFH determination.* (A) Councils should analyze available ecological, environmental, and fisheries information and data relevant to the managed species, the habitat requirements by life stage, and the species' distribution and habitat usage to describe and identify EFH. The information described in paragraphs (a)(1)(ii) and (iii) of this section will allow Councils to assess the relative value of habitats. Councils should interpret this information in a risk-averse fashion to ensure adequate areas are identified as EFH for managed species. Level 1 information, if available, should be used to identify the geographic range of the species at each life stage. If only Level 1 information is available, distribution data should be evaluated (e.g., using a frequency of occurrence or other appropriate analysis) to identify EFH as those habitat areas most commonly used by the species. Level 2 through 4 information, if available, should be used to identify EFH as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species. FMPs should explain the analyses conducted to distinguish EFH from all habitats potentially used by a species.

(B) FMPs must describe EFH in text, including reference to the geographic location or extent of EFH using boundaries such as longitude and latitude, isotherms, isobaths, political boundaries, and major landmarks. If there are differences between the descriptions of EFH in text, maps, and tables, the textual description is ultimately determinative of the limits of EFH. Text and tables should explain pertinent physical, chemical, and biological characteristics of EFH for the managed species and explain any variability in habitat usage patterns, but the boundaries of EFH should be static.

(C) If a species is overfished and habitat loss or degradation may be contributing to the species being identified as overfished, all habitats currently used by the species may be considered essential in addition to certain historic habitats that are necessary to support rebuilding the fishery and for which restoration is technologically and economically feasible. Once the fishery is no longer considered overfished, the EFH identification should be reviewed and amended, if appropriate.

(D) Areas described as EFH will normally be greater than or equal to aquatic areas that have been identified as ''critical habitat'' for any managed species listed as threatened or endangered under the Endangered Species Act.

(E) Ecological relationships among species and between the species and their habitat require, where possible, that an ecosystem approach be used in determining the EFH of a managed species. EFH must be designated for each managed species, but, where appropriate, may be designated for assemblages of species or life stages that have similar habitat needs and requirements. If grouping species or using species assemblages for the purpose of designating EFH, FMPs must include a justification and scientific rationale. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that are necessary to maintain a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(F) If degraded or inaccessible aquatic habitat has contributed to reduced yields of a species or assemblage and if, in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for stream or river blockages), improved water quality measures (removal of contaminants or increasing flows), and similar measures that are technologically and economically feasible, EFH should include those habitats that would be necessary to the species to obtain increased yields.

(v) *EFH mapping requirements.* (A) FMPs must include maps that display, within the constraints of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Maps should identify the different types of habitat designated as EFH to the extent possible. Maps should explicitly distinguish EFH from non-EFH areas. Councils should confer with NMFS regarding mapping standards to ensure that maps from different Councils can be combined and shared efficiently and effectively. Ultimately, data used for mapping should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation.

(B) Where the present distribution or stock size of a species or life stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known.

(C) FMPs should include maps of any habitat areas of particular concern identified under paragraph (a)(8) of this section.

(2) *Fishing activities that may adversely affect EFH*—(i)*Evaluation.* Each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity regulated under the FMP or other Federal FMPs. This evaluation should consider the effects of each fishing

activity on each type of habitat found within EFH. FMPs must describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing activity adversely affects EFH. The evaluation should also consider the cumulative effects of multiple fishing activities on EFH. The evaluation should list any past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The evaluation should give special attention to adverse effects on habitat areas of particular concern and should identify for possible designation as habitat areas of particular concern any EFH that is particularly vulnerable to fishing activities. Additionally, the evaluation should consider the establishment of research closure areas or other measures to evaluate the impacts of fishing activities on EFH. In completing this evaluation, Councils should use the best scientific information available, as well as other appropriate information sources. Councils should consider different types of information according to its scientific rigor.

(ii) *Minimizing adverse effects*. Each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, based on the evaluation conducted pursuant to paragraph (a)(2)(i) of this section and/or the cumulative impacts analysis conducted pursuant to paragraph (a)(5) of this section. In such cases, FMPs should identify a range of potential new actions that could be taken to address adverse effects on EFH, include an analysis of the practicability of potential new actions, and adopt any new measures that are necessary and practicable. Amendments to the FMP or to its implementing regulations must ensure that the FMP continues to minimize to the extent practicable adverse effects on EFH caused by fishing. FMPs must explain the reasons for the Council's conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

(iii) *Practicability*. In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.(iv) Options for managing adverse effects from fishing. Fishery management options may include, but are not limited to:

(A) *Fishing equipment restrictions*. These options may include, but are not limited to: seasonal and areal restrictions on the use of specified equipment, equipment modifications to allow escapement of particular species or particular life stages (e.g., juveniles), prohibitions on the use of explosives and chemicals, prohibitions on anchoring or setting equipment in sensitive areas, and prohibitions on fishing activities that cause significant damage to EFH.

(B) *Time/area closures*. These actions may include, but are not limited to: closing areas to all fishing or specific equipment types during spawning, migration, foraging, and nursery activities and designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life stages, such as those areas designated as habitat areas of particular concern.

(C) *Harvest limits*. These actions may include, but are not limited to, limits on the take of species that provide structural habitat for other species assemblages or communities and limits on the take of prey species.

(3) *Non-Magnuson-Stevens Act fishing activities that may adversely affect EFH*. FMPs must identify any fishing activities that are not managed under the Magnuson-Stevens Act that may adversely affect EFH. Such activities may include fishing managed by state agencies or other authorities.

(4) *Non-fishing related activities that may adversely affect EFH.* FMPs must identify activities other than fishing that may adversely affect EFH. Broad categories of such activities include, but are not limited to: dredging, filling, excavation, mining, impoundment, discharge, water diversions, thermal additions, actions that contribute to non-point source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. For each activity, the FMP should describe known and potential adverse effects to EFH.

(5) *Cumulative impacts analysis*. Cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. To the extent feasible and practicable, FMPs should analyze how the cumulative impacts of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts) and an assessment of the ecological risks resulting from the impact of those threats on EFH, also should be included.

(6) *Conservation and enhancement.* FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a)(3) through (5) of this section, especially in habitat areas of particular concern.

(7) *Prey species*. Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. FMPs should list the major prey species for the species in the fishery management unit and discuss the location of prey species' habitat. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.

(8) *Identification of habitat areas of particular concern*. FMPs should identify specific types or areas of habitat within EFH as habitat areas of particular concern based on one or more of the following considerations:

(i) The importance of the ecological function provided by the habitat.

(ii) The extent to which the habitat is sensitive to human-induced environmental degradation.

(iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iv) The rarity of the habitat type.

(9) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

(10) *Review and revision of EFH components of FMPs.* Councils and NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH provisions as warranted based on available information. FMPs should outline the procedures the Council will follow to review and update EFH information. The review of information should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e). A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every 5 years.

(b) *Development of EFH recommendations for Councils.* After reviewing the best available scientific information, as well as other appropriate information, and in consultation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations to assist each Council in the identification of EFH, adverse impacts to EFH, and actions that should be considered to ensure the conservation and enhancement of EFH for each FMP. NMFS will provide such recommendations for the initial incorporation of EFH information into an FMP and for any subsequent modification of the EFH components of an FMP. The NMFS EFH recommendations may be provided either before the Council's development of a draft EFH document or later as a review of a draft EFH document developed by a Council, as appropriate.

(c) *Relationship to other fishery management authorities.* Councils are encouraged to coordinate with state and interstate fishery management agencies where Federal fisheries affect state and interstate managed fisheries or where state or interstate fishery regulations affect the management of Federal fisheries. Where a state or interstate fishing activity adversely affects EFH, NMFS will consider that action to be an adverse effect on EFH pursuant to paragraph (a)(3) of this section and will provide EFH Conservation Recommendations to the appropriate state or interstate fishery management agency on that activity.

Subpart K—EFH Coordination, Consultation, and Recommendations

§ 600.905 Purpose, scope, and NMFS/Council cooperation.

(a) *Purpose.* These procedures address the coordination, consultation, and recommendation requirements of sections 305(b)(1)(D) and 305(b)(2–4) of the Magnuson-Stevens Act. The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

(b) *Scope.* Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Sections 305(b)(3) and (4) direct the Secretary and the Councils to provide comments and EFH Conservation Recommendations to Federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. Section 305(b)(4)(B) requires Federal agencies to respond in writing to such comments. The following procedures for coordination, consultation, and recommendations allow all parties involved to understand and implement the requirements of the Magnuson-Stevens Act.

(c) *Cooperation between Councils and NMFS.* The Councils and NMFS should cooperate closely to identify actions that may adversely affect EFH, to develop comments and EFH Conservation Recommendations to Federal and state agencies, and to provide EFH information to Federal and state agencies. NMFS will work with each Council to share information and to coordinate Council and NMFS comments and recommendations on actions that may adversely affect EFH. However, NMFS and the Councils also have the authority to act independently.

§ 600.910 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Anadromous fishery resource under Council authority means an anadromous species managed under an FMP.

Federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

State action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage.* The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.915 Coordination for the conservation and enhancement of EFH.

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become

familiar with areas designated as EFH, potential threats to EFH, and opportunities to promote the conservation and enhancement of EFH.

§ 600.920 Federal agency consultation with the Secretary.

(a) *Consultation generally*—(1) *Actions requiring consultation.* Pursuant to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions if the renewal, review, or revision may adversely affect EFH. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level under paragraph (j) of this section, if appropriate, with respect to these actions. Consultation is required for emergency Federal actions that may adversely affect EFH, such as hazardous material clean-up, response to natural disasters, or actions to protect public safety. Federal agencies should contact NMFS early in emergency response planning, but may consult after-the-fact if consultation on an expedited basis is not practicable before taking the action.

(2) *Approaches for conducting consultation.* Federal agencies may use one of the five approaches described in paragraphs (f) through (j) of this section to fulfill the EFH consultation requirements. The selection of a particular approach for handling EFH consultation depends on the nature and scope of the actions that may adversely affect EFH. Federal agencies should use the most efficient approach for EFH consultation that is appropriate for a given action or actions. The five approaches are: use of existing environmental review procedures, General Concurrence, abbreviated consultation, expanded consultation, and programmatic consultation.

(3) *Early notification and coordination.* The Federal agency should notify NMFS in writing as early as practicable regarding actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve EFH. Such early coordination should occur during pre-application planning for projects subject to a Federal permit or license and during preliminary planning for projects to be funded or undertaken directly by a Federal agency.

(b) *Designation of lead agency.* If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2) through (4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency should notify NMFS in writing that it is representing one or more additional agencies. Alternatively, if one Federal agency has completed an EFH consultation for an action and another Federal agency acts separately to authorize, fund, or undertake the same activity (such as issuing a permit for an activity that was funded via a separate Federal action), the completed EFH consultation may suffice for both Federal actions if it adequately addresses the adverse effects of the actions on EFH. Federal agencies may need to consult with NMFS separately if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on EFH and that agency does not act as the lead agency.

(c) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an EFH consultation by giving written notice of such designation to NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4)(B) of the Magnuson-Stevens Act.

(d) *Best available information.* The Federal agency and NMFS must use the best scientific information available regarding the effects of the action on EFH and the measures that can be taken to avoid, minimize, or offset such effects. Other appropriate sources of information may also be considered.

(e) *EFH Assessments*—(1) *Preparation requirement.* For any Federal action that may adversely affect EFH, Federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. For actions covered by a General Concurrence under paragraph (g) of this section, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation under paragraph (j) of this section, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation. Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH. Federal agencies may incorporate an EFH Assessment into documents prepared for other purposes such as Endangered Species Act (ESA) Biological Assessments pursuant to 50 CFR part 402 or National Environmental Policy Act (NEPA) documents and public notices pursuant to 40 CFR part 1500. If an EFH Assessment is contained in another document, it must include all of the information required in paragraph (e)(3) of this section and be clearly identified as an EFH Assessment. The procedure for combining an EFH consultation with other environmental reviews is set forth in paragraph (f) of this section.

(2) *Level of detail.* The level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the action. For example, for relatively simple actions involving minor adverse effects on EFH, the assessment may be very brief. Actions that may pose a more serious threat to EFH warrant a correspondingly more detailed EFH Assessment.

(3) *Mandatory contents.* The assessment must contain:

(i) A description of the action.

(ii) An analysis of the potential adverse effects of the action on EFH and the managed species.

(iii) The Federal agency's conclusions regarding the effects of the action on EFH.

(iv) Proposed mitigation, if applicable.

(4) *Additional information.* If appropriate, the assessment should also include:

(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(ii) The views of recognized experts on the habitat or species that may be affected.

(iii) A review of pertinent literature and related information.

(iv) An analysis of alternatives to the action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH.

(v) Other relevant information.

(5) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action,

supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with the EFH Assessment.

(f) *Use of existing environmental review procedures*—(1) *Purpose and criteria.* Consultation and commenting under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as NEPA, the Fish and Wildlife Coordination Act, Clean Water Act, ESA, and Federal Power Act. The requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act, including consultations that would be considered to be abbreviated or expanded consultations under paragraphs (h) and (i) of this section, can be combined with existing procedures required by other statutes if such processes meet, or are modified to meet, the following criteria:

(i) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH. The Federal agency should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing process. Whenever possible, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter timeframes provided that they allow sufficient time for NMFS to develop EFH Conservation Recommendations.

(ii) Notification must include an assessment of the impacts of the action on EFH that meets the requirements for EFH Assessments contained in paragraph (e) of this section. If the EFH Assessment is contained in another document, the Federal agency must identify that section of the document as the EFH Assessment.

(iii) NMFS must have made a finding pursuant to paragraph (f)(3) of this section that the existing process can be used to satisfy the requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(2) *NMFS response to Federal agency.* If an existing environmental review process is used to fulfill the EFH consultation requirements, the comment deadline for that process should apply to the submittal of NMFS EFH Conservation Recommendations under section 305(b)(4)(A) of the Magnuson-Stevens Act, unless NMFS and the Federal agency agree to a different deadline. If NMFS EFH Conservation Recommendations are combined with other NMFS or NOAA comments on a Federal action, such as NOAA comments on a draft Environmental Impact Statement, the EFH Conservation Recommendations will be clearly identified as such (e.g., a section in the comment letter entitled ''EFH Conservation Recommendations'') and a Federal agency response pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act is required for only the identified portion of the comments.

(3) *NMFS finding.* A Federal agency with an existing environmental review process should contact NMFS at the appropriate level (regional offices for regional processes, headquarters office for national processes) to discuss how to combine the EFH consultation requirements with the existing process, with or without modifications. If, at the conclusion of these discussions, NMFS determines that the existing or modified process meets the criteria of paragraph (f)(1) of this section, NMFS will make a finding that the process can be used to satisfy the EFH consultation requirements of the Magnuson-Stevens Act. If NMFS does not make such a finding, or if there are no existing consultation processes relevant to the Federal agency's actions, the agency and NMFS should follow one of the approaches for consultation discussed in the following sections.

(g) *General Concurrence*—(1) *Purpose.* A General Concurrence identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(2) *Criteria.* (i) For Federal actions to qualify for General Concurrence, NMFS must determine that the actions meet all of the following criteria:

(A) The actions must be similar in nature and similar in their impact on EFH.

(B) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(C) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(ii) Actions qualifying for General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. In most cases, tracking actions covered by a General Concurrence will be the responsibility of the Federal agency. However, NMFS may agree to track such actions. Tracking should include numbers of actions and the amount and type of habitat adversely affected, and should specify the baseline against which the actions will be tracked. The agency responsible for tracking such actions should make the information available to NMFS, the applicable Council(s), and to the public on an annual basis.

(iii) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (g)(2)(i) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iv) If a General Concurrence is proposed for actions that may adversely affect habitat areas of particular concern, the General Concurrence should be subject to a higher level of scrutiny than a General Concurrence not involving a habitat area of particular concern.

(3) *General Concurrence development.* A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with an EFH Assessment containing a description of the nature and approximate number of the actions, an analysis of the effects of the actions on EFH, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will provide the Federal agency with a written statement of General Concurrence that further consultation is not required. If NMFS does not agree that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will notify the Federal agency that a General Concurrence will not be issued and that another type of consultation will be required. If NMFS identifies specific types of Federal actions that may meet the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(4) *Further consultation.* NMFS may request notification for actions covered under a General Concurrence if NMFS concludes there are circumstances under which such actions could result in more than a minimal impact on EFH, or if it determines that there is no process in place to adequately assess the cumulative impacts of actions covered

under the General Concurrence. NMFS may request further consultation for these actions on a case-by-case basis. Each General Concurrence should establish specific procedures for further consultation, if appropriate.

(5) *Notification.* After completing a General Concurrence, NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means.

(6) *Revisions.* NMFS will periodically review and revise its General Concurrences, as appropriate.

(h) *Abbreviated consultation procedures*—(1) *Purpose and criteria.* Abbreviated consultation allows NMFS to determine quickly whether, and to what degree, a Federal action may adversely affect EFH. Federal actions that may adversely affect EFH should be addressed through the abbreviated consultation procedures when those actions do not qualify for a General Concurrence, but do not have the potential to cause substantial adverse effects on EFH. For example, the abbreviated consultation procedures should be used when the adverse effect(s) of an action could be alleviated through minor modifications.

(2) *Notification by agency and submittal of EFH Assessment.* Abbreviated consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for consultation.

(3) *NMFS response to Federal agency.* If NMFS determines, contrary to the Federal agency's assessment, that an action would not adversely affect EFH, or if NMFS determines that no EFH Conservation Recommendations are needed, NMFS will notify the Federal agency either informally or in writing of its determination. If NMFS believes that the action may result in substantial adverse effects on EFH, or that additional analysis is needed to assess the effects of the action, NMFS will request in writing that the Federal agency initiate expanded consultation. Such request will explain why NMFS believes expanded consultation is needed and will specify any new information needed. If expanded consultation is not necessary, NMFS will provide EFH Conservation Recommendations, if appropriate, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 60 days prior to a final decision on the action. NMFS must respond in writing within 30 days. NMFS and the Federal agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(i) *Expanded consultation procedures*—(1) *Purpose and criteria.* Expanded consultation allows maximum opportunity for NMFS and the Federal agency to work together to review the action's impacts on EFH and to develop EFH Conservation Recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effects of an action make expanded consultation appropriate.

(2) *Notification by agency and submittal of EFH Assessment.* Expanded consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for expanded consultation. Federal agencies are encouraged to provide in the EFH Assessment the additional information identified under paragraph (e)(4) of this section to facilitate review of the effects of the action on EFH.

(3) *NMFS response to Federal agency.* NMFS will:

(i) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(ii) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action. Such a site visit should be coordinated with the Federal agency and appropriate Council(s), if feasible.

(iii) Coordinate its review of the action with the appropriate Council(s).

(iv) Discuss EFH Conservation Recommendations with the Federal agency and provide such recommendations to the Federal agency, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 90 days prior to a final decision on the action. NMFS must respond within 60 days of submittal of a complete EFH Assessment unless consultation is extended by agreement between NMFS and the Federal agency. NMFS and Federal agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 60 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(5) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH Conservation Recommendations, NMFS may request additional time for expanded consultation. If NMFS and the Federal agency agree to an extension, the Federal agency should provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal agency do not agree to extend consultation, NMFS must provide EFH Conservation Recommendations to the Federal agency using the best scientific information available to NMFS.

(j) *Programmatic consultation*—(1) *Purpose.* Programmatic consultation provides a means for NMFS and a Federal agency to consult regarding a potentially large number of individual actions that may adversely affect EFH. Programmatic consultation will generally be the most appropriate option to address funding programs, large-scale planning efforts, and other instances where sufficient information is available to address all reasonably foreseeable adverse effects on EFH of an entire program, parts of a program, or a number of similar individual actions occurring within a given geographic area.

(2) *Process.* A Federal agency may request programmatic consultation by providing NMFS with an EFH Assessment in accordance with paragraph (e) of this section. The description of the proposed action in the EFH Assessment should describe the program and the nature and approximate number (annually or by some other appropriate time frame) of the actions. NMFS may also initiate programmatic consultation by requesting pertinent information from a Federal agency.

(3) *NMFS response to Federal agency.* NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and, if applicable, will identify any potential adverse effects that could not be addressed programmatically and require project-specific consultation. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH Conservation Recommendations will be deferred to project-specific consultations. If appropriate, NMFS' response may include a General Concurrence for activities that qualify under paragraph (g) of this section.

(k) *Responsibilities of Federal agency following receipt of EFH Conservation Recommendations*—(1) *Federal agency response.* As required by section 305(b)(4)(B) of the Magnuson-Stevens Act, the Federal agency must provide a detailed response in writing to NMFS and to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act within 30 days after receiving an EFH Conservation Recommendation from NMFS. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations, unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(2) *Further review of decisions inconsistent with NMFS or Council recommendations.* If a Federal agency decision is inconsistent with a NMFS EFH Conservation Recommendation, the Assistant Administrator for Fisheries may request a meeting with the head of the Federal agency, as well as with any other agencies involved, to discuss the action and opportunities for resolving any disagreements. If a Federal agency decision is also inconsistent with a Council recommendation made pursuant to section 305(b)(3) of the Magnuson-Stevens Act, the Council may request that the Assistant Administrator initiate further review of the Federal agency's decision and involve the Council in any interagency discussion to resolve disagreements with the Federal agency. The Assistant Administrator will make every effort to accommodate such a request. NMFS may develop written procedures to further define such review processes.

(l) *Supplemental consultation.* A Federal agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS EFH Conservation Recommendations.

§ 600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.

(a) *General.* Under section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH Conservation Recommendations to Federal and state agencies for actions that would adversely affect EFH. NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

(b) *Recommendations to Federal agencies.* For Federal actions, EFH Conservation Recommendations will be provided to Federal agencies as part of EFH consultations conducted pursuant to § 600.920. If NMFS becomes aware of a Federal action that would adversely affect EFH, but for which a Federal agency has not initiated an EFH consultation, NMFS may request that the Federal agency initiate EFH consultation, or NMFS will provide EFH Conservation Recommendations based on the information available.

(c) *Recommendations to state agencies*—(1) *Establishment of procedures.* The Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH, and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

(2) *Coordination with states on recommendations to Federal agencies.* When an action that would adversely affect EFH is authorized, funded, or undertaken by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH Conservation Recommendations developed as part of the Federal consultation procedures in § 600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

(d) *Coordination with Councils.* NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act. For such actions NMFS will share pertinent information with the Council, including copies of NMFS' EFH Conservation Recommendations.

§ 600.930 Council comments and recommendations to Federal and state agencies.

Under section 305(b)(3) of the Magnuson-Stevens Act, Councils may comment on and make recommendations to the Secretary and any Federal or state agency concerning any activity or proposed activity authorized, funded, or undertaken by the agency that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. Councils must provide such comments and recommendations concerning any activity that, in the view of the Council, is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority.

(a) *Establishment of procedures.* Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the habitat, including EFH, of a species under its authority. Each Council may receive information on actions of concern by methods such as directing Council staff to track proposed actions, recommending that the Council's habitat committee identify actions of concern, or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions of concern that would adversely affect EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies.

[FR Doc. 02–885 Filed 1–15–02; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 67, No. 12
Thursday, January 17, 2002

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 99–100–4]

Export Certification; Canadian Solid Wood Packing Materials Exported From the United States to China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations for the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. Prior to the interim rule, the packing materials had to be certified as having been heat treated in the United States. The interim rule allowed certification of packing materials that were heat treated in Canada if that treatment was certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. The interim rule was necessary to facilitate the exportation of the large volume of U.S. goods shipped to China using Canadian-origin coniferous solid wood packing materials.

EFFECTIVE DATE: The interim rule became effective on July 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Thomas, Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8367.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 11, 2001, and published in the **Federal Register** on July 17, 2001 (66 FR 37114–37117, Docket No. 99–100–3), we amended the export certification regulations in 7 CFR part 353 regarding the certification of softwood (coniferous) packing materials used with goods exported from the United States to China. The interim rule allowed certification of packing materials that were heat treated in Canada if that treatment was certified by the Canadian Food Inspection Agency to meet requirements established by the Government of the People's Republic of China. These changes were necessary to facilitate the exportation of the large volume of U.S. goods shipped to China using Canadian-origin coniferous solid wood packing materials.

Comments on the interim rule were required to be received on or before September 17, 2001. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

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

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

PART 353—EXPORT CERTIFICATION

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 353 and that was published at 66 FR 37114–37117 on July 17, 2001.

Authority: 7 U.S.C. 7711, 7712, 7718, 7751, and 7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of January, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1240 Filed 1–16–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–21–AD; Amendment 39–12598; AD 2002–01–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters that requires changes to the electrical power distribution system. This amendment is prompted by design deficiencies in the electrical systems. The actions specified by this AD are intended to prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter.

DATES: Effective February 21, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 21, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for BHTC Model 430 helicopters was published in the **Federal Register** on October 12, 2001 (66 FR 52072). That action proposed to

require, before further flight after March 31, 2002, accomplishing the electrical power distribution system changes in accordance with BHTC Alert Service Bulletin No. 430–01–19, dated February 22, 2001 (ASB).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 33 helicopters of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per helicopter to accomplish the changes to the electrical system, and that the average labor rate is $60 per work hour. The manufacturer states in its ASB that the parts will be provided at no cost before March 31, 2002. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $95,040.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–01–07 Bell Helicopter Textron Canada: Amendment 39–12598. Docket No. 2001–SW–21–AD.

Applicability: Model 430 helicopters, serial numbers 49002 through 49071, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both generators, loss of primary electrical power, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight after March 31, 2002, perform the Accomplishment Instructions, paragraphs 1 through 124, of Bell Helicopter Textron Canada Alert Service Bulletin No 430–01–19, dated February 22, 2001, which is terminating action for the requirements of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with the Accomplishment Instructions, paragraphs 1 through 124, of Bell Helicopter Textron Canada Alert Service Bulletin No 430–01–19, dated February 22, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 21, 2002.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–32R1, dated May 28, 2001.

Issued in Fort Worth, Texas, on January 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1055 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–56–AD; Amendment 39–12601; AD 2001–25–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–25–51, which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model MD900 helicopters by individual letters. This AD requires performing a dual power confirmation test on the Integrated Instrument Display System (IIDS) and inserting a revision to the Rotorcraft Flight Manual (RFM), as applicable. If the IIDS fails the power test, replacing it is required before further flight. Removing the temporary revision when the IIDS is replaced and inserting the applicable revision into the RFM is also required. This AD is prompted by the failure of the IIDS during a helicopter hover operation. The actions specified by this AD are intended to prevent total power failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter.

DATES: Effective February 1, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–51, issued on December 7, 2001, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 1, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–56–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The applicable service information may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at www.mdhelicopters.com. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Guy Dalla Riva, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5248, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On December 7, 2001, the FAA issued Emergency AD 2001–25–51 for MDHI Model MD900 helicopters, which requires performing a dual power confirmation test on the IIDS and inserting a revision to the RFM, as applicable. If the IIDS fails the power test, replacing it is required before further flight. Removing the temporary revision when the IIDS is replaced and inserting the applicable revision into the RFM is also required. That action was prompted by the failure of the IIDS during a helicopter hover operation. The failure was attributed to an error in the manufacturing process and a design deficiency. Failure of the IIDS, if not corrected, could result in the inability to monitor information and warning indications essential for the operation of the helicopter.

The FAA has reviewed MDHI Service Bulletin SB900–081R1, dated November 8, 2001 (SB), which describes procedures for inspecting and replacing the IIDS and inserting revisions into the RFM.

Since the unsafe condition described is likely to exist or develop on other MDHI MD900 helicopters of the same type design, the FAA issued Emergency AD 2001–25–51 to prevent total power failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter. The AD requires the following within 10 days:

- Perform an IIDS dual power confirmation test.
- If the IIDS continues to operate after the dual power confirmation test, insert into the RFM the applicable TEMPORARY RFM revisions that state the pilot must ''land as soon as possible'' after an IIDS failure.
- If the IIDS does not continue to operate, replace it with a specified IIDS before further flight. Insert into the RFM the applicable RFM revision that states the pilot must ''land as soon as practical'' after total power failure of the IIDS.
- Remove the TEMPORARY RFM revisions when the IIDS is replaced in accordance with this AD, and insert the applicable RFM revision into the RFM.

The actions must be accomplished in accordance with the SB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions previously described are required as indicated, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 7, 2001 to all known U.S. owners and operators of MDHI Model MD900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 53 helicopters of U.S. registry will be affected by this AD. It will take approximately 1 work hour per helicopter to perform the dual power confirmation test and 1 work hour to replace the IIDS, if necessary. The manufacturer has stated in the SB that they will provide replacement IIDS at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6360, assuming that the IIDS is replaced on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–56–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–25–51 MD Helicopters, Inc.: Amendment 39–12601. Docket No. 2001–SW–56–AD.

Applicability: Model MD900 helicopters, serial numbers (S/N) 900–00008 through 900–00107, with integrated instrument display system (IIDS), part number (P/N) 900A3720002–107, –109, –111, or –113, installed, certificated in any category.

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

Compliance: Required within 10 days, unless accomplished previously.

To prevent failure of the IIDS and the subsequent inability to monitor information and warning indications essential for the operation of the helicopter, accomplish the following:

(a) Conduct a dual power confirmation test (power test) with external power ON or both generators on line in accordance with Section 2, Accomplishment Instructions, paragraphs 2.B.(1), 2.B.(2), and 2.B.(3), of MD Helicopters Service Bulletin SB900–081R1, dated November 8, 2001.

(1) If the IIDS continues to operate after the power test, insert into the Rotorcraft Flight Manual (RFM) the applicable TEMPORARY RFM revision stating that the pilot must ''land as soon as possible'' after an IIDS failure:

(i) TR01–001, dated November 2, 2001, into RFM CSP–900RFM–1 (Reissue 1), CSP–900ERFM–1, CSP–902RFM–1 (Reissue 1), or CSP–902RFM207E–1; and

(ii) TR01–002, dated November 28, 2001, into RFM CSP–902RFM–1 (Reissue 1), or CSP–902RFM207E–1.

(2) If the IIDS does not continue to operate after the power test, before further flight:

(i) Replace IIDS, P/N 900A3720002–107 with 900A3720002–115; 900A3720002–111 with 900A3720002–117; 900A3720002–109 with 900A3720002–119; or 900A3720002–113 with 900A3720002–121.

(ii) Insert into the RFM the applicable RFM revision, dated November 2, 2001, stating that the pilot must ''land as soon as practical'' after an IIDS failure:

(A) Revision 4 into RFM CSP–900RFM–1 (Reissue 1);

(B) Revision 1 into CSP–900ERFM–1;

(C) Revision 5 into CSP–902RFM–1 (Reissue 1); or

(D) Revision 2 into CSP–902RFM207E–1.

(b) After replacing the IIDS in accordance with this AD, before further flight, remove the TEMPORARY RFM revisions specified in paragraph (a)(1) of this AD if inserted into the RFM, and insert into the RFM the applicable RFM revision specified in paragraph (a)(2)(ii) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The power test shall be done in accordance with the Accomplishment Instructions, paragraphs 2.B.(1), 2.B.(2), and 2.B.(3), of MD Helicopters Service Bulletin SB900–081R1, dated November 8, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–891–6782, or on the web at www.mdhelicopters.com. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 1, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–25–51, issued December 7, 2001, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 9, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1054 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–34–AD; Amendment 39–12596; AD 2002–01–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes that are equipped with certain main landing gear (MLG) radius rods. This AD requires you to inspect the MLG radius rod cylinders for the required conductivity or hardness standard. This AD also requires you to replace any MLG radius rod cylinder that does not meet this standard. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations, could lead to loss of airplane control.

DATES: This AD becomes effective on February 11, 2002.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of February 11, 2002.

ADDRESSES: You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–34–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes equipped with certain main landing gear (MLG) radius rods.

The CAA reports, that the manufacturer of the MLG radius rods, APPH Ltd., incorrectly heat treated a batch of radius rod cylinders, part number (P/N) 184811. Incorrect heat treatment of the MLG radius rod cylinder causes the part to be below required design strength. This results in reduced structural integrity of the part.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the MLG. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes that are equipped with certain MLG radius rods. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 5, 2001 (66 FR 50894). The NPRM proposed to require you to inspect the MLG radius rods for the required conductivity or hardness standard, and replace any rod that does not meet this standard.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 250 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspection using the eddy current conductivity test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour per radius rod (2 per airplane) × $60 = $120.	No parts required	$120	$30,000

We estimate the following costs to accomplish the inspection using the Rockwell hardness test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours per radius rod (2 per airplane) × $60 = $600.	No parts required	$600	$150,000

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost for replacement of each main landing gear radius rod	Parts cost	Total cost per airplane
5 workhours × $60 = $300	$9,000	$9,300

Are There Differences Between This AD and the Service Information?

British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the inspections to British Aerospace Regional Aircraft. This AD does not require this action. The FAA recommends that each owner/operator submit this information. We are including a note in this AD to reflect this. British Aerospace and the British CAA will use this information to determine whether further action is necessary.

The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is ''within the next 30 calendar days after the effective date of this AD''.

Why is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the MLG is an unsafe condition; however, it is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it is for an airplane with 500 hours TIS. A calendar time for compliance will ensure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–05 British Aerospace: Amendment 39–12596; Docket No. 2001–CE–34–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with a main landing gear (MLG) radius rod, APPH Ltd. part number 1847–A through 1847–L, 1848–A through 1848–F, or 1862–A through 1862–L.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the MLG due to incorrectly heat treated MLG radius rod cylinders. Such failure during takeoff, landing, or taxi operations could lead to loss of airplane control.

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

Actions	Compliance	Procedures
(1) Inspect, using an eddy current conductivity tester, or the Rockwell hardness test, the left and right main landing gear (MLG) radius rods, part numbers (P/N) 1847–A through 1847–L, 1848–A through 1848–F, and 1862–A through 1862–L, for correct conductivity or hardness standard specified in the referenced service information.	Within the next 30 calendar days after February 11, 2002 (the effective date of this AD).	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.
(2) If the results of the inspection are greater than 46% International Aluminum & Copper Standards (IACS) using the eddy current conductivity test, or less than 79 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod that meets the conductivity or hardness standard specified in the referenced service information.	Within the next 90 calendar days after the inspection required in paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.

Actions	Compliance	Procedures
(3) If the results of the inspection are equal to or greater than 41.5% IACS but less than or equal to 46% IACS using the eddy current conductivity test, or equal to or greater than 79 but less than or equal to 87 using the Rockwell hardness test, replace the MLG radius rod with an FAA-approved MLG radius rod that meets the conductivity or hardness requirements specified in the referenced service information.	Within the next 180 calendar days after the inspection required in paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001, and the applicable maintenance manual.
(4) If the results of the inspection are greater than 36.5% IACS and less than 41.5% IACS using the eddy current conductivity test, or greater than 87 and less than 90 using the Rockwell hardness test, no replacement of the MLG radius rod is required.	Not applicable	In accordance with the Accomplishment Instructions section of British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, APPH Ltd. Service Bulletin 1862–32–08, dated July 2001.
(5) Do not install, on any affected airplane, a P/N 1847–A through 1847–L, 1848–A through 1848–F, or 1862–A through 1862–L MLG radius rod, unless it has been inspected and is found to meet the conductivity or hardness standard specified in the referenced service information.	As of February 11, 2002 (the effective date of this AD).	In accordance with British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001.

Note 1: The compliance time of this AD differs from that specified in British Aerospace Alert Service Bulletin 32–A–JA–010740, Revision 2, Issued July 23, 2001. This AD takes precedence over any other information.

Note 2: British Aerospace Alert Service Bulletin 32–JA010740, Revision 2, Issued: July 23, 2001, specifies reporting the results of the inspections to British Aerospace Regional Aircraft. The FAA highly recommends that each owner/operator submit this information. British Aerospace and the British Civil Airworthiness Authority (CAA) will use this information to determine whether further action is necessary. The FAA will evaluate the information from the British CAA and may initiate further rulemaking action.

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

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

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Alert Service Bulletin 32–A–JA010740, Revision 2, Issued: July 23, 2001, APPH Ltd. Service Bulletin 1847–32–08, dated July 2001, and APPH Ltd. Service Bulletin 1862–32–08, dated July 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British AD Number 005–07–2001, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on February 11, 2002.

Issued in Kansas City, Missouri, on January 4, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–797 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–33–AD; Amendment 39–12600; AD 2002–01–09]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This AD requires you to inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material; replace any engine-driven pump with signs of fuel leakage or extruding gasket material; and inspect to ensure that the relief valve attachment screws are adequately

torqued and re-torque as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

DATES: This AD becomes effective on February 28, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 28, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA of an unsafe condition that may exist on Pilatus Models PC–7, PC–12, and PC–12/45 airplanes. The FOCA reports instances of fuel leaking from the engine-driven pump on the referenced airplanes. The compression set of the gasket and diaphragm after thermal cycling could cause the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing. This in turn relieves the torque of the relief-valve cover screws of the engine-driven pump, which could result in fuel leakage.

Information on the affected pumps follows:

—The affected engine-driven pumps are Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) as installed on Models PC–12 and PC–12/45 airplanes or Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) as installed on Model PC–7 airplanes;

—Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes; and

—These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

What Is the Potential Impact if FAA Took No Action?

Gasket material extruding from the engine-driven pump housing and relief valve attachment screws with inadequate torque, if not detected and corrected, could lead to fuel leakage and result in a fire in the engine compartment.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Aircraft Ltd. Models PC–7, PC–12, and PC–12/45 airplanes that incorporate a certain engine-driven pump. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 24, 2001 (66 FR 53738). The NPRM proposed to require you to inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material; replace any engine-driven pump with signs of fuel leakage or extruding gasket material; and inspect to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

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

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 278 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspections and re-torque:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Not Applicable	$120	$120 × 278 = $33,360.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour X $60 per hour = $60	$3,900 per new pump	$3,960 per airplane.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of the inspections that will be required by this AD is ''within 20 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first.''

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The deterioration and potential extrusion of the gasket occurs over time and is not a condition of repetitive airplane operation. However, the relief valve attachment screws becoming inadequately torqued occurs as a result of airplane usage if the compression set of the gasket and diaphragm after thermal cycling causes the gasket of the engine-driven pump to extrude between the relief valve housing and the engine-driven pump housing.

Therefore, to ensure that the unsafe condition defined in this document is detected and corrected in a timely manner, we are stating the compliance in both calendar time and hours TIS.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–09 Pilatus Aircraft Ltd.: Amendment 39–12600; Docket No. 2001–CE–33–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
PC–7	All manufacturer serial numbers (MSN) with a Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump.
PC–12 and PC–12/45	All MSN with a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump.

Note 1: Pilatus installed these engine-driven pumps on manufacturer serial number (MSN) 101 through MSN 400 of the Models PC–12 and PC–12/45 airplanes and MSN 101 through MSN 618 of the Model PC–7 airplanes. These engine-driven pumps could be installed through field approval on any MSN of the Models PC–7, PC–12, and PC–12/45 airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct gasket material extruding from the engine-driven pump housing and detect and correct relief valve attachment screws with inadequate torque. Such conditions could lead to fuel leakage and result in a fire in the engine compartment.

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

Actions	Compliance	Procedures
(1) For all airplanes: inspect the joints between the engine-driven pump housing, relief valve housing, and the relief-valve cover for signs of fuel leakage or extruding gasket material.	Initially inspect within the next 20 hours time-in-service (TIS) after February 28, 2002 (the effective date the of this AD) or within the next 30 days after February 28, 2002 (the effective date of this AD), whichever occurs first.	In accordance with the Accomplishment Instructions section of either Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(2) For the Model PC–7 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with a Lear Romec part number RG9570M1/M engine-driven pump.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of Pilatus PC–7 Service Bulletin No. 28–006, dated August 10, 2001; and the appropriate maintenance manual.

Actions	Compliance	Procedures
(3) For the Models PC–12 and PC–12/45 airplanes: if you find signs of fuel leakage or extruding gasket material during the inspection required by paragraph (d)(1) of this AD, replace the engine-driven pump with one of the following and accomplish any specified follow-on action:. (i) a Lear Romec part number RG95701R1/M (Pilatus part number 968.84.51.106/M) engine-driven pump; or. (ii) a Lear Romec part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump. Installation of this part requires you to accomplish the inspection and replacement, if necessary, specified in paragraphs (d)(1) and (d)(3) of this AD, respectively. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Replace prior to further flight after the inspection required by paragraph (d)(1) of this AD. Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus PC–12 Service Bulletin No. 28–009, dated August 10, 2001; and the appropriate maintenance manual.
(4) For all affected airplanes: inspect to ensure that the relief valve attachment screws are adequately torqued and re-torque as necessary.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with the Accomplishment Instructions section of either Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001, as applicable.
(5) Do not install, on any affected Model PC–7 airplane, a replacement Lear Romec part number RG9570M1 (Pilatus part number 968.84.51.105) engine-driven pump.	As of February 28, 2002 (the effective date of this AD).	Not Applicable.
(6) If you install, on any Model PC–12 or PC–12/45 airplane, a part number RG9570R1 (Pilatus part number 968.84.51.106) engine-driven pump, you must accomplish the inspection and replacement, if necessary, as specified in paragraphs (d)(1) and (d)(3) of this AD, respectively. This inspection is to ensure that the compression set of the gasket and diaphragm after thermal cycling does not cause the gasket of the engine-driven pump to extrude between the relief valve housing and the pump housing.	Accomplish the inspection at least 20 hours TIS after the installation, but not to exceed 30 hours TIS after the installation.	In accordance with the Accomplishment Instructions section of Pilatus PC–12 Service Bulletin No. 28–009, dated August 10, 2001.

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

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

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC–7 Service Bulletin No. 28–006 or Pilatus PC–12 Service Bulletin No. 28–009, both dated August 10, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 28, 2002.

Note 3: The subject of this AD is addressed in Swiss AD HB 2001–500 (PC–12 and PC–12/45) and Swiss AD HB–505 (PC–7), both dated August 24, 2001.

Issued in Kansas City, Missouri, on January 8, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–899 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8977]

RIN 1545–BA39

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Unexpected Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective January 17, 2002.

Applicability Date: For dates of applicability, *see* § 1.1441–6T(h)(6).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Payments of U.S. source income to foreign persons create a number of withholding and information reporting obligations for both the payor and the recipient of these payments under the Internal Revenue Code and associated Treasury regulations. Specifically, under section 871(a), nonresident alien individuals are subject to a 30 percent tax on certain items of income they receive from sources within the United States that are not effectively connected with the conduct of a trade or business in the United States. Those items of income include interest, dividends, royalties, compensation, and other fixed or determinable annual or periodical income. The tax liability imposed under section 871(a) on the payment of such items of income is generally collected by way of withholding at the source pursuant to section 1441(a). Withholding agents are generally required to report payments of such income to the IRS on Form 1042–S.

The 30 percent rate of tax can be reduced under an income tax treaty. Under current Treasury regulations, a withholding agent may generally rely on a Form W–8BEN, ''Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,'' or Form 8233, ''Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual,'' provided by, or for, the foreign individual certifying eligibility for a reduced rate of tax under an income tax treaty.

Section 1.1441–1(e)(4)(vii) generally provides that a taxpayer identifying number (TIN) must be furnished on a Form W–8BEN or Form 8233 in order for a foreign individual to obtain the benefit of reduced withholding under an income tax treaty. *See* § 1.1441–6(b)(2)(ii). Treasury and the IRS have recently become aware, however, of certain unusual cases where an unexpected payment to a nonresident alien individual claiming treaty benefits arises on short notice. In general, a foreign individual receiving such an unexpected payment currently may be unable to obtain a TIN prior to payment. In such a case, unless the foreign individual already has a TIN, the withholding agent would be required to withhold tax at the 30 percent rate, rather than the treaty rate, and the foreign individual would be required to file for a refund in order to obtain the benefits of the income tax treaty.

To alleviate this filing burden on foreign individuals, IRS is putting in place administrative procedures that will allow certain withholding agents, who also are acceptance agents (as defined in § 301.6109–1(d)(3)(iv)) and who make unexpected payments to foreign individuals, to apply for and obtain an individual taxpayer identification number (ITIN) for such individuals on an expedited basis. However, Treasury and IRS recognize that, in certain circumstances, these expedited ITIN procedures will not be sufficient to ensure that foreign individuals receiving an unexpected payment can obtain the benefits of a reduced rate of withholding under an income tax treaty at the time of payment. Accordingly, these temporary regulations will allow, in limited circumstances, withholding agents to rely on a Form W–8BEN or Form 8233 that does not include a TIN for purposes of withholding at the reduced treaty rate.

The proposed rules are published elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

These temporary regulations amend § 1.1441–1(b)(7) and § 1.1441–6(b)(1) and add new § 1.1441–6T(h) to provide a limited exception to the requirement that a foreign individual provide a TIN to its withholding agent before obtaining a reduced rate of withholding tax under an income tax treaty. As noted above, under the current regulatory framework, a foreign individual generally is required to put the individual's TIN on the Form W–8BEN or Form 8233 in order to claim a reduced rate of withholding based upon a tax treaty. If a foreign individual does not have a TIN, a withholding agent who is an acceptance agent, as defined in § 301.6109–1(d)(3)(iv), can aid the foreign individual in obtaining an ITIN.

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the IRS has decided to permit certain withholding agents to enter into special acceptance agent agreements with the IRS that will allow those withholding agents, in their capacity as acceptance agents, to seek ITINs through an expedited process for these foreign individuals claiming treaty benefits. It is anticipated that any withholding agent who qualifies as an acceptance agent under § 301.6109–1(d)(3)(iv) and who anticipates making unexpected payments will be allowed to enter into such an agreement. However, the IRS intends to allow the use of the expedited process only when an application for an ITIN using the standard process will not generate an ITIN in time for the payment.

These temporary regulations provide that, in limited circumstances, a withholding agent who has entered into such a special acceptance agent agreement may rely on a beneficial owner withholding certificate without regard to the requirement that it include a TIN. Generally, these temporary regulations provide that, in order for a withholding agent to rely on a beneficial owner withholding certificate that does

not contain a TIN, the withholding agent must be unable to obtain an ITIN for the foreign individual because the IRS is not issuing ITINs at the time of an unexpected payment to the individual or any time prior to the time of payment when the withholding agent had knowledge of the unexpected payment and the nature of the unexpected payment must be such that it cannot reasonably be delayed until the withholding agent could obtain an ITIN for the foreign individual through the use of the expedited process. The temporary regulations further provide that the IRS must receive the foreign individual's application for an ITIN on the first business day following payment. At this time, the IRS intends to issue ITINs through the expedited process from 6 a.m. until 11:30 p.m. E.S.T., except for weekends and holidays. The IRS intends to increase the availability of this expedited process in the future.

Except as provided in these regulations or in § 1.1441–6(c), a foreign individual will continue to be required to provide a TIN on a beneficial owner withholding certificate (Form W–8BEN or Form 8233) in order to obtain the benefit of a reduced rate of withholding under an income tax treaty.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. These regulations impose no new collection of information on small entities, therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1441–1T is added to read as follows:

§ 1.1441–1T Requirement for the deduction and withholding of tax on payments to foreign persons (temporary).

(a) Through (b)(7)(i)(C) [Reserved]. For further guidance, *see* § 1.1441–1(a) through (b)(7)(i)(C).

(b)(7)(i)(D). The withholding agent has complied with the provisions of § 1.1441–6(d).

(b)(7)(ii) through (f)(2)(ii) [Reserved]. For further guidance, *see* § 1.1441–1(b)(7)(ii) through (f)(2)(ii).

§ 1.1441–6 [Amended]

Par. 3. In § 1.1441–6, the fifth sentence of paragraph (b)(1) is amended by adding the language ''and § 1.1441–6T(h)'' immediately following the language ''(c)(1) of this section.''

Par. 4. Section 1.1441–6T is added to read as follows:

§ 1.1441–6T Claim of reduced withholding under an income tax treaty (temporary).

(a) through (g) [Reserved]. For further guidance, see § 1.1441–6(a) through (g).

(h) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits*—(1) *General rule.* Except as provided in § 1.1441–6(c) or paragraph (h)(2) of this section, for purposes of § 1.1441–6(b)(1), a withholding agent may not rely on a beneficial owner withholding certificate, described in § 1.1441–6(b)(1), that does not include the beneficial owner's taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of § 1.1441–6(b)(1), a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner's TIN, if—

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109–1(d)(3)(iv) of this chapter (hereafter the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS), Philadelphia Service Center, because the IRS, Philadelphia Service Center is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (h)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W–7) that complies with the requirements of § 301.6109–1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109–1(d)(3)(iv)(A)(*4*) of this chapter, to the IRS, Philadelphia Service Center, during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (h)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) *Examples.* The rules of this paragraph (h) are illustrated by the following examples:

Example 1. G, a citizen and resident of Country Y, a country with which the U.S. has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the U.S. for the first time. During his visit, G visits Casino B, a casino that has entered

into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins $5000 in slot machine play at Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S.—Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W–7, including the required certification, for G, to the IRS, Philadelphia Service Center for an expedited ITIN. Pursuant to § 1.1441–6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the $5000 to G without withholding U.S. tax based on the treaty exemption.

Example 2. The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the $5000 payment to G.

Example 3. The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S.—Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the U.S. has an income tax treaty that exempts certain income earned from the performance of independent personal services from U.S. tax. It is P's first visit to the U.S. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P $5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S.—Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S.—Z tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for P. On Tuesday, University U faxes a completed Form W–7, including the required certification, for P, to the IRS, Philadelphia Service Center, for an expedited ITIN. Pursuant to § 1.1441–6(b) and paragraph (h)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay $5000 to P without withholding U.S. tax based on the treaty exemption.

(6) *Effective date.* This paragraph (h) applies to payments made after December 31, 2001.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority for part 301 continues to read in part as follows:

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

Par. 6. In § 301.6109–1, paragraph (g)(3) is revised to read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(g) * * *

(3) [Reserved]. For further guidance, see § 301.6109–1T(g)(3).

* * * * *

Par. 7. Section 301.6109–1T is added to read as follows:

§ 301.6109–1T Identifying numbers (temporary).

(a) Through (g)(2) [Reserved]. For further guidance, see § 301.6109–1(a) through (g)(2).

(g)(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This paragraph (g)(3) applies to payments made after December 31, 2001.

(h) through (j)(2)(iii). For further guidance, see § 301.6109(h) through (j)(2)(iii).

Approved: December 21, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 02–1125 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 84 and 183

46 CFR Part 25

[USCG–1999–6580]

RIN 2115–AF70

Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: The Coast Guard is delaying the effective date of the final rule on Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels published in the **Federal Register** on November 1, 2001. The final rule requires domestic manufacturers of vessels to install only certified navigation lights on all newly manufactured uninspected commercial vessels and recreational vessels. This rule aligns the requirements for these lights with those for inspected commercial vessels and with requirements for all other mandatory safety equipment carried on board all vessels. The Coast Guard expects the resulting reduction in the use of noncompliant lights to improve safety on the water.

EFFECTIVE DATE: The final rule is effective on November 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–6580 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Randolph J. Doubt, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–6810 or by e-mail at *rdoubt@comdt.uscg.mil*. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, by telephone at 202–366–5149.

SUPPLEMENTARY INFORMATION: On November 1, 2001, the Coast Guard published a final rule entitled ''Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels'' in the **Federal Register** (66 FR 55086). The final rule, which was to become effective on November 1, 2002, directs manufacturers of uninspected commercial vessels and recreational vessels to install only navigation lights certified and labeled by a laboratory listed by the Coast Guard as meeting the technical requirements of the Navigation Rules.

Upon publication of the final rule, the Coast Guard noted that the implementation date may not provide enough time to complete the testing of navigation lights by laboratories listed by the Coast Guard to allow the recreational boat manufacturers to comply with the regulation. July 2002 is the date most of next year boat models will appear on show room floors. Photo boats for sales brochures will be built in March and April 2002 so that these brochures can be printed in time for the introductions. Actual new model year production will start in April and May 2002. Thus, boat builders must make their navigation light selections for the upcoming model year as early as February 2002. Each navigation light manufacturer will have to make tooling changes to meet the new marking requirements, and many will have to retest their applicable product line. Sufficient time is not available to do this by February 2002. The alternative would be to pull all unsold boats off the market on November 1, 2002, replacing them either with new boat models equipped with compliant navigation lights or modifying their navigation lights to meet the new marking and certification requirements. Most, if not all, agree that this latter alternative is not a reasonable course to take.

Based upon this concern, the Coast Guard is delaying the effective date of the final rule to November 1, 2003.

Accordingly, in FR Doc. 01–27320 published in the **Federal Register** on November 1, 2001, at 66 FR 55086, the effective date for the referenced final rule is changed from November 1, 2002, to November 1, 2003.

Dated: January 9, 2002.

Terry M. Cross,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 02–1252 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–112]

RIN 2115–AA97

Security Zone; San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone 50 yards around all cruise ships while entering or departing the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when these vessels are moored in the Port of San Juan. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico or his designated representative.

DATES: This regulation is effective from 12:01 a.m. on November 30, 2001 until 11:59 p.m. on February 28, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan CGD 07–01–112] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00969 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and written information via facsimile and electronic mail to inform mariners of this regulation.

For the same reasons, 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**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of San Juan, Puerto Rico, against cruise ships entering, departing and moored within this port. There may be Coast Guard, local police department or other patrol vessels on scene to monitor traffic through these areas. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico.

The security zone for a vessel entering the Port of San Juan is activated when the vessel is one mile north of the #1 buoy, at approximate position 18°28.3′ N, 66°07.6′ W, when entering the Port of San Juan. The zone for a vessel is deactivated when the vessel passes this buoy on its departure from the port. The Captain of the Port will also notify the public of these security zones via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) and Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan website at *http://www.msocaribbean.com.*

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) because vessels should be able to safely transit around the zone and may be allowed to enter the zone with the authorization of the Captain of the Port of San Juan.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Environmental

The Coast Guard considered the environmental impact of this rule and concluded 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.**

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, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships 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 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.

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. A new temporary § 165.T07–112 is added to read as follows:

§ 165.T07–112 Security Zone; Port of San Juan, Puerto Rico.

(a) *Regulated area.* Temporary moving security zones are established 50 yards around all cruise ships while entering or departing the Port of San Juan. These moving security zones are activated when the subject vessel is one mile north of the #1 buoy at approximate position 18°28.3′ N, 66°07.6′ W when entering the Port of San Juan and deactivated when the vessel passes this buoy on its departure from the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when these vessels are moored in the Port of San Juan.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective dates.* This section becomes effective at 12:01 a.m. on November 30, 2001 until 11:59 p.m. on February 28, 2002.

Dated: November 30, 2001.

J. A. Servidio,

Commander, U. S. Coast Guard, Captain of the Port.

[FR Doc. 02–1187 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 07–01–135]

RIN 2115–AA97

Security Zone; St. Croix, USVI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands. This security zone extends 3 miles seaward from the HOVENSA facility waterfront area along the south coast of the island of St. Croix, U.S. Virgin Islands. All vessels must receive permission from the U.S. Coast Guard Captain of the Port San Juan or the HOVENSA Facility Port Captain prior to entering this temporary security zone. This security zone is needed for national security reasons to protect the public and the port of HOVENSA from potential subversive acts.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD 07–01–135] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00968, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

DATES: This regulation is effective at 6 p.m. on December 19, 2001 until 11:59 p.m. on June 15, 2002.

FOR FURTHER INFORMATION CONTACT: LCDR Robert Lefevers, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

For the same reasons, 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**.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels from coming within 3 miles of the HOVENSA facility unless specifically permitted by the Captain of the Port San Juan or the HOVENSA Facility Port Captain. The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, seven days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, seven days a week. The temporary security zone around the HOVENSA facility is outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

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) because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include 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.

This rule may affect the following entities, some of which may be small entities: owners of small charter fishing or diving operations that operate near the HOVENSA facility. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan or the HOVENSA Port Captain.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Environmental

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M14475.1D that 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.**

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 relationships 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 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.

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. A new temporary § 165.T07–135 is added to read as follows:

§ 165.T07–135 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Regulated area.* All waters 3 miles seaward of the HOVENSA facility waterfront outlined by the following coordinates: 64°45′09″ West, 17°41′32″ North, 64°43′36″ West, 17°38′30″ North, 64°43′36″ West, 17°38′30″ North and 64°43′06″ West, 17°38′42″ North.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port San Juan or a Coast Guard commissioned, warrant, or petty officer designated by him or unless authorized by the HOVENSA Port Captain who can be reached on VHF Marine Band Radio Channel 11(156.6 Mhz). The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz).

(c) *Effective dates.* This section is effective from 6 p.m. on December 19, 2001 until 11:59 p.m. on June 15, 2002.

Dated: December 19, 2001.

J.A. Servidio,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–1253 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301208; FRL–6818–6]

RIN 2070–AB78

Ethalfluralin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of ethalfluralin in or on canola seed and safflower seed. IR-4 requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective January 17, 2002. Objections and requests for hearings, identified by docket control number OPP–301208, must be received by EPA on or before March 18, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301208 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9368; and e-mail address: Jamerson.Hoyt@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301208. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 14, 2001 (66 FR 57082) (FRL–6808–9), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of pesticide petitions (PP 9E5037, 1E6326, and 1E6345) for tolerances by Interregional Research Project Number 4 (IR–4), 681 U.S. Highway Number 1, South, North Brunswick, New Jersey 08902–3390. This notice included a summary of the petitions prepared by Dow AgroSciences, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.416 be amended by establishing tolerances for residues of the herbicide ethalfluralin, [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine, in or on canola seed and safflower seed at 0.05 part per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances, November 26, 1997) (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of ethalfluralin on canola seed and safflower seed at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by ethalfluralin are discussed in the following Table 1 as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 68 mg/kg/day LOAEL = 136 mg/kg/day based on low bilirubin and low kidney weights in males.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3150	90–Day oral toxicity in nonrodents	NOAEL = 27.5 mg/kg/day LOAEL = 80 mg/kg/day based on elevated alkaline phosphatase, slight fatty metamorphosis of the liver, increase cholesterol, and increased blood urea nitrogen (BUN).
870.3200	21–Day dermal toxicity in rabbits	NOAEL = 1,000 mg/kg/day - highest dose tested (HDT) LOAEL =>1,000 mg/kg/day no systemic effects were seen at the HDT.
870.3700	Prenatal developmental in rodents	Maternal NOAEL = 50 mg/kg/day LOAEL = 250 mg/kg/day based on decreased body weight gain and dark urine. Developmental NOAEL = 1,000 mg/kg/day no systemic effects were seen at the HDT. LOAEL = >1,000 mg/kg/day no systemic effects were seen at the HDT.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL = 75 mg/kg/day LOAEL = 150 mg/kg/day based on abortions and decreased food consumption. Developmental NOAEL = 75 mg/kg/dayLOAEL = 150 mg/kg/day based on slightly increased resorptions, abnormal cranial development, and increase sternal variants.
870.3800	Reproduction and fertility effects in rats	Parental/Systemic NOAEL = 12.5 mg/kg/day LOAEL = 37.5 mg/kg/day based on decreased mean body weight gains in males in all generations. Reproductive NOAEL = 37.5 mg/kg/day HDT LOAEL = >37.5 mg/kg/day no systemic effects were seen at the HDT.
870.4100	Chronic toxicity dogs	NOAEL = 4 mg/kg/day LOAEL = 20 mg/kg/day based on increased urinary bilirubin, variations in erythrocyte morphology, increased thrombocyte count, and increased erythroid series of the bone marrow.
870.4300	Combined chronic toxicity/carcinogenicity in rats	NOAEL = 32.3 mg/kg/day HDT LOAEL = > 32.3 mg/kg/day no systemic effects were seen at the HDT. Mammary gland fibroadenomas were found in dosed female rats at statistically significant incidences in mid and high doses.
870.4300	Combined chronic toxicity/carcinogenicity in mice	NOAEL = 10.3 mg/kg/day LOAEL = 41.9 mg/kg/day based on focal hepatocellular hyperplasia in both sexes and increased liver, kidney, and heart weights in females. No increase in of neoplasms was attributed to the treatment.
870.5100	Bacterial reverse mutation test	Ethalfluralin was weakly mutagenic in activated strains TA1535 and TA100 of *Salmonella typhimurium*, but not in strains TA1537, TA1538, and TA98 in an Ames assay. In a modified Ames assay with *Salmonella typhimurium* and *Escherichia coli*, ethalfluralin was weakly mutagenic in strains TA1535 and TA100, with and without activation, and in strain TA 98 without activation, at the highest dose.
870.5300	*In vitro* mammalian cell mutation test	No mutagenicity was found in the mouse lymphoma assay for forward mutation.
870.5550	Unscheduled DNA synthesis in mammalian cells in culture	Ethalfluralin did not induce unscheduled DNA synthesis in rat hepatocytes.
870.5375	*In vitro* mammalian chromosome aberration test	In Chinese hamster ovary cells, ethalfluralin was negative without S9 activation, but it was clastogenic with activation.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics	Rats were treated orally with a single low dose, a single high dose, or repeated low doses of radiolabeled ethalfluralin. Absorption of ethalfluralin was estimated at 79–87% of the dose for all dose levels. Ethalfluralin was rapidly and extensively metabolized, and 95% of the chemical was excreted in urine and feces by seven days. The major route of elimination for the radiolabel was in the feces, 50.9–63.2%, and the levels remaining in the tissues after 72 hours were negligible.
870.7600	Dermal penetration	A Dermal penetration study with rhesus monkeys indicated that 2.8% of a dermal dose was absorbed through the skin.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^*: is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer=}$ point of departure/exposures) is calculated. A summary of the toxicological endpoints for ethalfluralin used for human risk assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ETHALFLURALIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age	NOAEL = 75 mg/kg/day UF = 100 Acute RfD = 0.75 mg/kg/day	FQPA SF = 10 aPAD = acute RfD FQPA SF = 0.075 mg/kg/day	Oral developmental toxicity study in rabbits LOAEL = 150 mg/kg/day based on an increased number of resorptions and increased sternal and cranial variations.
Acute dietary general population including infants and children	None	None	None
Chronic dietary all populations	NOAEL= 4.0 mg/kg/day UF = 100 Chronic RfD = 0.04 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD FQPA SF = 0.004 mg/kg/day	1–year oral toxicity study in dogs LOAEL = 20 mg/kg/day based on altered red cell morphology and urinary bilirubin.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ETHALFLURALIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-term dermal (1 to 7 days) Intermediate-term dermal (1 week to several months)	None	None	A dermal penetration study with rhesus monkeys indicated that 2.8% of a dermal dose was absorbed through the skin. Although the developmental and fetotoxic effects (refer to toxicological effects for acute dietary for females above) would normally be used for this assessment, the dermal absorption rate of 2.8% precludes the need. Dermal absorption is too low to cause concern.
Short-term inhalation (1 to 7 days) Intermediate-term Inhalation (1 week to several months) Long-term inhalation (several months to lifetime) (Residential)	None	None	Ethalfluralin has a low inhalation toxicity category (III). The maximum attainable concentration (gravimetric) was tested in an acute inhalation toxicity study, and no deaths occurred to exposed rats. Clinical signs included hypoactivity, dyspnea, ataxia, chromodacryorrhea, poor grooming, and yellow urine; these were reversible after 4 days (LC_{50} 0.94 mg/L). This maximum attainable concentration is considered to be non-lethal. An inhalation risk assessment is not needed.
Cancer (oral, dermal, inhalation)	Ethalfluralin has been classified as a possible human carcinogen (Group C). Q_1^* = 8.9 x 10^{-2} (mg/kg/day)$^{-1}$	Negligible risk	2–year chronic carcinogenicity study in rats, showing an increased incidence of mammary gland fibroadenomas and combined adenomas/fibroadenomas in female rats.

*The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA. The safety factor of 10X was retained until ethalfluralin is assessed by the Agency's FQPA Safety Factor Committee. Therefore, the 10X is subject to change when ethalfluralin is assessed in an upcoming Tolerance Reassessment Eligibility Decision (TRED).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.416) for the residues of ethalfluralin, in or on a variety of raw agricultural commodities. Tolerances for residues of ethalfluralin are established for dry beans and peas, the Cucurbits vegetable subgroup, peanuts, soybeans, sunflower seeds, and fat, meat, and meat by-products of goats. The tolerance level for all these commodities is 0.05 ppm. Time limited tolerances associated with section 18 requests have also been established for canola and safflower. Risk assessments were conducted by EPA to assess dietary exposures from ethalfluralin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document prepared for ethalfluralin. No percent crop-treated adjustment was made therefore, 100% crop treated was assumed. Further refinements (such as percent crop-treated adjustments and/or Monte Carlo analysis) would yield even lower estimates of acute dietary exposure.

ii. *Chronic exposure.*In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document. In addition, weighted average percent crop treated data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iii. *Cancer.* In conducting this cancer dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII. The following assumptions were made for the cancer exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are

ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues were used. The ARs used for this analysis are the same as those used for the 1995 reregistration eligibility decision (RED, 3/95) document. In addition, weighted average percent crop treated data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop-treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 34% of dry beans and dry peas treated; 4% melons and cantaloups treated; 16% cucumbers treated; 15% watermelons treated and 1% soybeans treated.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which ethalfluralin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for ethalfluralin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of ethalfluralin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Ground Water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/ EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to ethalfluralin they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the EECs of ethalfluralin for acute exposures are estimated to be 2.3 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 0.05 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ethalfluralin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative

effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether ethalfluralin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, ethalfluralin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ethalfluralin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. In the developmental toxicity study in rats, the maternal (systemic) NOAEL was 50 milligram/kilogram/day (mg/kg/day), based on decreased body weight gain and dark urine at the LOAEL of 250 mg/kg/day. The developmental (fetal) NOAEL was 1,000 mg/kg/day (the highest dose tested, HDT).

In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 75 mg/kg/day, based on abortions and decreased food consumption at the LOAEL of 150 mg/kg/day. The developmental (fetal) NOAEL was also 75 mg/kg/day, based on a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants at the LOAEL of 150 mg/kg/day.

3. *Reproductive toxicity study*. In a 3–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 12.5 mg/kg/day, based on decreased mean body weight gains in males in all generations at the LOAEL of 37.5 mg/kg/day. The reproductive (pup) NOAEL was 37.5 mg/kg/day (the HDT).

In a 7–month multi-generation bridging study in rats, the parental NOAEL of 20 mg/kg/day was based on increased liver weights at the LOAEL of 61 mg/kg/day. The reproductive (pup) NOAEL was 61 mg/kg/day (the HDT).

4. *Prenatal and postnatal sensitivity*. There is qualitative evidence of increased susceptibility following *in utero* exposure to ethalfluralin in the developmental toxicity study in rabbits demonstrated by abortions and a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants in the pups. There was no indication of increased susceptibility following *in utero* exposure to ethalfluralin in the prenatal developmental toxicity study in rats.

5. *Conclusion*. There is a complete toxicity data base for ethalfluralin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

To date, ethalfluralin has not been assessed by the Agency's FQPA Safety Factor Committee. The Agency is in the preliminary stages of evaluating ethalfluralin for an upcoming Tolerance Reassessment Eligibility Decision (TRED) (Reports on FQPA Tolerance Reassessment Progress and Interim Risk Management Decisions). During this reassessment, the Agency's FQPA Safety Factor Committee will evaluate this chemical.

EPA's preliminary review of the studies bearing on risks to infants and children indicates that an additional safety factor of greater than 10X will not be needed to protect the safety of infants and children. Previously, when time-limited tolerances were established for residues of ethalfluralin in or on canola seed and safflower seed to support specific emergency exemptions the Agency concluded that an additional FQPA safety factor of 3X for assessing acute dietary risk and an additional FQPA safety factor of 1X for assessing chronic dietary risk would be adequate for protecting the safety of infants and children. This was based on a determination made by ad hoc FQPA Safety Factor Committee which based its decision on the results of the oral developmental toxicity study in rabbits.

Accordingly, for the purpose of acting on the petition for tolerances for residues of ethalfluralin in or on canola seed and safflower seed prior to completion of the ethalfluralin TRED, the FQPA safety factor of 10X was retained.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to ethalfluralin in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of ethalfluralin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An acute dietary endpoint was only identified for females. Using the exposure assumptions discussed in this unit for

acute exposure, the acute dietary exposure from food to ethalfluralin will occupy less than 1% of the aPAD for females 13 years and older. In addition, despite the potential for acute dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ETHALFLURALIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–50 years old)	0.075	<1	2.3	0.02	2,200

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to ethalfluralin from food will utilize less than 1% of the cPAD for the U.S. population and all other population subgroups included in DEEM™. There are no residential uses for ethalfluralin that result in chronic residential exposure to ethalfluralin. In addition, despite the potential for chronic dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.004	<1	0.05	0.02	140
Females 13–50	0.004	<1	0.05	0.02	120
Children	0.004	<1	0.05	0.02	40
Infants	0.004	<1	3.05	0.02	40

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population*. Using the exposure assumptions described in this unit for cancer exposure, EPA has concluded that exposure to ethalfluralin from food will result in an estimated lifetime cancer risk to the U.S. population of 5.8×10^{-7}. Currently there are no uses registered for ethalfluralin that will result in residential exposures. In addition, despite the potential for chronic (cancer) dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to pose greater than a negligible risk (the range of 10^{-6}), as shown in the following Table 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	Q1*	Cancer Risk Estimate (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	8.9×10^{-2} (mg/kg/day)$^{-1}$	5.8×10^{-7}	0.05	0.02	0.18

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to ethalfluralin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (GLC-ECD) is available in PAM II to enforce the tolerance expression. The

limit of detection in plant commodities is 0.01 ppm.

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for ethalfluralin. Mexico has established MRLs of 0.05 ppm in/on squash, cucumber, and melon. Canada has labels for uses on oilseed and pulse crops, wheat, field crop vegetables, barley, rapeseed, flax, canola, and mustard however, there are no published tolerances.

V. Conclusion

Therefore, tolerances are established for residues of ethalfluralin,[*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine], in or on canola seed and safflower seed at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301208 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 18, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301208, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public

Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: January 3, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.416 is amended as follows:

i. By alphabetically adding entries for the commodities ''canola, seed'' and ''safflower, seed'' to the table in paragraph (a) as set forth below.

ii. The text of paragraph (b) is removed and reserved.

§ 180.416 Ethalfluralin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Canola, seed	0.05
* * * * *	
Safflower, seed	0.05
* * * * *	

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 02–701 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 82

RIN 0920–ZA00

Methods for Radiation Dose Reconstruction Under the Energy Employees Occupational Illness Compensation Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Interim Final Rule; Reopening of Comment Period.

SUMMARY: The Department of Health and Human Services(DHHS), is reopening the comment period for the interim final rule for dose reconstruction for certain claims for cancer under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** of Friday, October 5, 2001. After considering these comments, comments previously received, and comments from the Advisory Board on Radiation and Worker Health (ABRWH) DHHS will publish a final rule.

DATES: Any public written comments not submitted at the meeting of the ABRWH must be received on or before Wednesday, January 23, 2002.

ABRWH must submit any comments and recommendations on the interim final rule to DHHS by Wednesday, February 6, 2002.

ADDRESSES: Submit written comments to: Attention—DoseReconstruction Comments, Department of Health and HumanServices, National Institute for Occupational Safety andHealth (NIOSH), Robert A. Taft Laboratories, MS–C34, 4676Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 533–8450, Fax: (513) 533–8285, e-mail: *NIOCINDOCKET@CDC.GOV.*

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director,Office of Compensation Analysis and Support, NationalInstitute for Occupational Safety and Health, 4676 ColumbiaParkway, Cincinnati, Ohio 45226, Telephone 513–841–4498(this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION: On October 5, 2001, HHS published an interim final rule establishing methods for radiation dose reconstruction to be conducted for certain cancer claims filed under EEOICPA, Public Law 106–398 [See FR Vol. 66, No. 194, 50978]. The notice included a public comment period that ended on November 5, 2001. However, DHHS is requesting the ABRWH to conduct a review of its dose reconstruction methods. ABRWH will be conducting its review during a meeting of the ABRWH scheduled for Tuesday, January 22, 2002 and Wednesday, January 23, 2002.

To permit HHS to consider the ABRWH review and any comments and recommendations of ABRWH in the rulemaking, DHHS will reopen the public comment period. This will also provide the public with the opportunity to participate in this review. The public comment period will be reopened to include the ABRWH meeting transcript and any statements submitted for the record of that meeting in the docket for this rule. DHHS will also accept additional public written comments submitted to its docket office on or beforeWednesday, January 23, 2002. The record for this rulemaking will close on Wednesday, February 6, 2002, by which time ABRWH must submit any comments and recommendations on the interim final rule to DHHS.

Dated: January 14, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1318 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 126

[USCG–2001–10164]

RIN 2115–AG17

Alternate Compliance Program; Incorporation of Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On October 23, 2001, we published a direct final rule (66 FR 53542). The direct final rule notified the public of our intent to incorporate Offshore Supply Vessels (OSVs) into the Alternate Compliance Program (ACP). This action will improve the flexibility of regulations governing OSVs by providing an alternative method for vessel design, inspection, and certification without compromising existing safety standards. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as January 22, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Lieutenant Benjamin Nicholson, United States Coast Guard Office of Design and Engineering Standards (G-MSE), at 202–267–0143, or e-mail him at *BNicholson@comdt.uscg.mil.*

Dated: January 10, 2002.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 02–1251 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300–1007–05; I.D. 120996A]

RIN 0648–AJ30

Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations implementing the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule establishes guidelines to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), the identification of adverse effects to EFH, and the identification of actions required to conserve and enhance EFH. The regulations also detail procedures the Secretary (acting through NMFS), other Federal agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. The intended effect of the rule is to promote the protection, conservation, and enhancement of EFH.

If further changes to the EFH regulations are warranted in the future, NMFS will propose changes through an appropriate public process.

DATES: Effective on February 19, 2002.

ADDRESSES: Requests for copies of the Environmental Assessment (EA) or related documents should be sent to EFH Coordinator, Office of Habitat Conservation, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. The EA and related documents are also available via the internet at: *http://www.nmfs.noaa.gov/habitat*.

FOR FURTHER INFORMATION CONTACT: Jonathan Kurland, NMFS EFH Coordinator, 301/713–2325; fax 301/713–1043; e-mail jon.kurland@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq*.) as reauthorized by the Sustainable Fisheries Act, signed into law on October 11, 1996. NMFS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on November 8, 1996 (61 FR 57843) to solicit comments to assist NMFS in developing an approach for the proposed regulations. NMFS published a second ANPR on January 9, 1997 (62 FR 1306) to announce the availability of the ''Framework for the Description, Identification, Conservation, and Enhancement of Essential Fish Habitat'' (Framework) and to solicit additional public comment. The Framework provided a detailed outline for the proposed regulations. NMFS held 15 public meetings, briefings, and workshops across the nation during the public comment period on the Framework and issued a proposed rule on April 23, 1997 (62 FR 19723). NMFS held an additional 6 public meetings and numerous briefings nationwide during the comment period on the proposed rule and issued an interim final rule on December 19, 1997 (62 FR 66531). The interim final rule took effect on January 20, 1998.

NMFS decided to issue the regulations as an interim final rule in 1997 for two reasons. First, NMFS decided to provide an additional comment period to allow another opportunity for affected parties to provide input prior to the development of a final rule. Second, NMFS determined that it would be advantageous to implement the EFH provisions of the Magnuson-Stevens Act for a period of time via interim final regulations, which would afford an opportunity to gain experience adding EFH information to fishery management plans and carrying out consultations and coordination with Federal and state agencies whose actions may adversely affect EFH. NMFS planned to use the additional comments and its experience implementing the interim final rule to make any necessary changes in the final rule.

The comment period on the interim final rule closed on March 19, 1998 (63 FR 8607, February 20, 1998). On November 8, 1999, NMFS reopened the comment period (64 FR 60731) to announce its intention to proceed with development of a final rule and to request additional public comments on four specific issues: how to improve the regulatory guidance on the identification of EFH; how to improve the regulatory guidance on minimizing the effects of fishing on EFH; whether the final rule should provide additional guidance on using existing environmental reviews to satisfy EFH consultation requirements; and whether to revise in the final rule the requirement for Federal agencies to prepare EFH Assessments as part of the EFH consultation process.

In total, NMFS provided five separate public comment periods for this rulemaking totaling 270 days. NMFS also held numerous public meetings and briefings to explain the EFH requirements for interested parties and to solicit their input. Based on the comments received, as well as NMFS' experience implementing the interim final rule, NMFS identified a number of improvements that would clarify and simplify the regulations. NMFS incorporated those changes in the final rule.

Although NMFS is finalizing this rule, NMFS recognizes that there remains a great deal of interest in the EFH regulations from various stakeholders. There is a diversity of opinions on the best way to integrate habitat and ecosystem considerations into fishery management. NMFS is actively evaluating these issues, and will continue to work with stakeholders to use the best available scientific information regarding habitat and ecosystem principles in fishery management decisions. For example, NMFS will hold a workshop in the coming months to examine the concepts underlying ecosystem-based approaches to marine resource management, followed by a second workshop to develop technical guidelines for implementing an ecosystem-based approach to fishery management. NMFS is also developing new environmental impact statements that will reexamine the EFH sections of many FMPs. NMFS will evaluate the efficacy of the EFH final rule in light of these activities and will apply the lessons learned as appropriate. If further changes to the EFH regulations are warranted, NMFS will propose changes through an appropriate public process.

Overview of the EFH Regulations

The final rule retains the same overall structure as the interim final rule, with minor organizational and editorial changes to improve clarity. These clarifications do not constitute substantial changes to the rule. Subpart J of 50 CFR part 600 contains guidelines to assist Councils in developing the EFH components of FMPs. Subpart K of 50 CFR part 600 contains procedures for coordination, consultations, and recommendations for Federal and state agency actions that may adversely affect EFH. NMFS is finalizing both subparts together so that all interested parties will understand the implications of areas being identified as EFH. The final rule contains no major substantive changes from the interim final rule, although the final rule includes numerous clarifications, simplifications, and editorial improvements intended to make the regulations easier to use.

Under subpart J, Councils must identify in FMPs EFH for each life stage of each managed species in the fishery management unit. Councils should organize information on the habitat requirements of managed species using a four-tier approach based on the type of information available. Councils must identify as EFH those habitats that are necessary to the species for spawning, breeding, feeding, or growth to maturity. Councils must describe EFH in text and must provide maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Councils should identify EFH that is especially important ecologically or particularly vulnerable to degradation as ''habitat areas of particular concern'' (HAPC) to help provide additional focus for conservation efforts. Councils must evaluate the potential adverse effects of fishing activities on EFH and must include in FMPs management measures that minimize adverse effects to the extent practicable. Councils must identify other activities that may adversely affect EFH and recommend actions to reduce or eliminate these effects.

Subpart K contains procedures for implementing the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. NMFS will make available descriptions and maps of EFH to

promote EFH conservation and enhancement. The regulations encourage Federal agencies to use existing environmental review procedures to fulfill the requirement to consult with NMFS on actions that may adversely affect EFH, and they contain procedures for abbreviated or expanded consultation in cases where no other environmental review process is available. Consultations may be conducted at a programmatic and/or project-specific level. In cases where adverse effects from a type of actions will be minimal, both individually and cumulatively, a General Concurrence procedure further simplifies the consultation requirements. The regulations encourage coordination between NMFS and the Councils in the development of recommendations to Federal or state agencies for actions that would adversely affect EFH. Federal agencies must respond in writing within 30 days of receiving EFH Conservation Recommendations from NMFS. If the action agency's decision is inconsistent with NMFS' EFH Conservation Recommendations, the agency must explain its reasoning and NMFS may request further review of the decision. EFH Conservation Recommendations are non-binding.

Effect on Approved FMP EFH Provisions

The final rule modifies portions of the guidelines to Councils for developing the EFH components of FMPs (Subpart J of the rule). Although the changes do not constitute substantial revisions to the guidelines contained in the interim final rule, some of the clarifications and explanations in the final rule result in minor changes to the Secretary's interpretation of the mandatory contents of FMPs. Existing FMP EFH provisions were approved (or in some cases partially approved) by the Secretary pursuant to the interim final rule. Councils are not required to develop immediate amendments to those FMPs to address any changes in regulatory guidelines pursuant to this final rule. To the extent that changes to approved FMPs are necessary to meet the standards of the final rule, Councils should incorporate those changes during the next regular review and revision of FMP EFH provisions. Section 600.815(a)(9) of the final rule (renumbered from § 600.815(a)(11) of the interim final rule) states that Councils should conduct such reviews as recommended by the Secretary, but at least once every five years.

Related Documents

NMFS prepared a draft internal technical guidance manual for EFH in conjunction with the interim final rule. That guidance will be superseded with guidance for the final rule. The draft technical guidance, the Framework, the EA, and other related documents that led to this final rule are available via the internet or by mail upon request (see **ADDRESSES**).

Comments and Responses

NMFS received approximately 3,300 written comments during the two comment periods on the interim final rule. Commenters included Fishery Management Councils, Federal agencies, state agencies, fishery groups, environmental groups, non-fishing industry groups, other non-governmental organizations, academicians, citizens groups, and numerous individuals. The comments and responses discussed below are arranged by topic to parallel the organizational structure of the interim final rule.

1. Comments Asking for Additional Opportunity to Comment on the Rule or to be Involved in the Designation of EFH

Comment A: Several commenters requested that the public comment period be extended and development of the final rule be delayed to allow the public to better assess EFH implementation.

Response A: NMFS disagrees that additional time is needed for public comment. NMFS provided five separate public comment periods on the EFH regulations, for a total of 270 days, which generated more than 3,600 separate written public comments. NMFS published the regulations as an interim final rule for the express purpose of allowing additional comments and gaining experience implementing the EFH provisions of the Magnuson-Stevens Act before issuing a final rule. Since the public comments received during each comment period raised similar issues and concerns with the EFH regulations, NMFS has had ample opportunity to gain understanding of the range of topics and opinions raised by the public and has made many revisions to the EFH regulations to address public comments.

Comment B: Several commenters criticized NMFS for failing to engage non-fishing stakeholders in the development of the EFH regulations and for failing to develop mechanisms to consider non-fishing interests in the EFH regulations.

Response B: NMFS disagrees that non-fishing groups were not given the opportunity to be included in this rulemaking. NMFS held numerous public meetings, briefings, and workshops to engage all interested parties in the development of the EFH regulations and held five separate public comment periods. In addition, NMFS met with every stakeholder group that asked to discuss how the regulations might affect them, including many prominent non-fishing organizations. Many of the changes to the regulations, from the proposed rule to the interim final rule and from the interim final rule to the final rule, responded directly to non-fishing stakeholder concerns.

Comment C: Two commenters requested that NMFS suspend the designation of EFH for Pacific salmon until after final revisions to the EFH regulations are made, since the EFH provisions of the Pacific salmon FMP had not been completed at the time NMFS reopened the comment period on the interim final rule. These commenters also asked NMFS to reopen the comment period on the rule again after the Pacific salmon EFH designations are in effect for a period of time.

Response C: NMFS approved the designation of EFH for Pacific salmon on September 27, 2000 (65 FR 63047). The Magnuson-Stevens Act prescribes a strict time frame for Secretarial action on an FMP amendment following submission by a Council, including an opportunity for public comment on what action the Secretary should take. NMFS cannot delay Secretarial review, and sees no need for another formal comment period on the EFH regulations to gauge implementation of Pacific salmon EFH. Nevertheless, if problems arise related to Pacific salmon EFH, NMFS will address them as appropriate.

Comment D: Several non-fishing industry groups commented that NMFS did not make necessary information on the consultation process available to commenters when the comment period for the interim final rule was reopened in November 1999. Some of these commenters referred specifically to their pending Freedom of Information Act (FOIA) request for copies of documents related to the EFH consultation process and every individual consultation that had occurred to date.

Response D: NMFS' intent in reopening the public comment period on the interim final rule in November 1999 was to solicit comments from interested parties on four specific issues: the scope of EFH designations, documentation of measures to minimize adverse fishing impacts to EFH, the use of existing environmental review

procedures for EFH consultations, and the preparation of EFH Assessments (64 FR 60731). NMFS asked commenters to answer based on their individual experience under the interim final rule. NMFS did not request that commenters conduct a program review of the EFH consultation process, nor did NMFS ask for comments on the totality of experience gained through all of the consultations completed thus far. The information requested by the commenters under FOIA was not necessary to enable the commenters to provide answers to NMFS' questions regarding their experience under the interim final rule, and analysis of that information was not a prerequisite to providing informed comments.

Comment E: One commenter noted that the absence of lists of species managed under FMPs and prey species in the proposed and interim final rules made it more difficult to provide meaningful comment on the EFH regulations.

Response E: NMFS determined that providing lists of managed and prey species in the EFH regulations was unnecessary. NMFS' intent in soliciting public comment on the regulations was to seek input on the process of identifying EFH and implementing the other EFH provisions of the Magnuson-Stevens Act, and not on how to identify EFH for specific managed species. Furthermore, the list of managed species changes whenever Councils develop management plans for new species. Nonetheless, the EA that accompanied publication of the interim final rule contained a list of managed species, and this list has been updated in the revised EA. Since the list will continue to change over time, interested parties should contact the Councils to obtain the most updated information on managed species. EFH cannot be designated for non-managed prey species, so a list of such species is not directly relevant to the rule.

Comment F: Several non-fishing groups commented that Fishery Management Councils should include representation of non-fishing interests.

Response F: The Secretary appoints members of each Council from lists of individuals recommended by the Governors of applicable states. Section 302(b)(2)(A) of the Magnuson-Stevens Act states that the appointed members of each Council ''must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned.'' There is ample flexibility in this requirement to allow for a broad range of representation on Councils. For example, a rancher from Idaho formerly served as a member of the Pacific Fishery Management Council.

Comment G: One commenter noted that the rule contains no provisions to ensure that non-fishing interests receive timely notification of Council meetings.

Response G: There are ample mechanisms through which interested parties can obtain information regarding Council meetings, and it is unnecessary to ensure such notification in the EFH regulations. Section 302(i) of the Magnuson-Stevens Act requires timely public notice of Council meetings in local newspapers and the **Federal Register**. All Councils have internet sites, most of which post the schedule and agendas for upcoming meetings. Additionally, interested parties can call Councils directly to receive information on upcoming meetings, and many Councils maintain mailing lists and send agendas to interested parties. NMFS encourages all interested parties to participate in the Council process.

Comment H: Both fishing and non-fishing groups commented that NMFS should engage local stakeholders in the process of EFH identification.

Response H: NMFS agrees and continues to encourage public involvement in EFH identification via the Council process. Section 305(b)(1)(B) of the Magnuson-Stevens Act requires NMFS, in consultation with participants in the fishery, to provide recommendations and information to assist Councils in EFH identification. NMFS typically solicits this input from the public via the Council process. Each Council holds numerous meetings throughout the year that focus on habitat and other issues related to fishery management. These meetings include public scoping meetings and public hearings and are specifically designed to engage interested parties in fishery management decisions, including decisions related to EFH identification. Furthermore, many Councils have habitat advisory panels. NMFS encourages interested parties to seek membership on Council advisory panels.

2. General Concerns with the Rule

Comment A: Several non-fishing groups commented that the EFH regulations are too complex, ambiguous, and burdensome.

Response A: NMFS has attempted to improve the clarity of the EFH regulations by eliminating wordiness, increasing specificity of the language, improving the efficiency of certain procedures, and reorganizing several sections. These changes should make the regulations easier to use and should promote better understanding of how to implement the EFH provisions of the Magnuson-Stevens Act. Councils, Federal agencies, and other interested parties should benefit from the modifications that were made to the EFH regulations.

Comment B: Two non-fishing industry groups expressed concern that their comments on the proposed rule were not addressed and asked NMFS to revisit their initial concerns. The comments questioned NMFS' authority to address non-fishing activities and said that the EFH coordination, consultation, and recommendation requirements of the regulations are burdensome and duplicative.

Response B: NMFS considered all comments received on the proposed rule, but did not accept all of the recommendations for changes to the rule. NMFS responded to the cited comments in the preamble to the interim final rule at 62 FR 66539–66540 and 66543. NMFS revisited these concerns while developing the final rule and concluded that, with the exception of changes described herein to clarify and streamline portions of the rule, no additional changes are warranted.

Comment C: One commenter questioned NMFS' approach to implementing the EFH provisions in light of the commenter's concerns about the U.S. Fish and Wildlife Service's efforts to protect bull trout under the Endangered Species Act.

Response C: Bull trout are not managed under the Magnuson-Stevens Act and the commenter's concerns are unrelated to the EFH regulations.

3. Comments in Favor of Implementing the Rule Without Substantial Changes

Comment A: Numerous commenters, primarily from conservation groups, expressed concern about the extended comment period and delay in promulgating the final rule, and questioned NMFS' commitment to implementing the EFH regulations. Many commenters urged NMFS to finalize the EFH regulations immediately without weakening them.

Response A: NMFS has been implementing the EFH regulations since January 1998, 30 days following publication of the interim final rule. The final rule benefitted from public comments on ways to improve the EFH regulations, and it incorporates many of the suggestions NMFS received.

Comment B: Several commenters supported the rule but expressed

concern that the EFH regulations impose an additional burden on the already heavy workload of NMFS personnel without offering new budgetary or staff resources. These commenters were concerned that resources may be diverted from other priorities to EFH, or that insufficient NMFS staff levels may slow the EFH consultation process.

Response B: NMFS agrees that the EFH mandate will impose additional work on NMFS staff and has taken this into consideration in crafting the final rule to minimize duplication and maximize efficiency. For example, NMFS encourages agencies to use existing environmental review procedures to complete EFH consultations. Additionally, NMFS has created options such as the General Concurrence and programmatic consultations that will help streamline the EFH consultation process. NMFS has redirected staff from other tasks as necessary to fulfill the new requirements of the Magnuson-Stevens Act.

Comment C: Several individuals and organizations from Alaska remarked that the future of fishing in Alaska depends on marine habitat, and thus the rule is important for Alaska fisheries.

Response C: NMFS agrees. The final rule is intended to benefit marine, estuarine, and riverine habitats of federally managed species and help promote sustainable fisheries in Alaska and nationwide.

4. Comments Regarding Definition of Terms in the Rule

Comment A: Several commenters questioned NMFS' interpretation of the statutory definition of EFH, wherein NMFS interpreted the meaning of several key terms: ''waters,'' ''substrate,'' necessary,'' and ''spawning, breeding, feeding, and growth to maturity.'' Some commenters asked whether, for purposes of identifying EFH, the term ''waters'' may include wetlands or riparian areas in proximity to waters occupied by a managed species. Other commenters suggested that NMFS remove the interpretation that ''waters'' and ''substrate'' can include biological properties, stating that the references to biological features inappropriately expand the definition of EFH. Two commenters thought that the interpretation of ''substrate'' should explicitly include historically important substrate areas that may have been modified by human activity. One commenter said that the word ''structures,'' which is part of the interim final rule interpretation of the word ''substrate,'' should not refer to human-made structures such as oil platforms, but only to natural structures that support fish. Several commenters took the opposite view and wanted the rule to encourage identifying artificial reefs, jetties, and shipwrecks as EFH. Other commenters objected to the narrowed interpretation of ''necessary'' in the interim final rule and recommended that NMFS return to the approach in the proposed rule where ''necessary'' meant the habitat required to support a sustainable fishery and a health ecosystem.

Response A: NMFS is not modifying its interpretation of the statutory definition of EFH in the final rule. The final rule retains the language in § 600.805(b)(2) of the interim final rule stating that EFH may be identified in waters of the United States, as defined in 33 CFR 328.3, which includes wetlands. EFH is limited to aquatic areas, so it may not include riparian habitats. As explained in the preamble to the interim final rule at 62 FR 66533, NMFS disagrees that interpreting ''waters'' and ''substrate'' to include ''biological properties'' and ''biological communities'' respectively is an impermissible expansion of the statutory definition of EFH. Certain biological properties of water and substrate are fundamental components of habitat and are necessary to maintain the function of habitat for fish. NMFS is not modifying the interpretation of ''substrate'' to discuss historically important substrate areas because the potential identification of historic habitats as EFH is addressed adequately in § 600.815(a) of the rule. NMFS is not modifying the interpretation of ''substrate'' to exclude human-made structures, because in some cases such structures can provide valuable habitat for managed species. As discussed in the preamble to the interim final rule at 62 FR 66534, structures such as artificial reefs, jetties, and shipwrecks may be identified as EFH in an FMP if they meet the criteria for EFH identification in the rule. The interpretation of ''necessary'' in the final rule continues to include the clarifying phrase ''and the managed species' contribution to'' a healthy ecosystem because it would be inappropriate for the rule to suggest that EFH must include habitats for species other than managed fish.

Comment B: Many commenters objected to or asked for clarification of the definition of ''adverse effect'' in §§ 600.810(a) and 600.910(a). Most of these commenters said the definition is vague and can be interpreted too broadly to include even effects that are of no consequence or significance to EFH. One commenter asked to what extent an activity must reduce the quality and/or quantity of EFH to trigger action. Some commenters thought that the example of a loss of prey being an adverse effect to EFH exceeds the proper interpretation of what constitutes EFH. These commenters felt that prey is not part of EFH so should not be referenced in a definition of ''adverse effect.'' One commenter recommended that the definition of ''adverse effect'' in the rule address only statistically significant adverse effects and provide for documentation of probabilities of error when predicting adverse effects. Another commenter focused on the statutory requirement for Federal agencies to consult with NMFS regarding actions that may adversely affect EFH and said NMFS' definition of ''adverse effect'' illegally negates the statutory duty of other agencies to decide what effects are adverse.

Response B: NMFS is modifying the definition of ''adverse effect'' in response to comments. The revised definition retains the original standard that an adverse effect is any impact that reduces the quality and/or quantity of EFH. The definition clarifies the types of alterations that may be included and explains that such modifications to habitat are only considered adverse effects if they reduce the quality and/or quantity of EFH. The definition also clarifies that adverse effects to EFH may result from actions occurring within EFH or outside of EFH. NMFS disagrees with the comments that loss of prey is beyond the appropriate scope of adverse effects to EFH. The revised definition specifically mentions the loss of or injury to prey species and their habitats as potential adverse effects to EFH because, as mentioned above, prey can be a vital component of habitat for managed species. NMFS disagrees that only statistically significant adverse effects should be considered because the Magnuson-Stevens Act contains no such limitations. A much more inclusive definition of ''adverse effect'' is necessary in the regulations to clarify what kinds of potential effects should be addressed in FMPs and in the coordination, consultation, and recommendation process for Federal and state agency actions. Federal agencies retain the discretion to make their own determinations as to what actions may fall within NMFS' definition of ''adverse effect.''

Comment C: One commenter said that the definition of ''healthy ecosystem'' should not say that such areas should be similar to undisturbed ecosystems, because hardly any ecosystem could be characterized as pristine or entirely undisturbed. Another commenter asked

for an explanation of the terms ''species richness'' and ''resilience'' within the definition of ''healthy ecosystem.''

Response C: NMFS does not agree that the regulations should omit the reference to undisturbed ecosystems. The definition of ''healthy ecosystem'' in the rule refers to comparing ecological features of ecosystems. Saying that healthy ecosystems should be similar to comparable undisturbed ecosystems is intended to convey that the basic functions of such ecosystems have not been altered by anthropogenic events, and not that such ecosystems are entirely pristine. The term ''species richness'' refers to biodiversity. The term ''resilience'' refers to the ability of a healthy ecosystem to withstand a certain level of environmental stress yet maintain its ecological functions.

Comment D: One commenter inferred that best professional judgment will be necessary to evaluate available data and identify EFH, and asked for a definition of ''best professional judgment'' in the final rule. The commenter asked what process NMFS envisions for gathering a range of scientific opinions and how NMFS will overcome the disadvantages of expert panels.

Response D: NMFS decided not to add a definition of ''best professional judgment.'' The regulations do not specifically call for using such judgments, so a definition is unnecessary. NMFS recognizes that professional opinion must be factored into EFH-related decisions by Councils, Federal agencies, and NMFS, but NMFS sees no need to define a separate process for considering professional opinions related to EFH as opposed to professional opinions on other matters.

Comment E: One commenter said that NMFS had overstepped its authority by referring to EFH ''protection'' when the Magnuson-Stevens Act uses the words ''conservation and enhancement'' of EFH.

Response E: NMFS reviewed the EFH regulations carefully to ensure that word usage reflected the intent of the Magnuson-Stevens Act. For instance, language in § 600.815(a)(2)(ii)(A) of the interim final rule was revised in the final rule (now in § 600.815(a)(1)(iv)(A)) to replace ''protected'' with ''identified'' as follows: ''Councils should interpret this information in a risk-averse fashion, to ensure adequate areas are identified as EFH for managed species.'' In other cases, use of the term ''protection'' was appropriate. For example, § 600.905(a), which reads, ''The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH'' is consistent with section (2)(b)(7) of the Magnuson-Stevens Act, which states that one of the Act's purposes is to ''promote the protection of EFH in the review of projects conducted under Federal permits, licenses, or other authorities that affect such habitat.''

5. Comments on the Purpose and Scope of the Rule

Comment A: Numerous commenters endorsed the use of the precautionary principle in identifying EFH. Several said that EFH should be identified for all marine fish species, and not just those managed under an FMP. Other commenters said that EFH designations should consider all relevant ecosystem components, including prey for managed species. A few commenters thought the regulations should call for identifying all areas as EFH until proven otherwise.

Response A: NMFS addressed similar comments from the proposed rule in the preamble to the interim final rule at 62 FR 66534. The Magnuson-Stevens Act requires that each FMP describe and identify EFH, and it is not appropriate to extend this requirement to species not managed under an FMP. NMFS agrees that EFH designations should account for pertinent features of the ecosystem such as prey, as noted in the interpretation of EFH in § 600.10. However, only the habitat necessary to managed species may be considered EFH. The final rule retains language in § 600.815(a) stating that Councils should interpret habitat information in a risk-averse fashion when identifying EFH. NMFS does not agree that all areas should be identified as EFH until proven otherwise, because EFH designations must be based on available scientific information indicating that the specified habitat is necessary for the managed species.

Comment B: Some commenters objected to the interim final rule restricting EFH designations to the outer limits of the U.S. Exclusive Economic Zone (EEZ), and thought that Councils should be required to address adverse effects to EFH in waters beyond the EEZ.

Response B: As explained in the preamble to the interim final rule at 62 FR 66535, areas beyond the EEZ cannot be identified as EFH, and Federal agencies need not consult with NMFS regarding the effects of actions on habitats beyond the EEZ. However, Councils may promote the protection of managed species' habitats outside the EEZ, and NMFS will use that information as appropriate in discussions regarding international actions.

Comment C: One commenter said that NMFS should delete from § 600.805(b) the language saying that a Council may describe, identify, and protect the habitat of species not in a fishery management unit, but such habitat may not be considered EFH. The commenter said that under the Magnuson-Stevens Act, Councils may only develop FMPs for identified species and may not act to describe, identify, or protect the habitat of other species. The commenter also said that Councils have no authority under the Magnuson-Stevens Act to protect the habitat of any fish.

Response C: The preamble to the interim final rule at 62 FR 66534 notes that the Magnuson-Stevens Act does not preclude Councils from identifying habitat (other than EFH) of a fishery resource under its authority even if the species is not managed under an FMP. Council action to protect the habitats of managed or non-managed species is limited to protecting habitats from fishing activities. Councils have no authority to protect habitats from other activities, although they may comment to state and Federal agencies on non-fishing activities under section 305(b)(3) of the Act.

Comment D: One organization commented that the regulations should consider recreationally important species, including the economic value of recreational fisheries, in any actions taken pursuant to the rule.

Response D: NMFS agrees. EFH must be identified for all species in the fishery management unit of an FMP, including recreationally important species. Actions taken by a Council, NMFS, or a Federal or state action agency to address threats to EFH should account for the recreational as well as commercial value of fishery resources dependent on EFH. However, no specific changes to the rule are necessary to provide for consideration of recreational fisheries.

Comment E: A few commenters urged regional flexibility in the regulations so Councils can develop their own EFH designations and procedures for tracking actions that may adversely affect EFH.

Response E: NMFS agrees. The final rule contains national guidelines for Councils but provides sufficient flexibility to account for the variety of managed species and to address regional variations in the availability of scientific information and differences in Council operating procedures nationwide.

6. Comments on Using an Ecosystem or Watershed Approach to Resource Management

Comment A: A number of commenters representing non-fishing interests stated that the Magnuson-Stevens Act does not authorize a risk-averse or ecosystem approach to EFH. These commenters thought that the focus should be limited to fish species and not ecosystem principles.

Response A: NMFS provided a detailed response to this comment in the preamble to the interim final rule at 62 FR 66532–66533, and the response remains the same. In summary, the Magnuson-Stevens Act provides authority for the link between EFH and the managed species' contribution to a healthy ecosystem in a number of places. Ecosystem concepts are common in the statutory definitions of ''fishery resources,'' ''conservation and management,'' and ''optimum.'' The fact that the Magnuson-Stevens Act directs the Councils to address the degradation and loss of EFH from both fishing and non-fishing activities through conservation and enhancement measures further reflects support for the ecosystem-based management of marine and anadromous fisheries. Ecosystem management encourages sustainable resource use and recognizes the uncertainties inherent in management and the need to make risk-averse decisions. This regulation embraces those concepts and urges Councils to seek environmental sustainability in fishery management, within the current statutorily prescribed fishery management framework (i.e., management by FMPs).

Comment B: A number of commenters from Louisiana stated that the rule places too much emphasis on species managed under FMPs, to the detriment of activities that are designed to protect and restore the coastal ecosystem. The commenters expressed concern that the focus on habitat for federally managed species would undermine the importance of ecosystem components besides federally managed fish species and potentially hinder Louisiana's extensive efforts to restore coastal wetlands as authorized under the Coastal Wetlands Planning, Protection, and Restoration Act (also known as the Breaux Act).

Response B: The rule is intended to promote the conservation and enhancement of EFH for federally managed species through means other than traditional harvest management. The EFH provisions are designed to encourage a broader, ecosystem approach to meet the requirements of the Magnuson-Stevens Act. NMFS recognizes the importance of Louisiana's coastal restoration efforts and is an active partner in implementing the Breaux Act. Although the final rule requires Federal agencies to consult with NMFS on any activity ''that may adversely affect EFH,'' including habitat restoration projects, EFH and ecosystem restoration can be compatible. NMFS works closely with other agencies and the private sector to ensure that restoration projects proceed expeditiously while considering and minimizing any temporary or permanent adverse effects to EFH. The rule recognizes the importance of ecosystem restoration and states that EFH may be designated for certain historic habitats for which restoration is technologically and economically feasible.

Comment C: Commenters from Louisiana wanted NMFS to examine the state's coastal management program and its relationship to the rule. These commenters asked NMFS to exempt from the final rule Louisiana's state programs and Federal activities in Louisiana with existing review procedures, and/or place an emphasis on programmatic consultations and General Concurrences for these actions.

Response C: NMFS highlighted its interaction and coordination with the states and state coastal zone management programs in the preamble to the interim final rule at 62 FR 66536. NMFS has no authority to exempt Federal and state actions in Louisiana from the EFH consultation and recommendation requirements of the Magnuson-Stevens Act. As outlined in Subpart K, NMFS encourages Federal action agencies to combine EFH consultations with other environmental review processes and to complete programmatic consultations and General Concurrences where appropriate.

7. Comments on the Guidance for Description and Identification of EFH in Fishery Management Plans

Comment A: Where the rule states that ''EFH can be inferred'' based on a species' distribution among habitats and on information about the species' habitat requirements and behavior, one commenter wanted the rule to require that the Councils clearly identify instances when EFH is designated based on these inferences.

Response A: The rule provides guidance to the Councils to evaluate all available information and use specified criteria to identify EFH. In some cases, Councils may need to use their best scientific judgement. To help explain how Councils identify EFH in FMPs, including cases where EFH is based on inferences, the final rule includes new language advising Councils to explain the analyses conducted to distinguish EFH from all habitats potentially used by a species. Councils must also demonstrate that the identification of EFH is based on the best scientific information available.

Comment B: Several groups of commenters expressed concern about the guidance in § 600.815(a)(2)(ii)(B) of the interim final rule that states all habitats, including historic habitats, ''should be considered essential'' if a species is overfished and habitat loss or degradation may be contributing to the species being overfished. One of these commenters stated that this was unreasonable because not all habitat used by an overfished species is essential. Another commenter wanted NMFS to require that the Councils establish a stronger link between the loss of habitat and its contribution to overfishing before it is considered essential. Several commenters wanted this provision deleted from the rule entirely, while others wanted to see all habitat for overfished species identified as EFH. One commenter evaluated the provisions for designating EFH for overfished species in the context of the Endangered Species Act (ESA). This commenter stated that the EFH provisions appear inconsistent with the way in which NMFS evaluates habitat in the ESA. The commenter noted that in NMFS' implementation of the ESA, the agency recognizes that currently available habitat is sufficient for conservation for some species. These commenters stated that identifying EFH in areas historically used by fish may not be the best means to ensure the conservation and enhancement of EFH.

Response B: NMFS agrees that it might not always be appropriate to identify as EFH all current habitats as well as certain historic habitats. NMFS has changed the guidance related to determining EFH for overfished species, now in § 600.815(a)(1)(iv)(C), to state that all habitats currently used by the species ''may be considered essential'' (versus ''should be considered essential'') if a species is overfished and habitat loss or degradation may be contributing to the species being overfished. Councils should make this determination on a case-by-case basis.

All FMP conservation and management measures, including identifying the limits of EFH for overfished species, must be based on the best scientific information available. As addressed in the preamble to the interim final rule at 62 FR 66537, the rule advocates a risk-averse approach to

identifying EFH because of the uncertainty in our knowledge of habitat and its relation to fisheries production. Councils should take particular care when inadequate information exists on overfished stocks to ensure that habitat losses do not hinder the stock rebuilding.

EFH and the habitat components of the ESA are authorized under different legislative mandates and have unique objectives. EFH must be designated for all federally managed species. Conservation and enhancement measures for EFH, if implemented by the agencies with relevant jurisdiction, should help prevent the need to list species under the ESA.

Comment C: One commenter wanted the guidance in § 600.815(a)(2)(ii)(F) of the interim final rule to be deleted from the regulations. This commenter stated that the Magnuson-Stevens Act only authorizes designation of existing habitat as EFH and does not provide the authority to identify EFH for degraded or inaccessible habitat.

Response C: NMFS responded to similar comments in the preamble to the interim final rule at 62 FR 66534, and upon further consideration takes the same position. The provision of the rule that allows the designation of inaccessible or degraded habitat as EFH is consistent with the EFH provisions of the Magnuson-Stevens Act. Section 2 of the Magnuson-Stevens Act recognizes that habitat losses have resulted in a diminished capacity to support sustainable fisheries and that the protection of habitat is necessary to prevent overfishing and rebuild overfished stocks. The restoration of degraded or inaccessible habitats may therefore be necessary to maintain or rebuild sustainable fisheries.

Comment D: Several commenters wanted the final rule to restrict EFH designation to the habitat required to maintain commercial fisheries at optimal yield or another quantitative measure of the status of a stock.

Response D: NMFS provided a detailed response to this comment in the preamble to the interim final rule at 62 FR 66533, and, upon further consideration, still takes the same position. The Magnuson-Stevens Act states that one of its purposes is to provide for the preparation and implementation of FMPs that will achieve and maintain the optimal yield from each fishery. Therefore, NMFS has linked the guidelines for identifying EFH to sustainable fisheries as is appropriate under the Magnuson-Stevens Act. The rule states that FMPs should identify sufficient EFH to support a population adequate to maintain a sustainable fishery and the managed species' contributions to a healthy ecosystem. When considering the EFH requirements of a managed species, the rule advises Councils to describe and identify enough habitat to support the total population, of which optimal yield is a subset, not just the individual fish that are removed by fishing.

Comment E: Several commenters wanted the final rule to establish incentives for improving the data available for identifying EFH. These commenters thought a research agenda should be developed to collect the information needed to identify EFH with Level 2, 3, and 4 data.

Response E: NMFS agrees that a prioritized EFH research agenda would be beneficial. The final rule asks the Councils to set priority research needs to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the development of conservation and enhancement recommendations. The rule also encourages the Councils to strive to describe habitat based on the highest level of detail (i.e., Level 4). Additionally, the final rule says that Councils and NMFS should periodically review and revise the EFH components of FMPs based on available pertinent information. NMFS is working within the constraints of available funding to conduct additional research to improve the designations of EFH.

Comment F: One port authority stated that the EFH designations should undergo a formal rulemaking process.

Response F: NMFS disagrees. Councils identify EFH within the existing statutory and regulatory process for FMP development and amendment, which provides numerous opportunities for public involvement. All Council deliberations on fishery management measures are open to the public, and all Council meeting agendas are published in the **Federal Register**. Additionally, NMFS publishes notices of availability and solicits public comments for FMPs and amendments received for Secretarial review. NMFS also publishes a public notice of decision in the **Federal Register.**

Comment G: A member of the recreational fishing community commented that the rule should be revised to require the identification of EFH for species assemblages, not individual species. Another commenter asked that Councils describe EFH separately within each FMP rather than making broad regional designations.

Response G: The final rule clarifies that every FMP must describe and identify EFH for each life stage of each managed species, but if appropriate, EFH may be designated for assemblages of species or life stages that have similar habitat requirements. If an FMP designates EFH for species assemblages, it must include a justification and scientific rationale.

Comment H: One Council stated that the specification that tables must be used to describe EFH may constrain the development of useful EFH descriptions. The Council stated that textual EFH descriptions would be more helpful.

Response H: NMFS agrees, and the final rule does not require that EFH be described in tables. The final rule clarifies that FMPs must describe and identify EFH in text and should use text and tables as appropriate to summarize information on variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity.

Comment I: Many commenters stated that the final rule should allow the Councils to identify EFH within state and Federal waters. One commenter wanted to see EFH designations based on the biological needs of each species, not geographic or political boundaries.

Response I: NMFS agrees, and addressed these comments in the preamble to the interim final rule at 62 FR 66535. The Magnuson-Stevens Act requires Councils to describe and identify EFH based on the biological requirements of all life stages of the managed species, with no limitations placed on the geographic location of EFH. EFH may be designated in state or Federal waters, but may not be designated beyond the United States exclusive economic zone.

Comment J: One commenter from a non-fishing industry group expressed concern that EFH might be designated in upland areas where fish habitat does not exist. One commenter from a conservation group and a commenter from a fishing group recommended that Councils be allowed to designate EFH in riparian corridors and on other dry lands that influence the productivity of aquatic areas.

Response J: EFH is defined in the Magnuson-Stevens Act as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH regulations interpret this definition by defining ''waters'' and ''substrate.'' ''Waters'' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate. ''Substrate'' includes

sediment, hard bottom, structures underlying the waters, and associated biological communities. EFH can only be designated in aquatic areas. EFH cannot be designated in riparian habitat or on dry land, although actions in these areas that may adversely affect EFH do require consultation with NMFS. The definition of ''adverse effect'' in the final rule clarifies that adverse effects to EFH may result from actions occurring within EFH or outside of EFH.

Comment K: Several commenters, including fishing and non-fishing groups and some government agencies, expressed concern that the EFH designations made under the interim final rule are extremely broad. Non-fishing groups commented that NMFS arbitrarily designated all habitat as EFH rather than designating ''necessary'' or ''essential'' habitats, as the statute requires. In contrast, one commenter thought that the guidance in § 600.815(a)(2)(ii) of the interim final rule that asks the Councils to identify EFH as the habitats areas ''valued most highly'' and ''most commonly used'' was not sufficiently inclusive to capture all the areas that should be identified as EFH.

Response K: Councils were justified in designating broad areas as EFH based on the guidance in the interim final rule. For many species there is little available scientific information linking the biological requirements of managed species to specific habitats. In such cases the rule encourages Councils to interpret available information in a risk-averse fashion. Moreover, NMFS is undertaking research in several regions to obtain additional scientific information. As further information becomes available, EFH designations will be refined.

NMFS has also taken steps to clarify in the final rule that EFH identification should emphasize necessary habitats for fish, based on available information. To reduce confusion about what habitats generally should be considered essential, the final rule omits language from the interim final rule saying that ''habitats of intermediate or low value may also be essential, depending on the health of the fish population'' because this concept is covered elsewhere in the rule. The final rule also clarifies that if sufficient information is available, EFH should be identified as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species. Furthermore, the final rule encourages Councils to identify EFH based on the highest level of information available, and states that EFH should not be designated if there is no information available and if habitat usage cannot be inferred from other means, such as information on a similar species.

Comment L: Two conservation groups expressed concern about specific elements of Amendment 14 to the Pacific Coast Salmon FMP.

Response L: These comments were not relevant to the EFH regulations.

8. Comments on the Sources and Quality of Information Used to Identify EFH

Comment A: Commenters representing fishing and non-fishing interests and environmental groups wanted to see NMFS use all good quality information to identify EFH. Some of these commenters wanted the standard of ''best scientific information'' to be replaced with a standard of ''best available information from all sources,'' including fishing interests. Some commenters also wanted this standard of information to extend to NMFS' EFH Conservation Recommendations.

Response A: Section 600.815(a)(1)(ii)(B) of the final rule reflects that Councils should use information from the best available sources to identify EFH, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. As stated in the preamble to the interim final rule at 62 FR 66536, NMFS intended to have the Councils use the best available information from a variety of sources, and the Magnuson-Stevens Act requires NMFS to consult with participants in the fishery before submitting its recommendations to the Councils to assist in developing the EFH components of FMPs. However, all information should be evaluated with regard to reliability, so the final rule clarifies that Councils should consider different types of information according to its scientific rigor. NMFS intends to continue using the best available sources of information to develop EFH Conservation Recommendations to Federal and state agencies.

Comment B: One marine conservation group thought the requirement that Councils must demonstrate their use of best available science in the identification of EFH may place an inappropriate burden of proof on the Councils.

Response B: The final rule maintains the requirement that Councils demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2. Section 301(a) of the Magnuson-Stevens Act requires all fishery management plans, and any regulation promulgated to implement such plans, to be consistent with the national standards. National standard 2 requires that fishery conservation and management measures be based on the best scientific information available. Applying this standard to the identification of EFH is appropriate and necessary to comply with the Magnuson-Stevens Act.

Comment C: A commenter representing non-fishing industry interests wanted the final rule to require the Councils to record, and make available for public review and comment, the scientific basis for all Council decisions. Another commenter wanted to require a list of all judgments for which data were not available and recommended that this list of data gaps be used to set a research agenda.

Response C: All Council deliberations on fishery management measures are open to the public, and adopted measures must be based on the best scientific information available. The final rule clarifies that FMPs should identify species-specific habitat data gaps. The final rule also clarifies that FMPs should contain recommendations for research needed to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and non-fishing activities, and the development of conservation and enhancement measures for EFH.

9. Comments on the Four-Level Approach for Organizing EFH Data

Comment A: As discussed separately above, NMFS received numerous general comments in favor of implementing the regulations without substantial changes, many of which mentioned specific support for the approach used in the interim final rule for organizing information used to designate EFH.

Response A: The final rule retains the four-level approach for organizing information used to designate EFH. However, the final rule clarifies that Level 1 information encompasses a variety of types of distribution data, which may be derived from systematic presence/absence sampling and/or may include information collected opportunistically. Since distribution data are lacking for a number of managed species, especially in Alaska, the final rule clarifies that habitat use for a given species or life stage may be inferred, if appropriate, based on information on a similar species or another life stage. The final rule also clarifies that if there is no information on a given species or life stage, and habitat usage cannot be inferred from

other means, EFH should not be designated.

Comment B: One commenter recommended that NMFS develop an incentives program or funding mechanism to encourage data collection to support identifying EFH with Level 3 or 4 data, as described in the interim final rule. Another commenter said that EFH should be categorized and prioritized according to its availability, vulnerability, and utilization.

Response B: For most species managed under the Magnuson-Stevens Act, available information on habitat requirements falls into Levels 1 or 2 (distribution or relative abundance data). NMFS agrees that having Level 3 or 4 data (rates of habitat-related growth, reproduction, or survival, or production rate data) would enable the Councils to refine the designations of EFH. NMFS is pursuing budget initiatives and partnerships with others to encourage the development of this type of information. Regarding the characterization and prioritization of EFH, NMFS agrees that the categories mentioned by the commenter are valid considerations for evaluating habitats. However, NMFS does not agree that the regulations should require EFH to be categorized, because requisite information to categorize EFH in this fashion is not available in many cases. Where Councils have more information on the ecological importance or vulnerability of portions of EFH, they may identify those areas as Habitat Areas of Particular Concern.

Comment C: One commenter said that further mechanisms are necessary to delineate important habitats based on habitat characteristics rather than the distribution of fish species. The commenter recommended adding to the regulations guidance that is complementary to the four-level approach but is based on an assessment of ecological significance and function of habitat.

Response C: NMFS agrees that where sufficient information is available, EFH designations should specify those habitat features that contribute most to the growth, reproduction, and survival of managed species (Level 3) or, ideally, those habitats with the highest production rates (Level 4) for each species. The final rule clarifies that this type of information, if available, should be used to identify EFH as the habitats supporting the highest growth, reproduction, survival, and/or production rates within the geographic range of a species. Currently, however, in most cases the best available scientific information is fish distribution (Level 1) or relative abundance (Level 2) data. Additional guidance linking EFH to habitat function, beyond the clarification mentioned above, is not necessary at this time because the rule already explains how to use Level 3 and 4 information to identify habitats with the highest ecological function for managed species.

10. Comments on the Guidelines for Determining the Limits of EFH

Comment A: One commenter representing waterfowl management efforts said that the importance of long-term sustainability of coastal wetlands habitat is overshadowed by the narrow focus of the EFH regulations on achieving optimal yield from a fishery.

Response A: As explained in the preamble to the interim final rule at 62 FR 66533, the Magnuson-Stevens Act states that FMPs must achieve the optimum yield from each fishery on a continuing basis, and determinations of optimal yield should take into account the protection of marine ecosystems. There is no inherent inconsistency between the overall objectives of promoting the conservation of coastal wetlands for waterfowl and promoting the conservation of EFH that is necessary to support a sustainable fishery and the managed species' contribution to a healthy ecosystem (including avian predators of managed species). However, specific wetlands management activities may not always advance both these objectives, and should be evaluated on a case-by-case basis.

Comment B: An alliance of Pacific northwest conservation groups commented that habitats that were historically used by salmon but are currently degraded or inaccessible should be included in EFH.

Response B: NMFS agrees that EFH should include historic habitats in certain circumstances. The final rule retains language in § 600.815(a) allowing the inclusion of such habitats as EFH, provided that the habitats are necessary to support rebuilding the fishery and that restoration is technologically and economically feasible.

Comment C: One organization commented that the Magnuson-Stevens Act defines EFH in terms of life history characteristics for managed species, whereas the interim final rule interprets EFH in terms of productivity.

Response C: The guidelines for determining the limits of EFH emphasize the habitat functions that have the most benefits to fish during the life stages contained in the statutory definition of EFH: spawning, breeding, feeding, and growth to maturity. Thus, the guidelines refer to habitats that support the highest productivity of managed species at each life stage. The regulations must make this connection between species and productivity to offer guidance on how to identify EFH based on the habitat needs of managed species at each life stage.

Comment D: One commenter asked who will determine whether it is economically feasible to restore degraded or inaccessible habitat in connection with the provision of the interim final rule that allows Councils to identify such areas as EFH.

Response D: The final rule retains language from the interim final rule saying that the Secretary and the appropriate Council(s) determine whether, for purposes of potentially identifying degraded or inaccessible aquatic habitat as EFH, restoration of such habitats is technologically and economically feasible. Through the Magnuson-Stevens Act process for developing FMPs and amendments, there are numerous opportunities for public comment on any proposal to designate degraded or inaccessible habitat as EFH, including the economic feasibility or infeasibility of restoration.

11. Comments on the Relationship Between EFH and Critical Habitat

Comment A: Several commenters said that EFH should be restricted to waters and substrate only and must always be greater than or equal to ''critical habitat'' identified for managed species that are listed as threatened or endangered under the ESA. Several other commenters thought it was inappropriate for the interim final rule to state a relationship between EFH and ''critical habitat'' that will always apply for ESA listed species. These commenters thought that the extent of EFH for listed species should be left to the Councils to decide on a case-by-case basis.

Response A: In the preamble to the interim final rule at 62 FR 66537, NMFS responded to similar comments that were critical of the corresponding provision in the proposed rule, and noted that the interim final rule contained modifications to help distinguish between EFH and critical habitat. NMFS maintained that it is appropriate for the rule to state that EFH will always be greater than or equal to the aquatic portions of critical habitat because, for example, important adult marine habitats for endangered salmonids have not been identified as critical habitat. Upon further consideration of this issue, NMFS agrees that there could conceivably be some

circumstances where this relationship between EFH and critical habitat might not be appropriate, so the word ''always'' is not appropriate in this provision of the regulations. The term ''will'' in the EFH regulations is used descriptively and does not denote an obligation to act, but apparently the use of ''will'' in combination with ''always'' implied to some readers a mandatory requirement. Therefore, the final rule states that areas described as EFH ''will normally'' (rather than ''will always'') be greater than or equal to aquatic areas that have been identified as critical habitat. NMFS agrees with the commenters who stated that EFH must be limited to aquatic areas.

Comment B: One commenter addressed the explanation in the preamble to the interim final rule at 62 FR 66537 stating that directed fishing of listed species is not permitted. This commenter said that rather than focus on non-fishing related threats to managed species that are listed under the ESA, NMFS should control indirect fishing effects on listed runs (which NMFS assumes to mean bycatch).

Response B: Salmon managed under the Pacific Coast Salmon FMP and the Atlantic Salmon FMP are the only species that currently are both listed under the ESA and managed under the Magnuson-Stevens Act. The 1996 amendments to the Magnuson-Stevens Act included a new requirement that fishery management measures minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of bycatch. Amendment 14 to the Pacific Coast Salmon FMP addresses this requirement by providing guidance for minimizing salmon bycatch and bycatch mortality, and by establishing salmon bycatch reporting specifications. The Atlantic Salmon FMP minimizes bycatch by prohibiting the possession of Atlantic salmon in the EEZ. The Magnuson-Stevens Act also requires evaluation of threats to EFH from non-fishing activities, so NMFS cannot divert all efforts to bycatch reduction at the expense of addressing threats from activities other than fishing.

12. Comments on the Effects of Fishing on EFH

Comment A: Some commenters expressed concern that the EFH regulations imply that fishing is the major, if not only, cause of habitat degradation.

Response A: NMFS disagrees with the commenters' perception of the interim final rule. Fishing and non-fishing activities have potential adverse effects on habitat and the regulations address both. The regulations provide guidance to Councils and procedures for Federal agencies on how to address adverse effects from non-fishing activities on EFH. The Magnuson-Stevens Act specifically requires that FMPs minimize to the extent practicable adverse fishing effects on EFH, so the regulations also include sections that focus on habitat impacts from fishing.

Comment B: One commenter expressed concern that the EFH provisions are being used arbitrarily to prevent the use of certain fishing gears, rather than to protect EFH based on scientific information.

Response B: NMFS disagrees with the commenter's opinion. The EFH provisions require Councils to minimize to the extent practicable the adverse effects on EFH caused by fishing. The Magnuson-Stevens Act and the EFH regulations address impacts caused by fishing activities in general and do not target specific gear types. Councils must evaluate the effects of all fishing activities (e.g., each gear type) on EFH, and fishery management measures must be based on the best scientific information available.

Comment C: One commenter from the commercial fishing community remarked that the size and duration of time/area closures, mentioned in the EFH regulations as an option for managing adverse effects from fishing, must be considered carefully since these management measures can impact the socioeconomic status of fishermen and their families.

Response C: NMFS agrees. By including the language ''to the extent practicable'' in the requirement to minimize adverse fishing impacts, Congress intended for fishery managers to take both ecological and socioeconomic effects of measures into consideration in determining whether it is appropriate to adopt particular management measures. The final rule clarifies the guidance to Councils for determining whether it is practicable to minimize an adverse effect from fishing, and states that Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation.

13. Comments on the Evaluation of the Effects of Fishing

Comment A: One commenter expressed concern about the quality of information that Councils were using to conduct assessments of the effects of fishing on EFH as required by the interim final rule, and recommended that NMFS provide Councils with a standard of review for non-scientific information such as ''gray'' literature, videos, and anecdotal information. Other commenters suggested that NMFS provide guidance to Councils for how to fulfill their obligation to minimize adverse fishing effects on EFH to the extent practicable when information is lacking.

Response A: NMFS agrees that further guidance is warranted to explain how Councils should consider available information. The final rule clarifies the requirement for Councils to examine the effects of fishing on EFH, and refers to this analysis as an ''evaluation'' rather than an ''assessment'' to avoid confusion with the requirement to perform an EFH Assessment during consultations as described in Subpart K. The final rule retains language from the interim final rule advising Councils to complete the evaluation using the best scientific information available, as well as other appropriate information sources, as available. When information is lacking, or when Councils use non-peer-reviewed or non-scientific information to augment the evaluation, the final rule states that Councils should consider the different types of available information according to its scientific rigor.

Comment B: Several commenters said that Councils did not adequately evaluate adverse effects from fishing in their EFH FMP amendments and urged NMFS to establish specific requirements, such as requiring Councils to classify the level of impacts according to gear type, to guide Councils in completing fishing impact evaluations.

Response B: The EFH regulations require Councils to evaluate the potential adverse effects of fishing activities on EFH so that Councils will be informed when making decisions regarding minimization of adverse effects to EFH from fishing. NMFS did not fully approve those EFH FMP amendments that did not meet this requirement.

Based upon experience implementing the interim final rule, NMFS agrees that the regulations should clarify the requirements for conducting fishing impact evaluations, and NMFS has modified the rule accordingly. Specifically, the final rule requires Councils to describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing

activity adversely affects EFH. The final rule also clarifies that Councils should consider the cumulative impacts of multiple fishing activities on EFH in the fishing impact evaluation.

Comment C: Two commenters recommended that the EFH regulations be revised to advise Councils to document and assess in FMPs all management actions taken prior to the enactment of the EFH provisions that benefit habitat before recommending new measures to conserve and enhance EFH.

Response C: NMFS agrees that it is useful for Councils to document and consider any past management actions that provide habitat protection. The final rule recommends that Councils list past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH in the evaluation of fishing impacts on EFH.

14. Comments on the Threshold That Requires Councils to Minimize Adverse Effects of Fishing on EFH

Comment A: One commenter questioned use of the words ''prevent'' and ''mitigate'' in the portion of the EFH regulations that states, ''Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable...'' The commenter indicated that use of these words is inappropriate since the Magnuson-Stevens Act only authorizes Councils to ''minimize'' adverse fishing effects on EFH.

Response A: NMFS disagrees. By using the words ''prevent'' and ''mitigate'' in this provision of the EFH regulations, NMFS' intent is to give Councils the flexibility to adopt the approach that is most suitable to meet the statutory obligation to minimize adverse fishing effects on EFH. For instance, it might be more effective for Councils to act to prevent particularly damaging adverse effects rather than allowing all types of effects to occur with some degree of minimization.

Comment B: The interim final rule stated that Councils must minimize to the extent practicable adverse effects on EFH from fishing if there is evidence that a fishing practice is having an identifiable adverse effect on EFH. Some commenters from conservation groups were pleased that NMFS replaced the word ''substantial'' (from the proposed rule) with ''identifiable,'' stating that ''identifiable'' is closer to the intent of the statute in terms of indicating the threshold at which Councils must take action to minimize adverse fishing effects to EFH. Others expressed concern that the word ''identifiable'' is inappropriate since this language does not appear in the Magnuson-Stevens Act and may still raise the threshold for action above that set by the Act. Commenters also expressed concern that the need to demonstrate an ''identifiable'' adverse effect might lead the Councils to inaction. Furthermore, commenters questioned the meaning of the descriptors for the term ''identifiable,'' offered in both the preamble to the interim final rule and the draft technical guidance manual, that ''identifiable means both more than minimal and not temporary in nature.'' Some commenters recommended that the EFH regulations require Councils to demonstrate adverse impacts scientifically and make the specific connection between adverse impacts and reduced stock productivity before taking action to minimize these impacts.

Response B: As discussed in the preamble to the interim final rule at 62 FR 66538, NMFS' intent was to provide guidance to Councils for determining when to act to minimize adverse fishing effects to EFH. Such action is warranted to regulate fishing activities that reduce the capacity of EFH to support managed species, not fishing activities that result in inconsequential changes to the habitat. In response to commenters' concern over the word ''identifiable'' in the interim final rule, NMFS modified this section to read, ''Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature'' based on the Councils' evaluation of the potential adverse effects of fishing. Temporary impacts are those that are limited in duration and that allow the particular environment to recover without measurable impact. Minimal impacts are those that may result in relatively small changes in the affected environment and insignificant changes in ecological functions.

It is not appropriate to require definitive proof of a link between fishing impacts to EFH and reduced stock productivity before Councils can take action to minimize adverse fishing impacts to EFH to the extent practicable. Such a requirement would raise the threshold for action above that set by the Magnuson-Stevens Act. The final rule encourages Councils to use the best available science as well as other appropriate information sources when evaluating the impacts of fishing activities on EFH, and to consider different types of information according to its scientific rigor.

Comment C: Several conservation groups criticized Councils for not adopting any new measures to minimize adverse effects from fishing activities and requested that NMFS require in the EFH regulations that new measures be taken to comply with the Magnuson-Stevens Act. Many of the same groups commented that NMFS should develop documentation requirements for Councils to demonstrate compliance with the requirement to minimize adverse fishing impacts to EFH to the extent practicable.

Response C: The final rule clarifies that Councils should document compliance with the requirement to minimize to the extent practicable adverse effects on EFH caused by fishing. When there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, Councils should identify in FMPs a range of potential new actions that could be taken to address adverse effects on EFH; include an analysis of the practicability of potential new actions; and adopt any new measures that are necessary and practicable. However, new measures may not be necessary in all cases. The final rule requires that FMPs explain the reasons for Councils' conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

Comment D: One commenter suggested that NMFS revise the EFH regulations to require Councils to adopt framework measures to address fishing impacts.

Response D: NMFS disagrees with this suggestion. It is not necessary or appropriate to add a requirement to the EFH regulations that Councils use framework measures as the mechanism to address fishing impacts. Rather, Councils should decide which administrative approach is most appropriate to use to meet the requirements of the EFH provisions.

Comment E: Several conservation groups recommended that each fishing activity be prohibited until it can be demonstrated that the activity does not adversely affect EFH.

Response E: NMFS disagrees. The approach suggested by the commenters would not be consistent with the statutory requirement to minimize adverse effects on EFH ''to the extent practicable'' and would have significant adverse socioeconomic impacts. The EFH provisions of the Magnuson-Stevens Act and the EFH regulations provide adequate mechanisms to evaluate the effects of fishing activities on EFH and ensure the minimization of adverse impacts on such habitat.

Comment F: Two commenters recommended that NMFS provide clearer guidance on how to interpret the term ''practicable'' and how Councils should carry out practicability analyses to comply with the statutory requirement to minimize to the extent practicable adverse effects on EFH caused by fishing. Another commenter noted that the phrase ''consistent with national standard 7'' in the section on conducting practicability analyses is unnecessary since all actions must be consistent with national standard 7 under the Magnuson-Stevens Act.

Response F: The final rule clarifies the guidance for considering practicability. The revised language eliminates redundancy and advises Councils to consider long- and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation. The final rule retains a reference to national standard 7 to provide context for the consideration of the costs and benefits of potential management measures.

Comment G: One commenter requested that NMFS reinsert the words ''the marine ecosystem'' in place of ''EFH'' in the following passage from § 600.815(a)(3)(iv) of the interim final rule: ''Councils should consider whether, and to what extent, the fishing activity is adversely impacting EFH...'' The commenter stated that the language used in the proposed rule was a more accurate reflection of the spirit of the Magnuson-Stevens Act.

Response G: NMFS disagrees. The Magnuson-Stevens Act requires Councils to address the effects of fishing on EFH, not on the entire marine ecosystem. The final rule incorporates editorial changes to eliminate redundancy, and therefore omits language cited by the commenter. The cited paragraph appears at § 600.815(a)(2)(iii) of the final rule.

Comment H: One commenter suggested that the EFH regulations clarify that Councils must address the effects of fishing covered under one FMP on EFH covered under another FMP.

Response H: NMFS agrees. The final rule clarifies that each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. The final rule also clarifies that each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity regulated under the FMP or other Federal FMPs.

Comment I: Several commenters recommended that NMFS revise the EFH regulations to indicate what constitutes grounds for disapproval of the portion of FMPs pertaining to minimization of fishing impacts.

Response I: Disapproval is warranted if an FMP or amendment is not consistent with the national standards, other provisions of the Magnuson-Stevens Act, or other applicable law. The EFH regulations provide guidance on meeting the EFH requirements of the Act, and failure to follow the guidance may lead to disapproval or partial approval of an FMP or amendment. It is unnecessary to state the grounds for disapproval in the regulations.

Comment J: One commenter recommended that NMFS require Councils to coordinate with states and other authorities to provide conservation recommendations when Council-managed fisheries adversely affect EFH outside Federal jurisdiction.

Response J: The Magnuson-Stevens Act does not authorize NMFS to require Councils to coordinate with or provide recommendations to states or other authorities, although Councils have authority under the Act to provide recommendations to states regarding actions that may affect the habitat of species under Council jurisdiction. When Council-managed fisheries adversely affect EFH in state waters, the Council should coordinate with the affected state(s) when developing management strategies.

15. Comments on the Identification of Specific Industries with Potential Adverse Effects on EFH

Comment A: Two commenters thought that the final rule should identify specific industries that adversely impact EFH.

Response A: During the comment period for the proposed rule, many commenters objected to their particular industries or activities being highlighted as having potential adverse effects on EFH. Many pointed out that non-fishing activities do not always adversely impact fish habitat. Some industries pointed out that they are involved in restoration efforts and that some of their activities have been documented as producing positive effects on fisheries, not adverse effects. In the preamble to the interim final rule at 62 FR 66540, NMFS acknowledged that many industries take certain actions specifically to improve fish habitat even if other activities conducted by the industry may adversely affect fish habitat. Therefore, the final rule avoids singling out specific industries or activities that have the potential to adversely affect EFH.

Comment B: One port authority asked NMFS to clarify that ''non-water dependent activities,'' as used in the interim final rule, excludes port development and maintenance activities. The commenter's request extended to other location-dependent activities such as bridge and utility/cable-line installation and maintenance.

Response B: Although NMFS has removed from the regulations the reference to specific non-water dependent activities, any Federal action that may adversely affect EFH is subject to consultation regardless of water dependency.

Comment C: Several non-fishing industry commenters asked NMFS to explain its authority for asking the Councils to identify non-fishing activities, and stated that the Magnuson-Stevens Act appears only to provide authority to identify fishing activities.

Response C: NMFS addressed this concern in the preamble to the interim final rule at 62 FR 66539–66540 and continues to disagree that its authority is limited to addressing fishing activities. One of the stated purposes of the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect, or have the potential to affect, such habitat. These projects include non-fishing activities. Section 303(a)(7) of the Magnuson-Stevens Act requires FMPs to address the effects of fishing on EFH and identify other actions to encourage the conservation and enhancement of EFH. The statute does not limit these measures to pertain only to fishing activities. A necessary first step to identifying conservation and enhancement measures is to identify adverse effects.

Comment D: One commenter representing non-fishing industry interests wanted the final rule to require that FMPs document actual adverse effects to EFH, rather than potential adverse effects.

Response D: NMFS disagrees. Documentation of actual adverse effects in most cases depends on site-specific factors, whereas the intent of this portion of the rule is to identify the types of activities that can commonly cause adverse effects. The final rule omits language stating that FMPs must identify activities that ''have the potential to adversely affect EFH'' and instead says that FMPs must identify activities ''that may adversely affect EFH.'' This change will make the standard for identifying threats to EFH consistent with the standard for actions

that require consultation under section 305(b)(2)of the Magnuson-Stevens Act.

16. Comments on Cumulative Impacts Analysis

Comment A: Many commenters, primarily environmental organizations and some individual commenters, wanted the final rule to mandate that the FMPs contain a cumulative impacts analysis of fishing and non-fishing activities on EFH.

Response A: NMFS agrees that FMPs should provide an analysis of cumulative impacts, but does not agree that such an analysis should be mandatory. The final rule clarifies that, to the extent feasible and practicable, FMPs should analyze how the cumulative impact of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale.

Comment B: Commenters representing non-fishing interests asked that cumulative impact analysis concentrate on a more clearly defined and focused group of watershed activities. The commenters also wanted to know what time period the cumulative impact analysis should address and why cumulative risk assessments would be conducted at all, since they are likely to be time consuming and expensive.

Response B: NMFS has clarified the cumulative impacts analysis language in the final rule. A cumulative impacts analysis is intended to evaluate the effect on EFH of impacts occurring within a watershed or marine ecosystem that may result from individually minor but collectively significant actions. It should consider the effects of all actions that affect the quantity and/or quality of EFH spanning a time frame deemed appropriate by the Councils. The resulting analysis will improve NMFS' and the Councils' ability to examine actions within a watershed or marine ecosystem that adversely affect EFH and will highlight the potential for future concerns. The final rule retains language stating that the FMPs should contain such an analysis to the extent feasible and practicable.

Comment C: One commenter requested that the word ''minor'' be removed from the description of what can cause cumulative impacts from § 600.815(a)(6) of the interim final rule.

Response C: NMFS disagrees. The intent of a cumulative impacts analysis is to address potential effects of actions that may appear minor individually, yet have more serious consequences when viewed in the aggregate. Thus, the final rule retains language stating that cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time.

Comment D: One commenter stated that the final rule should require the Councils to gather data to analyze cumulative impacts and that the quantity and quality of data should guide the conclusions on cumulative impacts. The commenter also wanted the FMPs to indicate which impacts are supported by data.

Response D: National standard 2 requires that all conservation and management measures, including those that arise from a cumulative impacts analysis, be based upon the best scientific information available. NMFS agrees that the quantity and quality of available data should guide Councils' conclusions on cumulative impacts, although Councils should also consider that cumulative impacts may not be easily discernable from available data.

17. Comments on the Guidance for Identifying Actions to Encourage the Conservation and Enhancement of EFH

Comment A: Two commenters addressed the guidance for general conservation and enhancement recommendations found in § 600.815(a)(7)(ii) of the interim final rule. One of the commenters focused on the statement that ''Activities that may result in significant adverse effect on EFH should be avoided where less environmentally harmful alternatives are available.'' The commenter questioned the use of the term ''significant'' here as opposed to ''identifiable'' in § 600.815(a)(3) of the interim final rule and said that NMFS appears to be condoning an increased level of habitat disturbance for non-fishing activities. The commenter also suggested replacing ''should be avoided'' with ''will be avoided'' in this sentence. Another commenter, representing non-fishing interests, wanted NMFS to delete the reference to ''protecting'' EFH in this portion of the regulations.

Response A: In the final rule NMFS deleted a large portion of the section entitled ''Conservation and enhancement'' that appeared in the interim final rule at § 600.815(a)(7), including the language referenced by the commenters. The deleted paragraphs contained general recommendations and options for EFH conservation and enhancement to assist Councils in developing the required provision of FMPs discussing measures to conserve and enhance EFH. However, NMFS determined that such general recommendations do not need to be codified in regulations and that including this information in the final rule could lead to confusion since the general recommendation might not apply equally in all areas. The shortened section dealing with conservation and enhancement recommendations appears in the final rule at § 600.815(a)(6).

Comment B: One commenter wanted NMFS to clarify that habitat creation should be reserved for mitigating habitat losses or restoring native fish populations and should not alter natural habitats.

Response B: As discussed above, the rule no longer contains any general recommendations for habitat creation or other methods to conserve and enhance EFH. Conservation and enhancement recommendations in FMPs must include options to avoid, minimize, or compensate for adverse effects to EFH. If appropriate, habitat creation may be a means of compensating for lost or degraded habitat. However, converting naturally functioning systems to another type of habitat warrants justification within an ecosystem context.

Comment C: One state commenter asked for clarification on how the Councils will evaluate the effectiveness of each recommended mitigation measure (i.e., conservation and enhancement option). The commenter asked that the FMPs include feedback mechanisms to assess the effectiveness of, and establish a monitoring program for, recommended mitigation measures.

Response C: The final rule does not require Councils to evaluate the effectiveness of each recommendation in FMPs for EFH conservation and enhancement. Council recommendations, however, should be based on the best scientific information available. NMFS and Councils may suggest monitoring requirements or other appropriate measures in their recommendations on state and Federal agency actions under sections 305(b)(3) and (4) of the Magnuson-Stevens Act.

Comment D: One commenter representing non-fishing interests wanted NMFS to delete the requirements of § 600.815(a)(5) of the interim final rule that require Councils to identify non-fishing activities that may adversely affect EFH. Several commenters representing non-fishing interests wanted NMFS to delete the language in § 600.815(a)(7)(i) of the interim final rule that refers to conservation and enhancement measures for non-fishing activities. The commenters thought that the language addressing non-fishing activities exceeded the statutory authority of the Magnuson-Stevens Act and should be limited to fishing activities. The

commenters also stated that since the rule does not require listing conservation and enhancement recommendations for fishing activities, then it cannot do so for non-fishing activities.

Response D: NMFS disagrees and maintains that it has statutory authority to address non-fishing activities. NMFS has clarified the language in the final rule that discusses the identification of non-fishing activities that may adversely affect EFH in § 600.815(a)(4) and conservation and enhancement recommendations in § 600.815(a)(6), but these modifications did not change the substantive requirements of the rule. One stated purpose of the Magnuson-Stevens Act is to promote the protection of EFH through the review of projects conducted under Federal permits, licenses, or other authorities that affect, or have the potential to affect, such habitat. These projects include non-fishing activities. Section 303(a)(7) of the Magnuson-Stevens Act requires FMPs to address the effects of fishing on EFH and identify other actions to encourage the conservation and enhancement of EFH. The statute does not limit these measures to fishing activities only. Likewise, section 305(b)(2) of the Magnuson-Stevens Act requires consultation for any federal action that may adversely affect EFH regardless of whether it is a fishing or non-fishing activity.

Comment E: Several non-fishing interests wanted the final rule to require the Councils to report on current conservation and enhancement practices and use data to identify how further conservation and enhancement of EFH is possible with additional measures. One commenter said that FMPs should document existing conservation measures before recommending new measures.

Response E: Councils must recommend appropriate measures for conservation and enhancement of EFH. These measures may include new recommendations or existing, routine practices of industry or other organizations that minimize potential harm to fish habitat. All Council recommendations should be based on the best scientific information available.

Comment F: A port authority asked that the Councils be required to consider the economic impacts to non-fishing maritime interests of making recommendations for minimizing adverse effects to EFH. The commenter pointed out that the rule requires the Councils to consider whether it is practicable to recommend conditions to minimize adverse effects from fishing. Given the economic importance of ports, the commenter thought that the Councils should apply the same standard of practicability to other recommendations for minimizing adverse effects to EFH from port maintenance and development activities.

Response F: As explained in the preamble to the interim final rule at 62 FR 66540, non-fishing and fishing impacts are held to different standards in the EFH regulations because of differences in the applicable provisions of the Magnuson-Stevens Act. Section 303(a)(7) of the Magnuson-Stevens Act requires that FMPs minimize effects of fishing on EFH to the extent practicable, and NMFS and the Councils manage fishing activities through regulations that must consider costs and benefits of required management measures. The requirement in Section 303(a)(7) of the Magnuson-Stevens Act for Councils to recommend conservation and enhancement measures for non-fishing activities does not mention practicability, and it is the responsibility of the agencies with relevant jurisdiction to determine whether it is practicable to implement Council recommendations. Nevertheless, Council recommendations should be reasonable.

18. Comments on Habitat Areas of Particular Concern

Comment A: Some commenters requested that NMFS delete all references to Habitat Areas of Particular Concern (HAPCs), saying that in encouraging Councils to designate HAPCs, NMFS is going beyond the scope of the EFH provisions since the Magnuson-Stevens Act does not specifically authorize the development of a subset of habitat within EFH. One commenter asked NMFS to clarify how the designation of HAPCs will be used to protect EFH, and specifically, how it will affect implementation of the consultation process. Other commenters urged NMFS to require Councils to designate HAPCs for all species and to hold HAPCs to a higher standard of protection.

Response A: NMFS disagrees that development of HAPCs as a subset of EFH goes beyond the scope of the Magnuson-Stevens Act. The statutory definition of EFH is broad, encompassing all habitat necessary for fish to carry out their basic life functions. HAPCs provide a mechanism to acknowledge areas where more is known about the ecological function and/or vulnerability of portions of EFH.

The designation of HAPCs is a valuable way to highlight priority areas within EFH for conservation and management. For example, a General Concurrence that is proposed for actions affecting HAPCs should be subject to a higher level of scrutiny than a General Concurrence not affecting HAPCs. Proposed fishing activities that might threaten HAPCs may likewise receive a higher level of scrutiny. NMFS has no authority to regulate activities other than fishing that may adversely affect EFH or HAPCs, so NMFS cannot impose protective measures for HAPCs through the consultation process. However, NMFS may recommend such measures to the applicable Federal or state action agency.

NMFS cannot require Councils to designate HAPCs. Any higher degree of protection for areas designated as HAPCs would result from having more available information about the function or sensitivity of the habitat, or the human-induced threats to the habitat, which may justify more stringent or precautionary management approaches.

Comment B: Some commenters recommended that the EFH regulations be revised to direct Councils to use HAPCs as the principal means to meet the requirements of the EFH provisions.

Response B: While HAPCs help to focus EFH conservation priorities, HAPCs are localized areas that are especially vulnerable or ecologically important. Healthy populations of fish require not only these relatively small habitats, but also other suitable areas that provide necessary habitat functions to support larger numbers of fish. HAPCs can highlight valuable and/or vulnerable habitats, but alone are not intended to comprise the areas necessary to support healthy stocks of fish throughout all of their life stages.

Comment C: One commenter requested that NMFS add a provision to the EFH regulations to allow stakeholders to petition NMFS to designate HAPCs.

Response C: It is not appropriate to add an HAPC petitioning provision to the rule, because HAPCs should be proposed through the Council process. NMFS encourages interested parties to participate in the identification of HAPCs through the Council process. Council meetings occur regularly throughout the year and are open to the public.

Comment D: The interim final rule listed four criteria for identifying HAPCs. One commenter requested that NMFS change the term ''criteria'' to more accurately reflect that the four items are ''considerations.''

Response D: NMFS agrees and has changed ''criteria'' to ''considerations.''

Comment E: One commenter requested that NMFS revise the first

consideration for HAPCs to distinguish between current and historical importance of ecological function provided by a particular habitat. The commenter also noted that this consideration should be expanded to include a determination as to whether the area in question serves more than one ecological function.

Response E: NMFS disagrees that a revision to this portion of the rule is necessary. The HAPC consideration regarding ecological importance may include both currently and historically important areas, provided that restoration of historic habitat functions is technologically and economically feasible. Additionally, Councils have flexibility to identify areas as HAPC that provide one or more important ecological functions.

Comment F: One commenter requested that NMFS define the word ''rarity'' in the fourth consideration for HAPC designation.

Response F: The fourth consideration for HAPC designation is the rarity of the habitat type. NMFS disagrees that a definition of ''rarity'' in the rule is needed, but suggests that Councils consider as rare those habitats that are less common than other habitats in a particular geographic area.

Comment G: One commenter recommended that the EFH regulations be revised to require Councils to address all four HAPC considerations to designate an area as an HAPC.

Response G: NMFS disagrees. Councils may designate HAPCs based on one or more of the four specified considerations, because any one of the considerations may provide sufficient basis for distinguishing a subset of EFH from the remainder of EFH.

Comment H: One commenter recommended that the EFH regulations be revised to require Councils to use information sources that meet a high scientific standard to designate HAPCs.

Response H: National standard 2 states that conservation and management measures shall be based upon the best scientific information available. This standard applies to all fishery management actions, including HAPC designation, and the final rule reemphasizes this point. Section 600.815(a)(1)(ii)(B) states, ''Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information.'' The final rule further clarifies that Councils should consider different types of information according to its scientific rigor. Since HAPCs are a subset of EFH, the same standard applies to HAPC designation.

Comment I: One Council requested that NMFS rename HAPCs ''EFH-HAPCs'' to distinguish them from HAPCs identified by the Council prior to enactment of the EFH provisions of the Magnuson-Stevens Act.

Response I: The final rule does not change the terminology for HAPCs because doing so would likely result in unnecessary confusion. Councils had the ability to identify particularly important habitat areas prior to the development of the EFH regulations, and may now identify such areas in the context of EFH. If a Council chooses to refer to HAPCs identified under the EFH regulations as ''EFH-HAPCs,'' it may do so. NMFS encourages the Councils to determine whether their previous identification of important habitats should be designated as HAPCs under the final rule.

Comment J: One commenter questioned why the draft technical guidance manual would not be reopened for public review and comment given that it elaborates on the considerations on which to base HAPC designations.

Response J: The rationale for not soliciting additional public comment on the guidance is discussed in the preamble to the interim final rule at 62 FR 66532. The draft technical guidance will be superseded with appropriate guidance for the final rule.

Comment K: One Council stated that all mid-Atlantic estuaries should be considered as HAPCs because they function as spawning grounds and/or nursery areas for many managed species.

Response K: The rule allows Councils to designate HAPCs in FMPs based on the ecological importance of an area of EFH, its sensitivity to anthropogenic degradation, whether it is or will be subject to stress from development, or its rarity. The commenting Council may designate HAPCs as appropriate using these guidelines.

19. Comments on New FMPs, FMP Amendments, and Updates

Comment: A Council suggested that the final rule encourage updating the EFH information in FMPs whenever better information becomes available, rather than just once every five years. Several conservation groups commented that the regulations should require that new FMPs and modifications to existing FMPs continue to comply with the EFH requirements of section 303(a)(7) of the Magnuson-Stevens Act. Another commenter asked for clarification of what constitutes new information worthy of updating the EFH portions of an FMP. The same commenter recommended that NMFS amend the regulations regarding Stock Assessment and Fishery Evaluation (SAFE) reports at 50 CFR 600.315(e) to require the inclusion of EFH information, rather than keeping such information optional as in the current regulations.

Response: NMFS agrees that the EFH components of FMPs should be revised as warranted based on available pertinent information. The final rule clarifies this point and encourages Councils to outline the procedures that will be used to review and update EFH information. The final rule also explains some of the types of information that Councils should review. The final rule does not establish a threshold level of information that should prompt revisions to an FMP because such decisions are best made on a case-by-case basis. Regarding SAFE reports, the regulations describing these reports do not list mandatory contents, but list information that ''should'' or ''may'' be included. NMFS does not intend to make EFH information a required part of SAFE reports since Councils should be able to report on their review of EFH information using other means if appropriate.

20. Comments on Development and Review of NMFS EFH Recommendations to Councils

Comment: One commenter said that in NMFS' recommendations to Councils regarding the EFH components of FMPs, NMFS should include a description of the extent and quality of the best available scientific information.

Response: NMFS' recommendations to Councils under § 600.815(c) may take one of two forms: suggestions for the EFH components of an FMP that precede a Council's development of a draft EFH document, or a technical and policy review of a draft EFH document prepared by a Council. In cases where NMFS' recommendations precede a Council's development of a draft EFH document, the recommendations typically will include a review of the best available science. In cases where the recommendations constitute a review of a draft Council document, it may not be necessary for the recommendations to describe the available science if that information is summarized adequately in the Council's document. Therefore, the final rule does not contain language specifying that NMFS' recommendations should address the extent and quality of the best available scientific information. Nevertheless, national standard 2

requires fishery management measures to be based upon the best scientific information available.

21. Comments on the Effect of EFH Designations on other Agencies and Other Uses of Aquatic Areas

Comment A: One commenter requested that NMFS delete reference to the word ''state'' in the sentence in § 600.905(a) of the EFH regulations that reads, ''The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.'' The commenter said that use of the word ''state'' is inappropriate since the Magnuson-Stevens Act only applies to the review of Federal actions.

Response A: NMFS disagrees. References to state actions is appropriate in this case since sections 305(b)(3) and (4) of the Magnuson-Stevens Act include provisions for NMFS and Councils to provide recommendations to state agencies on actions that could harm EFH.

Comment B: One commenter suggested that NMFS defer to the U.S. Army Corps of Engineers on matters related to dredging and contaminated dredged material.

Response B: NMFS has coordinated extensively with the Corps of Engineers on matters related to dredging and dredged material disposal and will continue to do so in the future. However, the Corps must consult with NMFS regarding its actions that may adversely affect EFH, and NMFS must provide EFH Conservation Recommendations on actions that would adversely affect EFH. NMFS and the Corps may in some cases disagree about potential impacts to EFH or appropriate measures to avoid, minimize, or offset such impacts.

Comment C: One commenter requested that NMFS clarify that owners of structures designated as EFH are not required to maintain them for the sole purpose of providing EFH.

Response C: NMFS does not have the authority to require owners of structures designated as EFH to maintain them as EFH.

Comment D: One commenter opposed designation of heavily industrialized areas, such as active ports, as EFH, stating that EFH designation would be in direct conflict with the purpose of such areas.

Response D: The Magnuson-Stevens Act requires Councils to identify as EFH those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity, regardless of whether those habitats occur in an industrialized area. NMFS disagrees that EFH designation is necessarily in conflict with heavily industrialized areas, since many active ports and other industrial areas continue to provide useful habitat for managed species.

Comment E: Several commenters expressed concern that EFH designations would affect the rights of private landowners.

Response E: NMFS addressed this concern in the preamble to the interim final rule at 62 FR 66535, and the response remains the same. EFH designation has no effect on the rights of private landowners.

Comment F: One commenter recommended that the EFH identification process should recognize existing treaties, statutes, compacts, decrees, and other laws and regulations that apply to areas under consideration for EFH designation so that the public is aware that EFH identification does not supersede other existing laws, interests, rights, or jurisdictions.

Response F: NMFS agrees that the identification of EFH in an area and any applicable regulations do not supersede the regulations, rights, interests, or jurisdictions that pertain to such an area under treaties, compacts, decrees, and other laws.

Comment G: One commenter requested that NMFS add language to the rule to recognize that non-fishing activities provide important economic and security benefits to the nation. The commenter suggested that NMFS direct the Councils to seek ways to provide for these activities while conserving EFH.

Response G: NMFS recognizes the value and contributions of non-fishing activities to the general public, but disagrees with the suggestion. NMFS and Councils have authority under the Magnuson-Stevens Act to provide recommendations to Federal and state agencies to minimize the adverse effects of non-fishing activities on EFH. It would be inappropriate to include in the EFH regulations a requirement for Council or NMFS positions on non-fishing activities to balance competing public interest factors. Council and NMFS recommendations on non-fishing activities under the Magnuson-Stevens Act are non-binding and are intended to address effects on EFH and fishery resources. Action agencies must consider the overall public interest, including the public benefits of the proposed action, when deciding whether to adopt these recommendations.

22. Comments on the Authority to Issue Regulations Regarding EFH Coordination, Consultation, and Recommendations

Comment A: A number of non-fishing industry groups questioned NMFS' authority to establish procedures by regulation for the EFH coordination, consultation, and recommendation process. These commenters questioned the need for such procedures and asserted that the Magnuson-Stevens Act does not authorize NMFS to establish requirements for other agencies as part of the EFH consultation process.

Response A: NMFS addressed similar comments in the preamble to the interim final rule at 62 FR 66542, and continues to maintain that it has the authority to issue regulations to implement the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. Section 305(d) of the Magnuson-Stevens Act confers upon the Secretary the authority to promulgate such regulations as may be necessary to carry out any provision of the Act. Regulations are necessary to implement Sections 305(b)(1)(D) and 305(b)(2)-(4) of the Magnuson-Stevens Act so that all affected parties will understand the Secretary's interpretation of these sections of the Act and the processes and information needs associated with carrying out the specific statutory requirements. Without such regulations, there likely would be considerable confusion, inconsistency, and inefficiency amongst Federal agencies, state agencies, Councils, and NMFS regarding the implementation of these sections of the Act.

Comment B: Several non-fishing industry groups identified specific provisions of the interim final rule that they believed illustrate that NMFS has exceeded its authority. With regard to the preparation of EFH Assessments, some commenters said that the Magnuson-Stevens Act gives NMFS no authority to require other agencies to provide specific information or otherwise prescribe how they should consult with NMFS regarding EFH. Some commenters felt that EFH consultations can be addressed through existing environmental review processes under other laws (such as the National Environmental Policy Act) with no additional EFH-specific information. Some commenters said that the requirement for a finding by NMFS is not authorized by the Magnuson-Stevens Act and should not be necessary before an existing environmental review process can be used for EFH consultations. Others said

that it is inappropriate for NMFS to suggest time frames that Federal agencies should follow as part of the EFH consultation process. A few commenters said NMFS has no authority to require other agencies to use the best scientific information available regarding potential adverse effects of an action on EFH, suggesting that action agencies may simply notify NMFS of proposed actions and leave the evaluation to NMFS.

Response B: Subpart K of the regulations details the procedures and information determined by the Secretary to be necessary to carry out the specific requirements of Sections 305(b)(1)(D) and 305(b)(2)-(4) of the Magnuson-Stevens Act in an efficient and effective manner. As noted in the preamble to the interim final rule at 62 FR 66542, information in an EFH Assessment is necessary to enable NMFS to fulfill its statutory requirement to provide EFH Conservation Recommendations to Federal agencies. This cooperative exchange of information and recommendations between NMFS and Federal agencies is vital for effective consultation regarding actions that may adversely affect EFH, and is inherent in the requirement for Federal agencies to consult with NMFS.

The Magnuson-Stevens Act does not provide for an exemption from EFH consultations if another environmental review is required for an action, and other environmental reviews generally do not address specific habitat considerations for managed species of fish and shellfish. However, NMFS encourages Federal agencies to combine EFH consultations with other environmental reviews. When Federal agencies choose this approach to EFH consultation, the regulations require a finding by NMFS that the selected process provides specific EFH-related information in a timely way. A finding is necessary to ensure that consultations are implemented effectively and efficiently. It is appropriate for NMFS to require the EFH Assessment information and a finding because otherwise consultations using different environmental review processes might not fulfill the requirements of Section 305(b)(2) of the Magnuson-Stevens Act.

The final rule continues to provide time frames for abbreviated and expanded consultation, and continues to include language allowing NMFS and a Federal action agency to agree to use a compressed schedule in cases where shorter time frames are appropriate. The inclusion of time frames in the regulations helps to make consultations efficient, and NMFS recognizes the need to be flexible when consultation using those time frames is not practicable for other agencies.

Regarding the requirement for Federal agencies and NMFS to use the best available scientific information, NMFS' intent is to promote an open exchange of information regarding the effects of actions on EFH. Federal agencies may have scientific information about their actions that is not readily available to NMFS, so providing this information will help to make consultations efficient.

Comment C: A national association involved in the construction trades requested that NMFS rescind or suspend the consultation and coordination provisions of the interim final rule until an open, constructive dialog has occurred with all interested parties.

Response C: NMFS has provided numerous opportunities for constructive dialog as part of this rulemaking. NMFS held five public comment periods, 21 public meetings, and numerous briefings and meetings with individual groups, including representatives of the construction trades and other non-fishing industries. NMFS received many written comments as well as extensive verbal feedback from these groups and others interested in the EFH regulations, and NMFS has carefully considered these comments. Based in part on this productive exchange of information, NMFS decided to proceed with the final rule.

23. Comments on Coordination for the Conservation and Enhancement of EFH

Comment: One commenter criticized the section of the interim final rule that says NMFS will compile and make available to other agencies information on the locations of EFH, and that NMFS will provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. The commenter said there is no authority for what the commenter characterized as NMFS' aggressive provision of information to other agencies, and implied that NMFS is seeking to reopen approved Federal programs. The same commenter said that the final rule should allow for public access to the information NMFS provides to Federal agencies under this section of the regulations.

Response: Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with and provide information to other Federal agencies to further the conservation and enhancement of EFH. The interim final rule addressed this requirement by stating that NMFS would provide pertinent information to Federal and state agencies. NMFS does not consider this to be improper; rather, it is an attempt to promote awareness of EFH and opportunities for conservation of EFH, as required by the Act. The final rule clarifies that EFH consultation is not required for Federal actions that were completed prior to the approval of EFH designations by the Secretary. The final rule also states that NMFS will make available to Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions.

24. Comments on Federal Actions Subject to EFH Consultation

Comment A: One commenter, concerned about potentially large workload requirements on Councils, NMFS, and action agencies, recommended that NMFS restrict the consultation requirements to those actions that will adversely affect EFH, rather than those that may. The commenter also recommended that NMFS establish realistic procedures and requirements for EFH consultation.

Response A: The Magnuson-Stevens Act requires Federal agencies to consult on any action that may adversely affect EFH, and NMFS cannot change this requirement by regulation. The final rule clarifies the approaches for conducting EFH consultation and simplifies the development of General Concurrences to improve the efficiency of the consultation process.

Comment B: One commenter recommended that the taking of species under special permits, such as for research and monitoring, not be subject to consultation. Another commenter recommended that projects designed to restore, improve, or protect fish habitat be excluded from consultation.

Response B: Any Federal action that may adversely affect EFH requires consultation, and NMFS cannot grant waivers for specific types of actions. The action agency must determine whether the approved action may adversely affect EFH and, if so, consult with NMFS. Not all activities result in adverse effects on EFH. Research or monitoring activities may cause no adverse effects at all, or may result in minimal impacts that could be addressed through a General Concurrence. Restoration or similar projects for beneficial purposes may still result in habitat disruption or alteration, both short- and long-term, and are subject to consultation if they may adversely affect EFH. In such cases, consultation provides an opportunity for NMFS to make EFH Conservation

Recommendations to reduce or eliminate any adverse effects.

Comment C: One commenter requested clarification on how NMFS intended to handle consultations regarding Federal programs delegated to states.

Response C: The rule requires consultation on Federal programs delegated to non-Federal entities at the time of delegation for those programs that result in activities that may adversely affect EFH. For programs that were delegated prior to the approval of EFH designations by the Secretary, EFH consultation is required when the delegation is reviewed, renewed, or revised. The delegation itself, and any review, renewal, or revision of the delegation, are Federal actions, and the Federal agency may consult with NMFS using any of the approaches for conducting consultation (§ 600.920(a)(2)) applicable for a particular delegation. Such consultations can be performed on a national or regional basis, as appropriate.

Comment D: Three commenters questioned the guidance on actions requiring EFH consultation, and specifically the guidance regarding consultation for existing or completed actions. One specifically requested clarification regarding the need for consultation on Federal reviews of actions.

Response D: The final rule clarifies that EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary. In addition, the rule clarifies that consultation is required on renewals, reviews, or substantial revisions of actions only if the renewal, review, or revision may adversely affect EFH.

Comment E: One non-fishing industry trade association commented that in many cases there are statutory constraints on Federal delegations of authority to states that may prevent the delegating agency from addressing other concerns, such as EFH. The commenter said that such actions therefore should not be subject to EFH consultation.

Response E: Federal agency delegations are subject to consultation if they may adversely affect EFH, regardless of whether the agency has the discretion to condition the delegation. Many agencies provide for interagency review of these actions specifically to incorporate other concerns, and condition the delegations accordingly. If a particular agency is incapable of addressing such concerns because of statutory constraints, such information should be provided as part of the EFH Assessment during consultation. Additionally, the final rule retains a provision that NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

Comment F: One commenter representing agricultural interests said that NMFS should establish a causal link between agricultural practices and effects to EFH before requesting consultation or providing EFH Conservation Recommendations. The commenter expressed concern that there is no clear threshold of significance or likelihood of adverse effect on EFH to trigger consultation or recommendations from NMFS or a Council.

Response F: The Magnuson-Stevens Act contains no requirement for definitive proof of an adverse effect to EFH before triggering the requirements for consultation and recommendations. Section 305(b)(2) of the Act requires Federal agencies to consult with the Secretary regarding any action or proposed action that may adversely affect EFH. Section 305(b)(3) of the Act authorizes Councils to comment on any Federal or state agency action that may affect the habitat, including EFH, of a fishery resource under Council jurisdiction, and requires such comments when a Council believes the action would substantially affect the habitat of an anadromous fishery resource. Section 305(b)(4)(A) of the Act requires NMFS to provide conservation recommendations for any Federal or state agency action that would adversely affect EFH.

Comment G: One sport diving association expressed concern about the loss of artificial reefs, jetties, shipwrecks, and other shoreline fish habitat as a result of large-scale sand replenishment projects and recommended a number of measures to address these concerns through the EFH consultation process.

Response G: If artificial structures are identified as EFH in a fishery management plan, NMFS will address potential adverse effects through the consultation process.

25. General Comments on the Coordination, Consultation, and Recommendation Procedures

Comment A: A number of non-fishing industry commenters said that the interim final rule creates a duplicative regulatory review process and recommended that NMFS exempt all activities currently subject to habitat review under other statutes from EFH consultations.

Response A: The Magnuson-Stevens Act requires consultation on all Federal actions that may adversely affect EFH. While other laws also have environmental review requirements, no other mandate specifically evaluates potential adverse effects on habitats for commercially and recreationally important species of fish. Section 2(b) of the Act states that one of Congress' purposes was ''to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.'' Therefore, an important purpose of EFH consultations is to provide information to action agencies to ensure consideration of potential impacts to EFH. NMFS has no authority to exempt any Federal actions from the consultation requirements, but has provided flexibility in the rule to combine EFH consultations with other environmental reviews to avoid duplication.

Comment B: Two non-fishing interests suggested that EFH consultation provides little benefit given the comprehensive protections already in place through other environmental review processes.

Response B: Congress indicated through the EFH provisions of the Magnuson-Stevens Act that existing environmental reviews are not adequate for the conservation and management of fishery resources of the United States. Direct and indirect habitat losses have been and continue to be serious threats to the long-term sustainability of many fisheries. Fish habitat has received limited consideration in the assessment of environmental impacts for activities authorized or supported by Federal agencies. The EFH provisions enable NMFS to work cooperatively with other agencies to promote the conservation of EFH.

Comment C: Four non-fishing industry organizations recommended that the final rule make clear that EFH consultations are an information exchange process, not a separate regulatory review, and may be documented in an informal manner. A separate forestry association commenter recommended that EFH consultations be verbal since they are not binding.

Response C: NMFS disagrees with these suggestions. The EFH provisions of the Magnuson-Stevens Act require more than a simple information exchange. Federal agencies must consult with NMFS regarding actions that may adversely affect EFH and must provide detailed written responses to NMFS' EFH Conservation Recommendations. An informal process without documentation would not fulfill these

statutory requirements. Moreover, documenting EFH consultations in writing reduces the chances for errors and misunderstandings.

Comment D: One commenter suggested that NMFS write a clear explanation about the minimum steps an action agency must take to comply with this rule.

Response D: The final rule simplifies and more clearly explains the approaches for conducting EFH consultations, the level of detail and mandatory contents of an EFH Assessment, the preparation of General Concurrences, and the process for programmatic consultations. Because the rule provides flexibility for Federal action agencies to choose a particular consultation approach depending on the nature and scope of the actions that may adversely affect EFH and the opportunities for combining EFH consultation with other environmental review procedures, there is no single set of minimum steps.

Comment E: One Federal agency recommended that the final rule contain a provision allowing more flexibility regarding the timing for notification and consultation through the use of memoranda of agreement at the field level.

Response E: NMFS disagrees that memoranda of agreement are necessary. However, the final rule retains language allowing Federal agencies to combine EFH consultations with other environmental reviews, and specific time frames may be developed in findings signed by NMFS at the regional level. In cases where EFH consultation is handled separately through abbreviated or expanded consultation, the rule also allows NMFS and action agencies to use a compressed schedule, which may be agreed upon at the field level.

Comment F: One commenter expressed a need for greater clarification regarding the EFH and ESA consultation requirements and recommended a single point of contact for both programs.

Response F: NOAA is implementing a one-stop-shopping approach to coordinate EFH, ESA, and other consultative requirements in an efficient and effective manner. As part of this approach NOAA staff will assist other agencies and the public in meeting all applicable NOAA consultative requirements, which in many cases (but not all) will mean that there is one principal NOAA point of contact. In addition, the interim final rule encouraged consolidating EFH consultations with other environmental reviews and incorporating EFH Assessments into documents prepared for other purposes, such as ESA biological assessments. This language has been retained in the final regulations.

Comment G: Several states and non-fishing interests asked for clarification on how to meet the EFH requirements, including meshing multiple state and Federal environmental reviews when undertaking activities with Federal permits or funding. These commenters wanted the EFH requirements combined with existing Federal and state environmental programs.

Response G: The final rule retains provisions from the interim final rule that encourage Federal agencies to consolidate EFH consultations with other environmental reviews. Further details on the operational procedures for combining EFH consultations with other environmental reviews should be provided in findings developed by NMFS pursuant to § 600.920(f)(3) (renumbered from § 600.920(e)(3) in the interim final rule). NMFS has developed over 40 such findings with Federal agencies to date. Regarding NMFS' EFH Conservation Recommendations to state agencies, the rule continues to state that NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

Comment H: Two commenters recommended that the final rule provide clarification on how NMFS and the Councils will coordinate in developing recommendations on Federal and state actions to ensure that agencies are not forced to choose between NMFS and Council recommendations.

Response H: The final rule includes a new subsection (§ 600.925(d)) stating that NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment and that NMFS will share pertinent information with the Council on such actions. However, Councils have independent authority under section 305(b)(3) of the Magnuson-Stevens Act to comment on Federal and state actions.

Comment I: One commenter recommended that the rule be strengthened to prevent the segmentation of approvals for a single overall project in a specific geographic area that includes EFH.

Response I: NMFS has no authority to prevent or restrict project approvals by other agencies. Under most circumstances, approaching project approvals in a piecemeal fashion is contrary to the environmental assessment requirements of statutes such as the National Environmental Policy Act and Clean Water Act, which call for the review of single and complete projects versus the sequential review of smaller phases of a larger project.

Comment J: Several environmental organizations expressed concern that there will be instances where an action should not go forward because its adverse impacts are so significant. These commenters expressed particular concern for actions that have no available alternatives and for which mitigation will not eliminate significant adverse impacts.

Response J: Section 305(b)(4)(A) of the Magnuson-Stevens Act directs NMFS to provide EFH Conservation Recommendations to Federal or state agencies on actions that would adversely affect EFH. The EFH Conservation Recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. NMFS could recommend that a particular Federal action should not be allowed. However, NMFS will not ask state or Federal agencies to take actions beyond their statutory authority and EFH Conservation Recommendations are not binding.

26. Comments Regarding Participation in the Consultation Process

Comment A: One Federal agency commenter advocated its participation as an active technical team member in the process of developing EFH consultative procedures.

Response A: NMFS will continue to work closely with Federal agencies when developing agency-specific procedures for EFH consultation, such as findings regarding the use of existing environmental review processes to handle EFH consultations.

Comment B: One commenter requested clarification regarding the types of entities that a Federal agency may designate as a non-Federal representative for EFH consultation purposes, and expressed concern about the potential resource expenditures for non-Federal representatives to perform these duties.

Response B: The rule places no restrictions on which entities a Federal agency may designate as non-Federal representatives for EFH consultation purposes. However, the Federal agency remains ultimately responsible for compliance with the EFH consultation provisions of the Magnuson-Stevens Act, including any costs associated with consultation. Federal agencies can reduce costs and maximize the

efficiency of required environmental analyses by combining EFH consultations with other environmental reviews.

Comment C: Two non-fishing industry associations recommended that the rule provide an opportunity for Federal permit applicants to be involved in EFH consultations, beyond the possibility of designation as a non-Federal representative. One of these commenters said that NMFS should provide public notices of consultations, individual notices to stakeholders that are likely to be affected, and opportunities for affected stakeholders to request a hearing following the issuance of any recommendations.

Response C: The Magnuson-Stevens Act requires that Federal agencies consult on actions that may adversely affect EFH. Permit applicants and other parties are under no such obligation and should confer with the applicable action agency to identify any opportunities for their involvement. It is not appropriate to provide public or personalized notices of consultations or opportunities for hearings regarding EFH Conservation Recommendations because the recommendations from NMFS are advisory in nature and because these additional steps would be inefficient, time consuming, and beyond the statutory requirements for EFH consultation.

27. Comments on EFH Assessments

Comment A: A large number of environmental groups and individual commenters wanted NMFS to retain in the regulations the requirement to prepare an EFH Assessment. Similarly, these commenters wanted the final rule to ensure that EFH Assessments are required for Federal land-based actions that may adversely affect EFH. These commenters argued that the EFH Assessment is a necessary and appropriate mechanism to evaluate effects to EFH during the consultation process.

Response A: The final rule maintains the requirement to prepare an EFH Assessment for any Federal action that may adversely affect EFH, regardless of whether the action is land-based or directly within waters designated as EFH. For actions covered by a General Concurrence, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation.

Comment B: Many commenters addressed the required contents of an EFH Assessment. Many environmental groups and individual commenters asked that NMFS expand the required contents of an EFH Assessment to include mitigation measures, but some cautioned that the effectiveness of many mitigation measures is unproven. Many of the commenters thought the EFH Assessment should include the additional information requirements in § 600.920(g)(3) of the interim final rule if available rather than just ''if appropriate.'' Several commenters wanted to know when the inclusion of additional information is needed and whether it related to the need for expanded consultation. One Fishery Management Council believed that a literature review should be included in the mandatory contents of an EFH Assessment.

Response B: The final rule clarifies that the level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the Federal action. Relatively simple actions involving minor adverse effects on EFH may have very brief EFH Assessments. Actions that pose a more serious threat to EFH, or involve more complex potential adverse effects, warrant a more detailed EFH Assessment. Since an expanded consultation is meant to address actions with substantial adverse effects, in many cases it would be appropriate for expanded consultations to include the additional information in an EFH Assessment. However, there also may be cases where some of the additional information (e.g., an alternatives analysis) is warranted for an abbreviated consultation. The level of information in an EFH Assessment depends on the action, and it is not appropriate to require additional information such as literature reviews and the results of on-site inspections for every EFH Assessment.

Comment C: An industry association representing non-fishing interests wanted clarification on whether project applicants would be required to support a more detailed evaluation and incur the costs of developing Level 3 or 4 data when EFH had been identified by Level 1 or 2 data.

Response C: The description of data levels in the rule notes the type of information that the Councils will use to describe and identify EFH, whereas EFH Assessments do not require data collection for the purposes of identifying and describing EFH. The consultation requirements of the regulations apply to the Federal action agency and neither the action agency nor project applicant will be asked to collect Level 3 or 4 data as a consultation requirement. The Federal agency, however, might in some cases request information from the applicant for a Federal permit, license, or grant when the agency is completing an EFH Assessment.

Comment D: One commenter thought a written EFH Assessment should be required only when an existing environmental review procedure could not be used and indicated that otherwise the EFH Assessment requirement would be too burdensome.

Response D: The final rule maintains the requirement to prepare a written EFH Assessment for every Federal action that may adversely affect EFH. As described in the preamble to the interim final rule at 62 FR 66543, to promote efficiency, when existing environmental review processes are available the EFH Assessment should be integrated into the same processes and documents that are used to satisfy other review requirements. NMFS encourages the use of existing environmental review procedures, but such procedures must include the information that comprises an EFH Assessment to support the consultation requirement set forth in section 305(b)(2) of the Magnuson-Stevens Act.

Comment E: Some commenters wanted the final rule to reflect that a prior EFH Assessment could only be incorporated by reference into a new EFH Assessment if the Council(s) and NMFS determine it is adequate.

Response E: Prior approval from NMFS or a Council is not necessary before a Federal agency incorporates by reference a completed EFH Assessment from another action. However, to make consultations efficient and to avoid requests for additional information, NMFS encourages action agencies to ensure that EFH Assessments include all necessary information.

Comment F: One commenter cited the provision of the interim final rule regarding additional information that should be included in EFH Assessments, and recommended deleting the language that encouraged providing an alternatives analysis ''particularly when an action is non-water dependent.'' Furthermore, this commenter thought nothing in the Magnuson-Stevens Act suggests that non-fishing, non-water dependent activities should be covered by the rule.

Response F: NMFS has deleted the reference to non-water dependent

activities from this section of the regulations because water dependency is not necessarily a more important consideration than others in determining the need for an alternatives analysis. NMFS disagrees, however, with the commenter's assertion that non-water dependent activities should not be covered by the rule. Section 305(b)(2) of the Magnuson-Stevens Act requires consultation for any federal action that may adversely affect EFH and does not distinguish between water and non-water dependent activities.

Comment G: A commenter asked NMFS to explain a statement in the response to comments on EFH Assessments in the preamble to the interim final rule at 62 FR 66545, which said that an action agency's conclusions regarding a potential adverse impact should be ''well supported by relevant research.'' The commenter asked that NMFS use the same standard when making EFH Conservation Recommendations.

Response G: The final rule contains additional language to clarify that the level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the federal action. Simple actions involving minor adverse effects on EFH would not necessitate that an action agency's conclusions be documented by citations to relevant research, whereas more complex actions and more detailed EFH Assessments could benefit from a review of pertinent literature. NMFS agrees that its EFH Conservation Recommendations must be based on the best scientific information available, and has modified § 600.920(d) accordingly.

28. Comments on the Use of Existing Consultation or Environmental Review Procedures

Comment A: One commenter stated that it was not NMFS' responsibility to make the implementation of all Federal laws more efficient.

Response A: In emphasizing the use of existing environmental review processes for EFH consultation, NMFS seeks to make more efficient the implementation of the EFH coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act, not all Federal laws.

Comment B: Many commenters expressed concern about significant project delays due to the requirements for EFH consultation, and argued that EFH consultation should occur within the normal approval times established by Federal agencies for their authorizations. Some of these commenters said that NMFS does not have the authority to set or influence time frames for EFH consultations.

Response B: The EFH regulations include numerous provisions to make EFH consultations efficient and effective, such as the use of existing environmental review procedures, General Concurrences, programmatic consultations, and options for using compressed schedules for abbreviated or expanded consultation. Regardless of the approach used for EFH consultation, NMFS will strive to provide its EFH Conservation Recommendations to action agencies within the normal public or agency comment periods for proposed actions.

Federal agencies are required by section 305(b)(2) of the Magnuson-Stevens Act to consult with the Secretary regarding actions that may adversely affect EFH. Section 305(d) of the Act authorizes the Secretary to promulgate such regulations as may be necessary to implement any provision of the Act. Accordingly, NMFS may establish time lines it considers appropriate to provide adequate notification and coordination regarding proposed actions and to allow sufficient time to prepare EFH Conservation Recommendations for actions that would adversely affect EFH. The rule allows NMFS and Federal agencies to agree to compressed consultation schedules in certain situations. In addition, existing environmental review processes may be used that allow shorter time frames for EFH consultation.

Comment C: Numerous individuals and ten conservation and fishery organizations stated that the regulatory language in the interim final rule for the use of existing environmental review procedures was adequate and should not be changed. Another two commenters requested that procedures for use of existing environmental review processes not be changed until additional experience has been gained with the use of these processes to determine whether they meet the requirements of the law.

Response C: The final rule includes only minor changes to the regulations regarding use of existing processes for EFH consultations. The changes are not substantive and are intended to clarify this portion of the rule.

Comment D: Numerous individuals and ten conservation and fishery organizations expressed concern that a specific review of potential impacts of activities that may adversely affect EFH was critical, and that NMFS should not rely wholly on other environmental review processes.

Response D: NMFS agrees, and the final rule clarifies that Federal agencies must provide NMFS with a written assessment of the effects of any action that may adversely affect EFH. While agencies may incorporate an EFH Assessment into documents prepared under another environmental review process, the assessment must still include all of the required information specified in the rule, which will ensure specific consideration of potential impacts to EFH. The final rule also explains that the level of detail in the EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse impacts on EFH.

Comment E: Three commenters recommended that the final rule require (rather than encourage) the use of existing environmental review processes for EFH consultations.

Response E: While NMFS strongly encourages the use of existing processes and has signed more than 40 findings to date with various Federal agencies at both the national and regional levels, the use of existing processes is not appropriate in all situations. An action may be so unique or infrequent that a stand-alone EFH consultation is the most efficient approach to meet the statutory requirements, or a Federal agency may prefer to complete EFH consultation prior to initiating another required consultation (e.g., under ESA). In addition, other approaches to EFH consultation, such as programmatic consultations and General Concurrences, may be more efficient for certain categories of actions.

Comment F: Three fishery or conservation organizations recommended that the rule be modified such that when using an existing process to complete EFH consultation, Federal agencies are required to notify NMFS of a proposed action according to the same time frames as in the existing process or 60–90 days prior to final agency action, whichever provides greater notice.

Response F: The final rule specifies that existing processes must provide NMFS with timely notification and states that whenever possible NMFS should have at least 60 days notice prior to a final decision, or at least 90 days if the actions would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter time frames provided they allow sufficient time for NMFS to develop EFH Conservation Recommendations. Any use of an existing environmental review process for EFH consultation requires that NMFS determine that the existing or modified process satisfies the

requirements of the Magnuson-Stevens Act, and if so, make a finding before the process may be used for EFH consultation. NMFS will not make findings for existing processes that do not provide adequate time to conduct EFH consultations.

Comment G: One commenter remarked that the rule sets forth extremely stringent criteria for the use of existing environmental review processes for EFH consultations, such that no existing processes are likely to meet these criteria and all will have to be modified significantly to satisfy the requirements.

Response G: Based on NMFS' experience implementing the interim final rule, this has proven not to be the case. To date NMFS has signed more than 40 findings with Federal agencies at both the regional and national level to use existing processes for EFH consultation. Numerous EFH consultations have been completed using a variety of other review processes pursuant to the National Environmental Policy Act; Clean Water Act; Rivers and Harbors Act; Marine Protection, Research, and Sanctuaries Act; Fish and Wildlife Coordination Act; and Endangered Species Act.

Comment H: One commenter supported the use of existing procedures but noted that their use does not mean that no additional resources or time would be needed to comply with the EFH consultation requirements, because existing procedures may not have considered the specific factors involved in addressing adverse affects to EFH.

Response H: NMFS agrees. Congress declared in section 2 of the Magnuson-Stevens Act that habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States and noted that a purpose of the Act is to promote the protection of EFH in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. The statutory mandates for Federal agencies to consult on activities that may adversely affect EFH and to respond to NMFS' EFH Conservation Recommendations were intended as new requirements. NMFS designed the approaches to EFH consultation detailed in the final rule to implement the EFH provisions in an efficient manner, using existing processes and other mechanisms to minimize additional workload.

29. Comments on the Use or Development of General Concurrences and/or Programmatic Consultations

Comment A: Two commenters asked NMFS to provide an update in the preamble to the final rule on the number of General Concurrences and programmatic consultations completed under the interim final rule and the overall status of NMFS' efforts to encourage the use of these two approaches to EFH consultations.

Response A: NMFS has completed one General Concurrence and five programmatic consultations to date. The General Concurrence applies to actions authorized by the Army Corps of Engineers New England District via programmatic general permits under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. The programmatic consultations cover certain Minerals Management Service petroleum development activities in the central and western Gulf of Mexico; certain Corps of Engineers nationwide permits; actions authorized by the Corps of Engineers Alaska District under general permits associated with the Anchorage Wetlands Management Plan; actions authorized by the Corps of Engineers Alaska District under general permits for water, wastewater, and sanitation facilities in Alaskan villages; and land management activities undertaken by the Bureau of Land Management and the Forest Service with the Oregon Coast, Lower Columbia River, and Willamette River Provinces of Oregon. NMFS is discussing several more General Concurrences and programmatic consultations with Federal agencies, and continues to advocate the use of these approaches to help reduce the number of actions that require individual consultations.

In the course of working with Federal agencies to identify opportunities for developing General Concurrences and programmatic consultations, it became apparent to NMFS that some parties were confused about the distinction between these two approaches to EFH consultation. General Concurrences may be developed for categories of similar actions that would cause no more than minimal adverse effects on EFH individually or cumulatively. No further consultation is generally required for actions that fall within a General Concurrence. Programmatic consultations also cover categories of actions, but are not limited to actions with minimal effects on EFH and may result in identifying effects that need to be addressed separately through project-specific consultation. To help clarify the difference between General Concurrences and programmatic consultations, and to provide clearer guidance on how to conduct programmatic consultations, the final rule discusses programmatic consultations in a distinct section.

NMFS also discovered through implementing the interim final rule that although General Concurrences are meant to be an efficient way of dispensing with consultations on actions that have minimal adverse effects, the process for issuing General Concurrences has actually hindered their development. The interim final rule required NMFS to consult with the appropriate Council(s) and provide an opportunity for public review prior to issuing a General Concurrence. These requirements stemmed from comments NMFS received on the Framework and proposed rule expressing concern that General Concurrences might allow more than minimal adverse effects to EFH without some degree of oversight.

For the General Concurrence that NMFS completed, NMFS coordinated with the affected Councils. However, NMFS found the process to be cumbersome and not very beneficial. Council meeting agendas are often very full, and because General Concurrences are intended to address minor threats to EFH, the Councils did not view the proposed General Concurrence as a high priority and were not able to accommodate it immediately on their meeting agendas. Also, a discussion of the proposed General Concurrence could not be added to Council agendas at the last minute if time permitted because the Magnuson-Stevens Act does not allow additions to Council meeting agendas without public notice or within 14 days before a meeting. Since Councils meet relatively infrequently, this led to delays. After NMFS briefed the Councils, NMFS sought public comment through Council meetings and a **Federal Register** notice, but received no comments. In other cases nationwide, NMFS considered developing General Concurrences but deferred action because the time-consuming process of soliciting Council and public input led to potential General Concurrences being eclipsed by other EFH priorities. In summary, while the intent behind General Concurrences was to improve efficiency and allow NMFS and other agencies to focus more effort on actions posing a greater threat to EFH, the cumbersome process of issuing General Concurrences has discouraged their use, with little

apparent benefit in terms of public and Council review.

NMFS modified the regulations to address these procedural inefficiencies while still keeping the public and Councils informed regarding General Concurrences. The final rule omits the requirements for public review and consultation with the appropriate Council(s), but contains a new provision stating that after completing a General Concurrence NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means. The final rule retains language allowing NMFS to review and revise General Concurrences as needed, so NMFS can make adjustments if necessary to ensure that General Concurrences only cover actions with minimal adverse effects to EFH.

Comment B: One conservation group commented that programmatic consultations do not ensure that individual projects or actions will be designed to minimize adverse effects, and thus consultation should occur at both the programmatic and project-specific level. Another organization commented that General Concurrences should not be used as an excuse to avoid project-specific consultations.

Response B: Neither programmatic consultations nor General Concurrences may be used to avoid abbreviated or expanded consultation if an action warrants individual review to evaluate potential adverse effects to EFH. The final rule clarifies that for a programmatic consultation, NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and will identify any potential adverse effects that require project-specific consultation because they could not be addressed programmatically. In some cases, however, it may be possible to address all reasonably foreseeable adverse effects to EFH with programmatic recommendations, so there would be no need for consultation on individual actions taken as part of the program. Likewise, General Concurrences can only be used for specified actions that have no more than minimal adverse effects on EFH, and any action that does not meet that standard would require separate consultation.

Comment C: One commenter asked for clarification of the programmatic consultation process.

Response C: NMFS agrees that clearer guidance is warranted for the programmatic consultation process. The final rule discusses programmatic consultation in a distinct subsection of § 600.920 to allow easier comparison to the other approaches to conducting EFH consultations, and provides more detail on the purpose of and process for programmatic consultations.

Comment D: One commenter said the process for developing General Concurrences is vague and may be burdensome.

Response D: As discussed above, NMFS discovered through implementation that the process in the interim final rule for developing General Concurrences was more complicated and time-consuming than NMFS intended. The final rule simplifies and clarifies this process by removing the requirements for public review and consultation with the appropriate Council(s).

Comment E: Many commenters said that NMFS should develop General Concurrences or programmatic consultations to cover actions related to the specific industries or activities in which the commenters are engaged, such as port development and operations, forest products, and petroleum development. Some of these commenters asked for clarification of proponents' responsibilities when advancing such a request.

Response E: The development of a General Concurrence or programmatic consultation is initiated by NMFS or a Federal agency, although other interested parties may bring to the attention of NMFS or a Federal agency specific types of actions that might be appropriate for one of these categorical approaches to EFH consultation. Affected industries or other groups are not required to provide specific information in support of such a request, although specificity regarding the actions to be covered and their potential effects to EFH would help NMFS and the action agency evaluate such proposals.

Comment F: A few commenters addressed the standards for determining whether a General Concurrence is appropriate for a given suite of actions. Two of these commenters asked for clarification of the standard that General Concurrences may be used for actions that would not cause greater than minimal adverse effects on EFH individually and cumulatively. A Federal agency recommended that NMFS should determine before issuing a General Concurrence not only that the actions would cause no more than minimal adverse effects, but also that coastal ecosystem health, including EFH, will generally benefit as a result of the Federal actions.

Response F: Given the wide variety of Federal actions that could adversely affect EFH, NMFS decided that rather than defining ''minimal adverse effects'' in the rule, it is best to determine separately for each contemplated General Concurrence whether the actions would cause greater than minimal adverse effects on EFH individually and cumulatively. In general terms, however, minimal effects are those that can be considered negligible in terms of their impact on the quality or quantity of EFH due to their limited scope and/or duration. Since EFH consultation covers effects to EFH specifically rather than effects to coastal ecosystems in general, it is not appropriate to state in the rule that General Concurrences must benefit coastal ecosystem health.

Comment G: One commenter said that it should be up to the Federal action agency to determine whether programmatic consultation is appropriate for a given circumstance, and suggested that it is improper for NMFS to tell Federal agencies how to consult.

Response G: NMFS disagrees. NMFS must determine what type of EFH consultation is appropriate for any given Federal action or group of actions so that NMFS can ensure the consultation is consistent with the Secretary's interpretation of the requirements of section 305(b)(2) of the Magnuson-Stevens Act. It is important to select the appropriate approach to EFH consultation so that the exchange of information between NMFS and the Federal agency considers potential effects to EFH at a suitable level of detail, resulting in NMFS having the information necessary to provide EFH Conservation Recommendations as required by section 305(b)(4)(A) of the Magnuson-Stevens Act. If a Federal agency attempts to use a method of consultation that NMFS determines is inappropriate for a given action or actions, NMFS will advise the agency as to which approach is best suited to handle the action(s). If a Federal agency nevertheless fails to consult properly for actions that would adversely affect EFH, NMFS will provide EFH Conservation Recommendations based on the information available.

Comment H: One commenter suggested that NMFS provide an example to illustrate how a Federal agency would track actions taken under a General Concurrence, as called for in the interim final rule. The commenter also recommended that the final rule require, rather than just suggest, annual reporting from each action agency.

Response H: Tracking actions covered by a General Concurrence is necessary to ensure that the cumulative effects of the actions are no more than minimal. The final rule retains language from the interim final rule stating that tracking should include the number of actions taken under a General Concurrence, the amount and type of habitat adversely affected, and the baseline against which the actions will be tracked. For example, for a particular General Concurrence tracking could entail a Federal agency providing NMFS with periodic reports specifying this information, comparing the condition of the EFH prior to the actions with its condition after the actions, and providing any revised estimates of the number or location of actions expected during the next reporting period. The final rule does not require such reporting on an annual basis because there may be circumstances where reporting on another time cycle would be equally effective.

Comment I: One commenter said that General Concurrences should also apply to Councils, so that Councils would not comment on individual Federal actions for which a General Concurrence has been issued.

Response I: General Concurrences are a means of obviating the need for Federal agencies to consult with NMFS individually on specified types of actions that would cause no more than minimal adverse effects on EFH. The Magnuson-Stevens Act does not require Federal agencies to consult with Councils regarding EFH, and General Concurrences do not apply to comments from Councils on Federal actions. As discussed above, the final rule modifies the process for NMFS to coordinate with Councils regarding the development of General Concurrences. NMFS will provide a copy of all General Concurrences to the appropriate Council(s). If the Councils agree that the actions covered by a General Concurrence would have no more than minimal adverse effects on EFH, it is unlikely that the Councils would comment on those actions. However, Councils have independent authority under section 305(b)(3) of the Magnuson-Stevens Act to comment on federal and state agency actions that may affect the habitat of fishery resources under Council jurisdiction.

30. Comments on the Expanded Consultation Process

Comment: Several commenters representing non-fishing interests wanted NMFS to clarify the thresholds for conducting EFH consultations and EFH expanded consultations. The commenters wanted NMFS to define the ''substantial adverse effects'' standard for actions requiring expanded consultation, and wanted examples of federal actions that would result in expanded consultation. Also, one commenter wanted to know who would be responsible for the costs of completing an EFH Assessment if an expanded consultation was required.

Response: Section 305(b)(2) of the Magnuson-Stevens Act requires federal agencies to consult with NMFS when any Federal action may adversely affect EFH. The EFH regulations require expanded consultation for Federal actions that would result in substantial adverse effects to EFH. Generally, the action agency determines the appropriate level of consultation, although if NMFS believes that a proposed action will have substantial adverse effects on EFH, NMFS may request expanded consultation. The determination of substantial adverse effects should be based on project-specific considerations, such as the ecological importance or sensitivity of an area, the type and extent of EFH affected, and the type of activity. Substantial adverse effects are effects that may pose a relatively serious threat to EFH and typically could not be alleviated through minor modifications to a proposed action. For example, a harbor development project that requires significant dredging and filling, channel realignments, or shoreline stabilization near EFH would likely be considered to have substantial adverse effects to EFH. Regardless of the type of consultation, the action agency is responsible for preparing an EFH Assessment.

31. Comments on Supplemental Consultation

Comment: Two commenters recommended that NMFS delete the section of the rule concerning supplemental consultation. One of these commenters said there is no provision in the Magnuson-Stevens Act to reopen a consultation. The other commenter thought this section was ambiguous and said that because of this provision action agencies and affected parties will not know whether consultations are final.

Response: The provision on supplemental consultation is a necessary and appropriate part of the regulations because it informs Federal agencies that changes to the factual basis behind a completed EFH consultation may warrant reinitiating the consultation. Supplemental consultation is not necessary unless a Federal agency substantially revises its plans for an action in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH Conservation Recommendations. It is reasonable to expect that a substantial change in circumstances may warrant review and potentially a change in EFH Conservation Recommendations.

32. Comments on NMFS' EFH Conservation Recommendations

Comment A: Several commenters asked for more information to clarify the role of EFH Conservation Recommendations. One commenter asked whether the recommendations NMFS will make on Federal or state actions that would adversely affect EFH are limited to the recommendations contained in FMPs for EFH conservation and enhancement. Another expressed confusion about the difference between EFH Conservation Recommendations and EFH Assessments.

Response A: The term ''EFH Conservation Recommendations'' in the final rule refers to recommendations provided by NMFS to a Federal or state agency pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. NMFS is required to provide these recommendations regarding any Federal or state agency action that would adversely affect EFH, and Federal agencies are required to provide a detailed written response to such recommendations under section 305(b)(4)(B) of the Act. Thus, EFH Conservation Recommendations have different legal connotations than other EFH-related recommendations called for under the Magnuson-Stevens Act, such as Council recommendations to Federal or state agencies under section 305(b)(3), or recommendations for EFH conservation and enhancement in FMPs pursuant to section 303(a)(7). The final rule capitalizes the term ''EFH Conservation Recommendations'' to help emphasize that these recommendations differ from other EFH-related recommendations discussed in the regulations.

EFH Conservation Recommendations are not limited to the recommendations contained in FMPs for EFH conservation and enhancement under section 303(a)(7) of the Act. For EFH consultations, NMFS' EFH Conservation Recommendations are based in part on EFH Assessments prepared by Federal agencies to describe the effects of agency actions on EFH.

Comment B: One commenter said that NMFS should release its EFH Conservation Recommendations in draft form and make them available for public comment before conveying the

recommendations to a Federal or state agency.

Response B: NMFS disagrees. Providing a comment period on EFH Conservation Recommendations could result in delays for Federal and state agencies that may be relying on NMFS' input to decide on appropriate measures to avoid or minimize adverse effects to EFH. Moreover, since EFH Conservation Recommendations are non-binding, they do not impose restrictions on proposed actions. If an action agency agrees with NMFS' EFH Conservation Recommendations but determines that adopting the recommendations may result in substantial changes to a proposed action, the agency may be required to seek additional public input under other laws before taking a final action that incorporates NMFS' recommendations.

Comment C: Several commenters asked NMFS to clarify the process for providing EFH Conservation Recommendations to state agencies. Three of these commenters suggested that the final rule say specifically that state agencies are not required to consult with NMFS. A state regulatory agency asked for clarification as to when NMFS will provide EFH Conservation Recommendations to state agencies. The same agency asked whether NMFS and the Councils will provide recommendations by category of activity or adverse impact (e.g., dredging or filling) or on a case-by-case basis.

Response C: The final rule includes a clarification that the Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. The final rule retains language stating that NMFS will use existing coordination procedures or establish new procedures to identify state agency actions that may adversely affect EFH and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies. In general, NMFS will strive to provide EFH Conservation Recommendations as appropriate on individual actions during the agency or public comment period. Councils may provide general recommendations in FMPs by category of activity or adverse impact under section 303(a)(7) of the Magnuson-Stevens Act, and may comment on individual actions under section 305(b)(3) of the Act.

Comment D: A number of non-fishing industries commented that NMFS has little or no experience or expertise to evaluate non-fishing activities and provide recommendations.

Response D: NMFS has commented on a variety of non-fishing threats to fish habitat under the Fish and Wildlife Coordination Act, National Environmental Policy Act, and other statutes since the agency was established in 1970. NMFS comments on thousands of such activities every year. Under section 305(b)(4)(A) of the amended Magnuson-Stevens Act, NMFS now is required to provide conservation recommendations for any Federal or state agency action that would adversely affect EFH. While NMFS may not have extensive expertise on all such threats to EFH, the information provided by Federal agencies through the consultation process in EFH Assessments will help NMFS to understand potential adverse effects and develop appropriate EFH Conservation Recommendations.

Comment E: One commenter referenced the section of the interim final rule that said Federal agencies and NMFS must use the best scientific information available regarding the effects of proposed actions on EFH. The commenter said that NMFS should also use the best scientific information available to support its mitigation recommendations.

Response E: NMFS agrees and has modified the regulations to add that Federal agencies and NMFS also must use the best scientific information available regarding the measures that can be taken to avoid, minimize, or offset adverse effects on EFH.

33.Comments on Federal Action Agency Responsibilities After Receiving NMFS' EFH Conservation Recommendations

Comment A: Three commenters recommended that NMFS delete the provision requiring that Federal agency responses that are inconsistent with EFH Conservation Recommendations must include the scientific justification for any disagreements with NMFS over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects. The commenters stated that NMFS has no authority to require a scientific justification, and pointed out that agencies may reject NMFS' recommendations on non-scientific grounds.

Response A: As noted in the preamble to the interim final rule at 62 FR 66546, section 305(d) of the Magnuson-Stevens Act gives the Secretary authority to issue regulations necessary to carry out any provision of the Act, including the provision that calls for a detailed written response to NMFS' EFH Conservation Recommendations and an explanation for not following the recommendations. In the regulations, NMFS interprets this statutory requirement to include explaining the basis for any disagreement over technical matters that are within NMFS' area of expertise. NMFS acknowledges that Federal agencies may disagree with EFH Conservation Recommendations for reasons that involve economic costs, public safety considerations, or other factors unrelated to the scientific merit of the recommendations, and the rule does not require a scientific justification in such cases.

Comment B: Several commenters said that NMFS does not have the authority to request further review of Federal agency decisions that are inconsistent with EFH Conservation Recommendations.

Response B: NMFS disagrees. The process for further review of Federal agency decisions that are inconsistent with NMFS' EFH Conservation Recommendations is integral to completing interagency consultation effectively under section 305(b)(2) of the Magnuson-Stevens Act. Interagency consultations by nature involve an exchange of information between agencies, and the process for further review provides a mechanism for resolving disagreements. NMFS has no authority to compel another Federal agency to hold final actions in abeyance pending the resolution of disputes about EFH. However, since NMFS does not anticipate requesting further review very frequently, NMFS hopes that Federal agencies will agree to defer final decisions temporarily if NMFS requests further review.

Comment C: One commenter said that the process for further review must preserve the autonomy of the action agency to decide whether to implement NMFS' recommendations.

Response C: NMFS agrees. NMFS' recommendations are non-binding. If a Federal agency ultimately decides not to accept one or more recommendations, the final rule and section 305(b)(4)(B) of the Magnuson-Stevens Act merely require the agency to explain in writing the reasons for not following the recommendations.

Comment D: Several commenters requested more information about the process for further review of Federal action agency decisions that are inconsistent with NMFS' EFH Conservation Recommendations. One of these commenters said the final rule should specify a time period within which disagreements must be resolved. Another asked for the final rule to specify sequential levels of review in each agency and procedures for suspending action agency decisions during higher level review. Two of the commenters asked for more detailed procedures for involving the Councils in

higher level review of action agency decisions.

Response D: The final rule does not include a time frame for resolving disagreements, nor does it specify sequential levels of review. Likewise, the final rule does not call for suspending action agency decisions pending higher level review. NMFS relies on other agencies to agree to further review of decisions that are inconsistent with NMFS' EFH Conservation Recommendations, including the procedures and time frames for such review. Procedures for Council involvement in higher level review are already discussed in the regulations, and may be elaborated upon if appropriate in any written procedures NMFS might develop to refine the process in the future.

34.Comments on Compliance with Applicable Laws and Executive Orders

Comment A: One commenter asked for clarification on the relationship between the interim final rule and Executive Order 12962 on Recreational Fisheries.

Response A: Although the EFH regulations and Executive Order 12962 both promote the themes of sustainability and interagency cooperation, there is no direct relationship between Executive Order 12962 and the Magnuson-Stevens Act EFH provisions. Executive Order 12962 was specifically designed to restore and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide. Executive Order 12962 established the National Recreational Fisheries Coordination Council (the Coordination Council) to develop and encourage partnerships between government and private sports fishing and boating groups to foster aquatic conservation that benefits recreational fisheries. The Coordination Council was to promote conservation awareness of aquatic restoration programs and evaluate the effects of Federal activities on recreational fishing. The EFH regulations pertain to all federally managed species without distinguishing between commercial and recreational fisheries. The EFH regulations establish procedures to identify important habitats and evaluate the effects of various actions on EFH, rather than on recreational or commercial fishing.

Comment B: Several commenters questioned whether NMFS had met its responsibilities under the Small Business Regulatory Enforcement Fairness Act (SBREFA), Title II of the Unfunded Mandates Reform Act, and Executive Order 12866.

Response B: The Regulatory Flexibility Act (RFA), as amended by SBREFA, requires federal agencies to prepare an initial and final regulatory flexibility analysis for a rule unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made such a certification to the Chief Counsel for Advocacy of the Small Business Administration, as required by 5 U.S.C. 605(b). Therefore, NMFS was not required to complete an initial or final regulatory flexibility analysis under RFA.

Under the Unfunded Mandates Reform Act, Federal agencies are required to enter a consultation process for any rulemaking that places responsibilities on another level of government (e.g., states) without paying the costs for carrying out these duties. Title II describes analyses and consultations that agencies must undertake for rules that may result in expenditures over $100 million in any year by state, local, and tribal governments, or the private sector. This rule will not require any expenditures by, nor place any responsibilities or duties on, state, local, or tribal governments, or the private sector. EFH consultations regarding Federal permits, licenses, or funding could lead the responsible Federal agency to restrict or limit the proposed action, which may result in indirect costs on the entity seeking the authorization or funding. However, any such requirements would be imposed at the discretion of the responsible Federal agency, and it would be speculative to evaluate such costs in conjunction with this rulemaking. Therefore, NMFS was not required to develop an assessment of the effects of this rule on other levels of government or the private sector.

The final rule has been determined to be significant for the purposes of Executive Order 12866. As such, NMFS submitted this rule to the Office of Management and Budget (OMB) for review and approval.

Comment C: One commenter thought the finding of no significant impact under the National Environmental Policy Act ignores the substantial amounts of staff time and other resources that Federal agencies will divert from other priorities to meet the EFH requirements.

Response C: NMFS completed a revised EA that addresses how the final rule could affect various parties, including Federal agencies. The provisions of the final rule related to Federal agency consultation with NMFS could result in an expenditure of time and resources that detracts from other activities. However, the rule implements a clear requirement in the Magnuson-Stevens Act for Federal agencies to consult with NMFS on any action that may adversely affect EFH. The rule provides guidance on required information for consultations and encourages agencies to combine the consultation process with existing environmental review procedures, so that consultations will be completed in an efficient and effective manner.

Changes from the Interim Final Rule

NMFS restructured parts of the section detailing the EFH contents of FMPs by providing a separate overview of the mandatory requirements and separating into distinct sections the guidelines for addressing general habitat information, information necessary to describe and identify EFH, and considerations for determining the limits of EFH. NMFS also restructured the section addressing fishing activities that may adversely affect EFH by separating into distinct sections the guidelines for evaluation of fishing activities and minimization of adverse effects. NMFS made these changes in response to commenters' concerns about a lack of clarity in the interim final rule, and based on NMFS' experience working with the Councils to add EFH information to existing FMPs.

NMFS reorganized parts of the coordination, consultation, and recommendation procedures by providing a separate summary of the five approaches for conducting EFH consultation; addressing the requirements for EFH Assessments before providing the procedures for each approach for EFH consultation; and placing the requirements for programmatic consultations in a distinct section. NMFS made these revisions in response to commenters' concerns that the consultation requirements were confusing and difficult to follow.

The changes to the rule are predominantly technical or administrative in nature and clarify intent or otherwise ease implementation of the EFH provisions of the Magnuson-Stevens Act. The following changes are listed in the order that they appear in the regulations. Grammatical or other minor changes are not detailed. Unless otherwise discussed below, the rationale for why changes were made from the interim final rule is contained in the Comments and Responses section.

In many cases throughout the final rule ''effect'' or ''affect'' replaces ''impact'' because the Magnuson-

Stevens Act uses ''affect'' in the applicable provision of the statute, and/or to reflect common usage of the terms in the fields of ecology and environmental assessment. Also, ''Federal agency'' or ''agency'' replaces ''Federal action agency'' or ''action agency'' in many places throughout the rule. This change eliminates redundancy and simplifies the text, particularly given that many sections of the rule only apply to Federal agencies with actions that may adversely affect EFH (i.e., Federal action agencies).

Throughout the final rule the phrase ''fishery management unit'' replaces the acronym ''FMU'' to improve understanding. ''Action'' replaces ''proposed action'' in many places to be inclusive of all types of agency actions. In several instances throughout Subpart J of the final rule ''life stage'' replaces ''life history stage'' to use the more common scientific term. In several places throughout Subpart K, ''existing environmental review process'' replaces ''existing consultation process'' to encompass environmental reviews that are not consultations per se.

In a number of places throughout the final rule, paragraphs have been renumbered and references to paragraphs and sections have been changed to reflect the renumbering.

In § 600.805, paragraph (a), ''EFH provisions'' replaces ''provision on EFH'' to improve clarity.

In § 600.805, paragraph (b), ''An FMP may'' replaces ''A Council may'' to clarify that FMPs are the appropriate vehicle to discuss habitat for species not included in the fishery management unit, if a Council chooses to do so.

In § 600.810, paragraph (a), NMFS modified the definition of ''adverse effect'' by deleting the parenthetical examples of direct and indirect effects and instead explaining that ''Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH.'' The definition also includes new language to clarify that ''Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.''

In § 600.810, paragraph (a), the definition of ''Council'' omits the word ''Secretarial'' to be consistent with the definition of this term in § 600.305(c) and 600.910(a).

In § 600.810, paragraph (a), the definition of ''habitat area of particular concern'' refers to areas identified pursuant to § 600.815(a)(8) rather than § 600.815(a)(9) because the final rule includes renumbered paragraphs.

In § 600.815, paragraph (a), a new paragraph (1) entitled ''Description and identification of EFH'' replaces the former paragraphs (1) ''Habitat requirements by life history stage'' and (2) ''Description and identification of EFH.'' As discussed above, the new organization clarifies the mandatory contents of FMPs by providing a separate overview and separating into distinct sections the guidelines for addressing general habitat information, information necessary to describe and identify EFH, and considerations for determining the limits of EFH. The language within this paragraph includes much of the language from corresponding sections of the interim final rule. Substantive changes are described below.

In § 600.815, paragraph (a), the description of Level 1 information (formerly § 600.815(a)(2)(i)(C)(*1*); now § 600.815(a)(1)(iii)(A)(*1*)) clarifies that distribution data need not necessarily be limited to systematic presence/absence sampling data. The word ''distribution'' replaces ''presence/absence'' and ''geographic range'' replaces ''distribution.'' The paragraph also includes a new sentence: ''Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage.''

In § 600.815, paragraph (a), a new paragraph (1)(iii)(B) says that in the absence of information to identify habitat usage by a given species or life stage, EFH should not be designated.

In § 600.815, paragraph (a), the former paragraph (2)(ii)(A) (now numbered (1)(iv)(A)) includes a new introductory sentence. The word ''described'' replaces ''obtained through the analysis'' and ''identified as EFH of managed species'' replaces ''protected as EFH for managed species.'' The words ''at each life stage'' now appear at the end of the sentence regarding Level 1 information. The sentence regarding Level 2 through 4 information appears in a different place in the paragraph to improve organization, and instead of saying the information should be used ''to identify the habitats valued most highly within the geographic range of the species'' the sentence includes new language to identify ''habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species.'' In the same paragraph ''distribution'' replaces ''presence/absence'' and the former ''identify those habitat areas most commonly used'' reads ''identify EFH as those habitat areas most commonly used'' because the purpose of the analysis is to identify EFH, if sufficient information is available. A new sentence advises Councils to explain the analyses conducted to distinguish EFH from all habitats potentially used by a species, which will improve understanding of the basis for the designations. The paragraph omits three sentences: ''Areas so identified should be considered essential for the species. However, habitats of intermediate and low value may also be essential, depending on the health of the fish population and the ecosystem. Councils must demonstrate that the best scientific information available was used in the identification of EFH, consistent with national standard 2, but other data may also be used for the identification.'' The first of these sentences is unnecessary since references to identifying EFH now appear earlier in the paragraph. The second sentence is unnecessary and confusing since other provisions of the rule allow Councils to identify EFH broadly if warranted, and in such cases the habitats would not be regarded as intermediate or low value. The third sentence is unnecessary and redundant with the requirements of the Magnuson-Stevens Act.

In § 600.815, paragraph (a), a new paragraph (1)(iv)(B) includes more specific guidance for the text descriptions of EFH.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(B) (now numbered (1)(iv)(C)), ''may'' replaces ''should'' so that the rule permits, but no longer strongly recommends, considering all habitats currently used by a species to be essential, as well as certain historic habitats, if a species is overfished and habitat factors may be contributing to the species being identified as overfished. Councils should make this determination on a case-by-case basis. In the same paragraph, ''should be reviewed and amended'' replaces ''should be reviewed, and the FMP amended'' because in many cases the identification of EFH can be amended via a framework adjustment rather than a full FMP amendment.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(C) (now numbered (1)(iv)(D)), ''Areas described as EFH will normally'' replaces ''EFH will always.''

The final rule omits the language that appeared as § 600.815 (a)(2)(ii)(D) of the

interim final rule to eliminate redundancy.

In § 600.815, paragraph (a), the former paragraph (2)(ii)(E) (now numbered (1)(v)(E)) omits ''or species assemblage'' and includes two new sentences to explain the conditions for designating EFH for species assemblages.

In § 600.815, paragraph (a), in the former paragraph (2)(ii)(F) (now numbered (1)(iv)(F)), ''stream or river blockages'' replaces ''fish blockages'' to be more accurate about the problem to be address by improved fish passage techniques. The text omits the words ''or quantity'' before ''measures'' to eliminate jargon and redundancy. The word ''necessary'' replaces ''essential'' to improve consistency with the Magnuson-Stevens Act.

In § 600.815, paragraph (a), in the former paragraph (2)(iii) (now numbered (1)(v)), the final rule contains new language to clarify the guidance for mapping EFH. The changes are intended to encourage more explicit and informative EFH maps in FMPs, based on NMFS' experience with maps produced using the guidance in the interim final rule. The new language requires that FMPs include maps that display, within the constrains of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. The new language also encourages Councils to map different types of habitat designated as EFH to the extent possible; to use maps to distinguish EFH from non-EFH areas; to confer with NMFS regarding national mapping standards; and to include maps of HAPCs.

Section 600.815, paragraph (a)(2) includes reorganized and expanded guidance regarding fishing activities that may adversely affect EFH (formerly addressed in paragraph (a)(3)). The final rule includes separate subsections on the evaluation of fishing activities and minimization of adverse effects, and explains in more detail the information that Councils should address in these portions of FMPs.

In § 600.815, paragraph (a), the former paragraph (3)(iv) (now numbered (2)(iii)) includes a new title, ''Practicability,'' and omits the phrase ''whether, and to what extent, the fishing activity is adversely impacting EFH, including the fishery'' to eliminate redundancy. The language also omits the phrase ''and whether the management measures are practicable, taking into consideration'' to eliminate redundancy. To clarify the intent of considering costs and benefits, the words ''the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation'' replace ''the long and short-term costs as well as benefits to the fishery and its EFH, along with other appropriate factors.'' A new sentence clarifies that Councils are not required to perform a formal cost/benefit analysis.

In § 600.815, paragraph (a), in the former paragraph (4)(i) (now numbered (2)(iv)(A)), ''damage to EFH'' replaces ''physical damage in EFH'' because adverse effects are not limited to physical effects.

Section 600.815, paragraph (3) is new. The paragraph clarifies that FMPs must identify threats to EFH from fishing activities that are managed under laws other than the Magnuson-Stevens Act, such as state managed fisheries or those fisheries managed by other agencies. The language addresses non-Magnuson-Stevens Act fishing directly, whereas the interim final rule more indirectly stated in § 600.815(a)(3)(ii) that FMPs must assess all fishing equipment types used in EFH.

In § 600.815, paragraph (a), the former paragraph (5) is now numbered (4). The title of the paragraph omits ''Identification of'' to reduce wordiness. The sentence ''FMPs must identify activities other than fishing that may adversely affect EFH'' replaces ''FMPs must identify activities that have the potential to adversely affect EFH quantity or quality, or both.'' This change clarifies that the requirement is to identify all adverse effects to EFH from non-fishing activities. The same paragraph omits language saying that FMPs should describe the EFH most likely to be adversely affected and should explain the mechanisms that may cause the effects, because this language is redundant with the sentence saying that FMPs should describe known and potential adverse effects to EFH. The paragraph also omits two sentences regarding geographical analysis of non-fishing impacts, because Councils should have the flexibility to analyze potential impacts using any suitable approach.

In § 600.815, the former paragraph (a)(6) is now numbered (a)(5). To provide context, the explanation of cumulative impacts appears at the beginning of the paragraph rather than later. The words ''the cumulative impacts of'' appear before ''fishing and non-fishing activities'' to emphasize that the focus is cumulative effects. To emphasize EFH over other fish habitat, the term ''the function of EFH'' replaces ''habitat function'' and ''EFH'' replaces ''the managed species' habitat.'' The paragraph omits the discussion of cumulative impacts from fishing that appeared in the interim final rule, because the final rule addresses cumulative impacts from fishing as part of the evaluation of fishing activities that may adversely affect EFH (§ 600.815(a)(2)(i)). The paragraph omits other language from the interim final rule that described suggested contents of cumulative impacts analyses and mapping for cumulative impacts, because Councils should have flexibility to evaluate cumulative impacts using any appropriate methods. The paragraph omits discussion of research needs pertaining to cumulative impacts because research needs are covered adequately in § 600.815(a)(9). The paragraph also omits language regarding schedules for research because Councils have no control over such schedules.

In § 600.815, the former paragraph (a)(7) is now numbered (a)(6). To more accurately reflect the statutory language, the text states that ''FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for'' adverse effects. The paragraph omits ''and promote the conservation and enhancement of EFH'' to better reflect the Councils' role as outlined in the EFH provisions of the Magnuson-Stevens Act. The paragraph also omits the general recommendations and options for conservation and enhancement that appeared in the interim final rule.

In § 600.815, the former paragraph (a)(8) is now numbered (a)(7). The words ''may be'' replace ''is'' because loss of prey does not always constitute an adverse effect on EFH and managed species. The first sentence omits the word ''a'' before ''managed species'' because adverse effects may apply to more than one species. To clarify that the consideration of effects to prey is consistent with the Magnuson-Stevens Act, the phrase ''because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding'' replaces ''because one component of EFH is that it be necessary for feeding.'' To clarify the conditions under which effects to prey should be considered, the phrase ''may be considered adverse effects on EFH if such actions reduce the quality and/or quantity of EFH'' replaces ''may be considered adverse effects on a managed species and its EFH.'' The word ''list'' replaces ''identify'' and ''discuss'' replaces ''generally describe'' to be clearer about how FMPs should address prey species and their habitat. The final rule omits

the sentence from the interim final rule saying that actions that cause a reduction of the prey species population should be described and identified. This language caused confusion about the scope of the required analysis, and was substantially redundant with other text in the paragraph.

In § 600.815, the former paragraph (a)(9) is now numbered (a)(8). The final rule combines the two introductory sentences from the interim final rule to be more concise, and the word ''considerations'' replaces ''criteria.''

In § 600.815, the former paragraph (a)(10) is now numbered (a)(9). The final rule includes much more concise text to explain that FMPs should identify the research and information needed to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

In § 600.815, the former paragraph (a)(11) is now numbered (a)(10). The final rule omits the words ''including an update of the equipment assessment originally conducted pursuant to paragraph (a)(3)(ii) of this section'' to eliminate redundancy. The final rule clarifies that Councils and NMFS should ''revise or amend EFH provisions as warranted based on available information.'' The final rule omits the language stating that ''each FMP amendment should include a provision requiring review and update of EFH information and preparation of a revised FMP amendment if new information becomes available'' and instead says that ''FMPs should outline the procedures the Council will follow to review and update EFH information.'' The final rule adds a sentence to provide guidance on the type of information the Councils and NMFS should examine when updating the EFH provisions of FMPs. These changes better reflect the process for revising FMPs based on a review of current information. The language in this section also clarifies that the Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation report. The new words ''all EFH'' clarify the type of information that needs to be reviewed at least once every five years.

In § 600.815, the final rule omits paragraph (b) of the interim final rule to eliminate redundancy with § 600.805(b)(1).

In § 600.815, the former paragraph (c) is now (b) and the heading includes the words ''for Councils'' to clarify that the EFH recommendations referred to in this paragraph are recommendations from NMFS to the Councils. The final rule adds new text explaining the intent and timing of NMFS' written recommendations to assist the Councils in identifying EFH and adverse affects to EFH, and incorporating EFH information into FMPs. The paragraph omits several sentences from the interim final rule that provided for public review of NMFS' written EFH recommendations.

In § 600.905, paragraph (c), ''NMFS'' replaces ''the Secretary'' to clarify that the NMFS is the agency responsible for working with the Councils. Additional language changes in this paragraph serve to simplify the language and reduce wordiness.

In § 600.910, paragraph (a), the final rule modifies the definition of ''adverse effect'' in the same manner as in § 600.810(a). The final rule omits the definition of ''Council'' provided in the interim final rule because the definition was originally meant to provide for NMFS' comments under section 305(b)(3) of the Magnuson-Stevens Act, allowing NMFS to comment as a Council for FMPs developed by the Secretary. This provision is unnecessary since NMFS comments will be provided under section 305(b)(4)(A).

In § 600.910, paragraph (a) also includes a new definition for ''anadromous fishery resource under Council authority'' to clarify that the term means an anadromous species managed under an FMP. The interim final rule discussed anadromous fishery resources in § 600.930(c), and NMFS explained that provision in the preamble to the interim final rule at 62 FR 66546. Upon further consideration, NMFS determined that § 600.930(c) and the preamble were not sufficiently clear as to what species should be considered anadromous fishery resources under Council authority for purposes of section 305(b)(3)(B) of the Magnuson-Stevens Act. Since Councils may not have sufficient expertise regarding non-managed anadromous species to provide the comments and recommendations that are required by section 305(b)(3)(B) of the Act, NMFS determined that the most appropriate interpretation of that section is for ''anadromous fishery resource under Council authority'' to mean those anadromous species managed under FMPs.

In § 600.915 the final rule adds the phrase ''and the general public'' and ''EFH'' replaces ''such habitat.''

In § 600.920, paragraph (a)(1), the phrase ''actions that were completed prior to the approval of EFH designations by the Secretary'' replaces the phrase ''completed actions.'' The second sentence of the paragraph adds the phrase ''if the renewal, review, or revision may adversely affect EFH'' to the end of the sentence. The final rule adds a reference to paragraph (j) of this section to refer to the procedures for programmatic consultation. The final rule includes new text that describes the requirement to complete EFH consultations for emergency Federal actions that may adversely affect EFH. This addition clarifies the requirement and timing for EFH consultations for Federal actions that must be carried out in an expedited manner due to emergency circumstances. If consultation is not practicable before taking an emergency action, Federal agencies may consult after-the-fact and NMFS may provide EFH Conservation Recommendations for measures to offset any unavoidable adverse effects to EFH.

The final rule omits § 600.920(a)(2) of the interim final rule and instead describes the five approaches for conducting consultation, and discusses procedures for programmatic consultation in a separate section. Section 600.920, new paragraph (a)(3), titled ''Early notification and coordination,'' encourages discussions of measures to conserve EFH for actions that may adversely affect EFH as early as practicable during project planning. In the interim final rule this language appeared in the procedures for abbreviated consultation but it applies equally to other types of consultation.

In § 600.920, paragraph (b), ''should'' replaces ''must'' to encourage, but not require, the lead agency to notify NMFS in writing that is representing another agency or agencies. New text provides additional clarification of when one Federal agency's EFH consultation may suffice for one of another Federal agency.

In § 600.920, paragraph (c), the final rule allows a non-Federal representative to conduct any type of EFH consultation.

In § 600.920, paragraph (d) adds a phrase clarifying that the best scientific information is needed regarding the effects of actions on EFH ''and the measures that can be taken to avoid, minimize, or offset such effects.≥

In § 600.920, paragraph (e) discusses EFH Assessments. This discussion was moved from § 600.920, paragraph (g) of the interim final rule to provide better organization and understanding of the provision.

In § 600.920, paragraph (e)(1) omits the language that suggested that EFH Assessments are unnecessary for some activities, and clarifies the preparation requirements for EFH Assessments associated with the development of General Concurrences and

programmatic consultations. Additional text clarifies that ''Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH because EFH consultation is not required for such actions.'' The final sentence omits that words ''consultation of'' to eliminate confusing language.

Section 600.920 adds a new paragraph (e)(2), titled ''Level of detail,'' to explain that the extent of information in an EFH Assessment should be based on the complexity and magnitude of the adverse affects of the action.

In § 600.920, paragraph (e)(3)(ii) adds ''potential adverse'' before ''effects'' and omits ''cumulative effects'' and ''associated species such as major prey species, including affected life history stages.'' This simplifies the rule and provides consistency with the definition of ''adverse effects'' provided in the final rule.

In § 600.920, paragraph (e)(3)(iii) ''conclusions'' replaces ''views'' to clarify that Federal agencies must indicate their opinions regarding the results or implications of the EFH Assessment.

In § 600.920, paragraph (e)(4)(iv) omits ''particularly when an action is non-water dependent.''

In § 600.920, former paragraph (e) is now paragraph (f) and the heading as been changed from ''Use of existing consultation/environmental review procedures'' to ''Use of existing environmental review procedures.''

In § 600.920, paragraph (f)(1) is newly titled ''Criteria'' rather than ''Purpose and criteria'' to better reflect the content of the paragraph. The paragraph now uses acronyms for ''National Environmental Policy Act'' and ''Endangered Species Act.'' The final rule adds reference to section 305(b)(4) of the Magnuson-Stevens Act and additional text to reflect that consultation under sections 305(b)(2) and 305(b)(4) of the Act, including abbreviated or expanded consultations, can be combined with existing environmental review procedures if the procedures meet or are modified to meet stated criteria.

In § 600.920, paragraph (f)(1)(i), to improve clarity ''Whenever possible'' replaces ''However'' and ''provided that'' replaces ''if.''

In § 600.920, paragraph (f)(1)(ii), the phrase ''the action agency must identify that section of the document as the EFH Assessment'' replaces the phrase ''that section of the document must be clearly identified as the EFH Assessment'' to clarify that it is the action agency's responsibility to identify an EFH Assessment when submitted as part of another document.

In § 600.920, paragraph (f)(1)(iii), ''can be used to satisfy'' replaces ''satisfies'' because even when using another environmental review process, specified procedures must be followed to fulfill the requirements of the Magnuson-Stevens Act. Also, the final rule adds reference to section 305(b)(4) of the Magnuson-Stevens Act to clarify that when consulting under section 305(b)(2), NMFS will use the process specified in a finding to provide EFH Conservation Recommendations. However, in the absence of a finding, if a Federal agency fails to consult under section 305(b)(2) of the Act, NMFS may provide EFH Conservation Recommendations under section 305(b)(4) either through another environmental review process or separately.

In § 600.920, paragraph (f)(2) is newly titled as ''NMFS response to Federal agency'' rather than ''EFH conservation recommendation requirements'' to better reflect the process described in this paragraph. The final rule replaces ''consultation'' with ''environmental review'' to clarify that the use of existing review processes is not limited to consultation processes. To eliminate redundancy, the final rule omits language reiterating the requirements of section 305(b)(4)(B) of the Magnuson-Stevens Act and the procedures for further review of Federal agency decisions. ''Will'' replaces ''shall'' since ''shall'' is used in the regulations only when quoting statutory language directly, to avoid confusion with the future tense, and ''will'' is used descriptively, as distinguished from denoting an obligation to act or the future tense. ''Action agency'' has been added to clarify from whom a response is needed pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act.

In § 600.920, paragraph (f)(3) includes a new phrase ''to combine the EFH consultation requirements with'' and removes the phrase ''can be used to satisfy the EFH consultation requirements.'' These and other minor changes to the paragraph clarify that existing or modified environmental reviews cannot substitute for an EFH consultation but can provide the format and process for an EFH consultation.

In § 600.920, paragraph (f) is now paragraph (g). Paragraph (g)(1) omits the word ''process'' to emphasize the end product rather than the process.

In § 600.920, paragraph (g)(2)(i) omits ''after consultation with the appropriate Council(s).'' The rule no longer requires NMFS to consult with the Councils before issuing a General Concurrence.

In § 600.920, paragraph (g)(2)(ii) includes the new phrase ''actions covered by a General Concurrence'' to clarify what activities need to be tracked. The final rule splits the second sentence into two sentences and restructures the language to improve clarity and remove redundancy. The final rule omits ''of habitat adversely affected'' and includes other minor edits to increase clarity and reduce wordiness. The addition of ''applicable'' clarifies that tracking information related to actions covered by a General Concurrence does not need to be made available to all Councils.

In § 600.920, paragraph (g)(2)(iv), ''proposed for actions that may adversely affect'' replaces ''developed for actions affecting'' to convey that the review for potential effect to HAPCs should occur while a proposed General Concurrence is being evaluated.

In § 600.920, paragraph (g)(3), ''an EFH Assessment containing a description'' replaces ''a written description'' to clarify that a Federal agency's request for a General Concurrence must include an EFH Assessment that evaluates the anticipated effects of the actions to be covered under the General Concurrence. The final rule omits the phrase ''and associated species and their life history stages,'' since this is implicit in an evaluation of effects to EFH. The final rule omits the phrase ''after consultation with the appropriate Council(s).'' The final rule also removes the phrase ''and that preparation of EFH Assessments for individual actions subject to the General Concurrence is not necessary'' to eliminate redundancy. ''Another type of'' replaces ''abbreviated or expanded'' to better describe the options available for consultation if a General Concurrence is not issued.

In § 600.920, paragraph (g)(4) is newly titled as ''Further consultation'' rather than ''Notification and further consultation.'' ''Request'' replaces ''require'' to more accurately reflect NMFS' role in asking for further consultation for actions covered under a General Concurrence.

In § 600.920, paragraph (g)(5) is newly titled as ''Notification'' rather than ''Public review.'' The rule no longer requires an opportunity for public or Council review before NMFS provides a Federal agency with a written statement of General Concurrence. The new paragraph states that NMFS will notify the appropriate Council(s) and make the General Concurrence available to the public.

In § 600.920, paragraph (g)(6) omits ''findings of'' to avoid confusion between establishing a finding pursuant to § 600.920(f)(3) of the final rule and issuing a General Concurrence under § 600.920(g).

Section 600.920(g) of the interim final rule addressed EFH Assessments. The final rule discusses EFH Assessments in § 600.920(e).

In § 600.920, paragraph (h)(2) is newly titled as ''Notification by agency and submittal of EFH Assessment'' rather then ''Notification by agency.'' Paragraph (h)(2) is combined with former paragraph (h)(3) and condensed to provide clearer guidance on notification and submittal of an EFH assessment.

In § 600.920, the former paragraph (h)(4)is now numbered (h)(3). The final rule provides new language regarding NMFS' response to an EFH Assessment to clarify that the type of response depends upon NMFS' determination of potential adverse effects to EFH. The final rule removes ''accurately'' to eliminate any suggestion that a Federal agency's EFH Assessment for abbreviated consultation might include inaccuracies. The paragraph adds the words ''in writing'' to clarify how NMFS will request that a Federal agency initiate expanded consultation for actions that may result in substantial adverse effects to EFH. The term ''additional'' replaces ''expanded'' to more accurately describe the type of consultation being discussed. The paragraph is restructured to state more succinctly that NMFS will provide EFH Conservation Recommendations, if appropriate. Also, the final rule deletes the sentence stating that ''NMFS will send a copy of its response to the appropriate Council.''

In § 600.920, the former paragraph (h)(5), which is now numbered (h)(4), omits ''complete'' and ''NMFS must receive it'' to reduce wordiness.

Section 600.920, paragraph (i)(2), is newly titled ''Notification by agency and submittal of EFH Assessment'' rather than ''Initiation.'' This paragraph omits ''completed'' to reduce wordiness. The paragraph includes the new phrase ''to facilitate review of the effects of the action on EFH'' to clarify why additional information identified under § 600.920(e)(4) should be submitted. To eliminate potential confusion with programmatic consultations, the paragraph omits the language that allowed a request for expanded consultation to encompass several similar individual actions within a given geographic area.

In § 600.920, paragraph (i)(3)(iv), the final rule omits the sentence stating that ''NMFS will also provide a copy of the recommendations to the appropriate Council(s).''

In § 600.920, paragraph (i)(4) omits ''complete'' to reduce wordiness, and contains new language clarifying that NMFS and Federal agencies may agree to conduct consultation early in the planning cycle for actions with lengthy approval processes.

In § 600.920, paragraph (j) is a new section on programmatic consultation.

In § 600.920, former paragraph (j) is now paragraph (k).

Section 600.920 paragraph (k)(1) replaces ''the appropriate Council'' with ''to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act'' to clarify which Councils must receive the Federal agency's written response to EFH Conservation Recommendations. The final rule adds ''from NMFS'' to more accurately parallel the statutory language requiring the Federal agency to provide its detailed written response within 30 days of receiving recommendations under section 305(b)(4)(A) of the Act. The final rule restructures the language from the interim final rule that required a response be provided at least 10 days prior to final approval of an action, if a decision by the Federal agency is required in fewer than 30 days. The new language requires a response at least 10 days prior to final approval only if the Federal agency's response is inconsistent with any of NMFS' EFH Conservation Recommendations, because there is no need for a 10–day review period if the Federal agency accepts NMFS' recommendations.

In § 600.920, paragraph (k)(2), ''NMFS may develop written procedures'' replaces ''Memoranda of agreement or other written procedures will be developed'' to reflect that any form of written procedures may be developed as necessary to further define review processes. The word ''may'' replaces ''will'' because written procedures may not be necessary in all cases. Also, the paragraph omits ''with Federal action agencies'' to reduce wordiness.

In § 600.925, paragraph (a) omits ''EFH conservation recommendations'' and ''suggest'' and adds ''recommend'' to be clearer and more concise.

In § 600.925, paragraph (b) omits the redundant statement that the recommendations fulfill the requirements of section 305(b)(4)(A) of the Magnuson-Stevens Act. The paragraph also omits the statement that ''NMFS will provide a copy of such recommendation to the appropriate Councils.''

In § 600.925, paragraph (c)(1) clarifies with new text that ''the Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH.'' ''NMFS will'' replaces ''each NMFS region should'' to convey more clearly that NMFS intends to use existing coordination procedures when making recommendations to state agencies. The final rule omits the unnecessary reference to other statutes in describing the use of existing coordination procedures. ''To determine'' replaces ''for determining.'' The final rule omits the sentence stating the ''NMFS will provide a copy of such recommendation to the appropriate Council(s).''

In § 600.925, paragraph (c)(2), the phrase ''is authorized, funded, or undertaken'' replaces ''requires authorization or funding'' to better reflect the requirements of the Magnuson-Stevens Act.

In § 600.925, paragraph (d) is a new paragraph, titled ''Coordination with Councils,'' that describes how NMFS will coordinate with each Council to identify actions on which the Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act.

Section 600.930 includes new language describing the statutory authority for Council comments and recommendations to Federal and state agencies.

In § 600.930, paragraph (a), the words ''habitat, including EFH, of a species under its authority'' replace ''EFH of a species managed under its authority'' to better reflect the statutory authority for Councils to comment on Federal or state actions. The phrase ''actions of concern that would adversely affect EFH'' replaces ''actions that may adversely impact EFH'' to convey more clearly that the Regional Administrator would screen the actions.

In § 600.930, paragraph (b), a change from passive to active voice clarifies that ''Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies.''

The final rule omits § 600.930, paragraph (c) of the interim final rule because that paragraph is redundant with the new definition of ''anadromous fishery resource under Council authority'' in § 600.910(a).

Classification

The NOAA Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to the National Environmental Policy Act (NEPA)

NMFS prepared a new EA for the final rule, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. The regulations contain guidelines to the Councils for incorporating EFH information into FMPs in accordance with the Magnuson-Stevens Act, and procedures to be used by NMFS, the Councils, and Federal action agencies to satisfy the coordination, consultation, and recommendation requirements of the Magnuson-Stevens Act. Any specific effects of the EFH provisions of individual FMPs will be addressed in NEPA documents prepared for the approval of those FMP provisions. A copy of the EA is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be significant for the purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. As discussed in the response to comments above, NMFS received comments on the interim final rule questioning whether the agency had met its responsibilities under applicable laws requiring economic analyses. These comments did not cause any change in the certification regarding effects on small entities. As a result, NMFS was not required to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 601 *et seq.*). The rule provides guidelines to the Councils for developing the EFH components of FMPs in compliance with the Magnuson-Stevens Act, and the guidelines do not have the force of law. Should Councils establish fishing regulations as a result of the guidelines, those actions may affect small entities and could be subject to the requirement to prepare regulatory flexibility analyses at the time the Councils propose them. The rule also establishes consultation procedures and a process for NMFS to provide EFH Conservation Recommendations to Federal and state action agencies. However, because compliance with NMFS recommendations is not mandatory, any effects on small businesses would be speculative.

This final rule does not include policies that have federalism implications as that term is defined in Executive Order 13132. This rule establishes procedures for consultation between Federal agencies and NMFS when Federal actions may adversely affect EFH. States are not required to consult regarding EFH. The rule requires NMFS to provide conservation recommendations for any Federal or state actions that would adversely affect EFH. The Councils may comment and make recommendations on Federal and state actions that may affect EFH and must comment and make conservation recommendations concerning any Federal or state activity that is likely to substantially affect the habitat of an anadromous fishery resource under Council authority. Neither NMFS' nor the Council's recommendations are mandatory, and states are not required to respond to the recommendations. Similarly, the rule does not require any expenditures by, nor place any responsibilities or duties on, state, local, or tribal governments. Therefore, in accordance with the provisions of the Unfunded Mandates Reform Act, NMFS was not required to develop an assessment of the effects of this rule on other levels of government or the private sector.

NMFS determined that this rule does not have reasonably foreseeable coastal effects and that this action is consistent to the maximum extent practicable with the approved coastal management programs for the coastal states. Therefore, a Coastal Zone Management Act consistency determination is not needed. EFH provisions of FMPs should be provided to state coastal zone consistency coordinators for review prior to approval by the Secretary.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act (PRA). The PRA requires OMB clearance for most planned information collections. The only information collection that derives from the rule is the requirement for Federal agencies to prepare EFH Assessments for actions that may adversely affect EFH. OMB clearance is not required for a collection of information from Federal agencies.

The rule provides guidance to the Councils on how to designate EFH and establishes a consultation process for Federal actions that may adversely affect EFH. This action will not result in a taking of private property and does not have takings implications. Accordingly, NMFS was not required to complete a Federal takings assessment.

This rule does not contain policies that have tribal implications as that term is defined in Executive Order 13175.

This rule will not have a significant adverse effect on the supply, distribution, or use of energy, and preparation of a Statement of Energy Effects under Executive Order 13211 is not required. EFH consultations result in non-binding conservation recommendations. EFH consultations regarding Federal permits, licenses, or funding could lead the responsible Federal agency to restrict or limit proposed actions, which potentially may affect entities seeking authorization or funding for projects involving energy supply, distribution, or use. However, any such requirements would be imposed at the discretion of the responsible Federal agency, and it would be speculative to evaluate the effects of such requirements in conjunction with this rulemaking.

List of Subjects in 50 CFR Part 600

Administrative practice and procedures, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations.

Dated: January 7, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON–STEVENS ACT PROVISIONS

1.The authority citation for part 600 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2.In § 600.10, the definition for ''Essential fish habitat'' is revised to read as follows:

§ 600.10 Definitions.

* * * * *

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: ''Waters'' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; ''substrate'' includes sediment, hard bottom, structures underlying the waters, and associated biological communities; ''necessary'' means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and ''spawning, breeding, feeding, or growth to maturity'' covers a species' full life cycle.

* * * * *

3. Subparts J and K of part 600 are revised to read as follows:

* * * * *

Subpart J—Essential Fish Habitat (EFH)

Sec.

600.805 Purpose and scope.
600.810 Definitions and word usage.
600.815 Contents of Fishery Management Plans.

Subpart K—EFH Coordination, Consultation, and Recommendations

600.905 Purpose, scope, and NMFS/Council cooperation.
600.910 Definitions and word usage.
600.915 Coordination for the conservation and enhancement of EFH.
600.920 Federal agency consultation with the Secretary.
600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.
600.930 Council comments and recommendations to Federal and state agencies.

Subpart J—Essential Fish Habitat (EFH)

§ 600.805 Purpose and scope.

(a) *Purpose.* This subpart provides guidelines for Councils and the Secretary to use in adding the required EFH provisions to an FMP, i.e., description and identification of EFH, adverse effects on EFH (including minimizing, to the extent practicable, adverse effects from fishing), and actions to conserve and enhance EFH.

(b) *Scope*—(1) *Species covered.* An EFH provision in an FMP must include all fish species in the fishery management unit (FMU). An FMP may describe, identify, and protect the habitat of species not in an FMU; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.

(2) *Geographic.* EFH may be described and identified in waters of the United States, as defined in 33 CFR 328.3, and in the exclusive economic zone, as defined in § 600.10. Councils may describe, identify, and protect habitats of managed species beyond the exclusive economic zone; however, such habitat may not be considered EFH for the purposes of sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act. Activities that may adversely affect such habitat can be addressed through any process conducted in accordance with international agreements between the United States and the foreign nation(s) undertaking or authorizing the action.

§ 600.810 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

*Council*includes the Secretary, as applicable, when preparing FMPs or amendments under sections 304(c) and (g) of the Magnuson-Stevens Act.

Ecosystem means communities of organisms interacting with one another and with the chemical and physical factors making up their environment.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

Healthy ecosystem means an ecosystem where ecological productive capacity is maintained, diversity of the flora and fauna is preserved, and the ecosystem retains the ability to regulate itself. Such an ecosystem should be similar to comparable, undisturbed ecosystems with regard to standing crop, productivity, nutrient dynamics, trophic structure, species richness, stability, resilience, contamination levels, and the frequency of diseased organisms.

Overfished means any stock or stock complex, the status of which is reported as overfished by the Secretary pursuant to section 304(e)(1) of the Magnuson-Stevens Act.

(b) *Word usage.* The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.815 Contents of Fishery Management Plans.

(a) *Mandatory contents*—(1) *Description and identification of EFH*—(i) *Overview.* FMPs must describe and identify EFH in text that clearly states the habitats or habitat types determined to be EFH for each life stage of the managed species. FMPs should explain the physical, biological, and chemical characteristics of EFH and, if known, how these characteristics influence the use of EFH by the species/life stage. FMPs must identify the specific geographic location or extent of habitats described as EFH. FMPs must include maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found.

(ii) *Habitat information by life stage.* (A) Councils need basic information to understand the usage of various habitats by each managed species. Pertinent information includes the geographic range and habitat requirements by life stage, the distribution and characteristics of those habitats, and current and historic stock size as it affects occurrence in available habitats. FMPs should summarize the life history information necessary to understand each species' relationship to, or dependence on, its various habitats, using text, tables, and figures, as appropriate. FMPs should document patterns of temporal and spatial variation in the distribution of each major life stage (defined by developmental and functional shifts) to aid in understanding habitat needs. FMPs should summarize (e.g., in tables) all available information on environmental and habitat variables that control or limit distribution, abundance, reproduction, growth, survival, and productivity of the managed species. The information should be supported with citations.

(B) Councils should obtain information to describe and identify EFH from the best available sources, including peer-reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information. Councils should consider different types of information according to its scientific rigor. FMPs should identify species-specific habitat data gaps and deficits in data quality (including considerations of scale and resolution; relevance; and potential biases in collection and interpretation). FMPs must demonstrate that the best scientific information available was used in the description and identification of EFH, consistent with national standard 2.

(iii) *Analysis of habitat information.* (A) The following approach should be used to organize the information necessary to describe and identify EFH.

(*1*) *Level 1: Distribution data are available for some or all portions of the geographic range of the species.* At this level, only distribution data are available to describe the geographic range of a species (or life stage). Distribution data may be derived from systematic presence/absence sampling and/or may include information on species and life stages collected

opportunistically. In the event that distribution data are available only for portions of the geographic area occupied by a particular life stage of a species, habitat use can be inferred on the basis of distributions among habitats where the species has been found and on information about its habitat requirements and behavior. Habitat use may also be inferred, if appropriate, based on information on a similar species or another life stage.

(*2*) *Level 2: Habitat-related densities of the species are available.* At this level, quantitative data (i.e., density or relative abundance) are available for the habitats occupied by a species or life stage. Because the efficiency of sampling methods is often affected by habitat characteristics, strict quality assurance criteria should be used to ensure that density estimates are comparable among methods and habitats. Density data should reflect habitat utilization, and the degree that a habitat is utilized is assumed to be indicative of habitat value. When assessing habitat value on the basis of fish densities in this manner, temporal changes in habitat availability and utilization should be considered.

(*3*) *Level 3: Growth, reproduction, or survival rates within habitats are available.* At this level, data are available on habitat-related growth, reproduction, and/or survival by life stage. The habitats contributing the most to productivity should be those that support the highest growth, reproduction, and survival of the species (or life stage).

(*4*) *Level 4: Production rates by habitat are available.* At this level, data are available that directly relate the production rates of a species or life stage to habitat type, quantity, quality, and location. Essential habitats are those necessary to maintain fish production consistent with a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(B) Councils should strive to describe habitat based on the highest level of detail (i.e., Level 4). If there is no information on a given species or life stage, and habitat usage cannot be inferred from other means, such as information on a similar species or another life stage, EFH should not be designated.

(iv) *EFH determination.* (A) Councils should analyze available ecological, environmental, and fisheries information and data relevant to the managed species, the habitat requirements by life stage, and the species' distribution and habitat usage to describe and identify EFH. The information described in paragraphs (a)(1)(ii) and (iii) of this section will allow Councils to assess the relative value of habitats. Councils should interpret this information in a risk-averse fashion to ensure adequate areas are identified as EFH for managed species. Level 1 information, if available, should be used to identify the geographic range of the species at each life stage. If only Level 1 information is available, distribution data should be evaluated (e.g., using a frequency of occurrence or other appropriate analysis) to identify EFH as those habitat areas most commonly used by the species. Level 2 through 4 information, if available, should be used to identify EFH as the habitats supporting the highest relative abundance; growth, reproduction, or survival rates; and/or production rates within the geographic range of a species. FMPs should explain the analyses conducted to distinguish EFH from all habitats potentially used by a species.

(B) FMPs must describe EFH in text, including reference to the geographic location or extent of EFH using boundaries such as longitude and latitude, isotherms, isobaths, political boundaries, and major landmarks. If there are differences between the descriptions of EFH in text, maps, and tables, the textual description is ultimately determinative of the limits of EFH. Text and tables should explain pertinent physical, chemical, and biological characteristics of EFH for the managed species and explain any variability in habitat usage patterns, but the boundaries of EFH should be static.

(C) If a species is overfished and habitat loss or degradation may be contributing to the species being identified as overfished, all habitats currently used by the species may be considered essential in addition to certain historic habitats that are necessary to support rebuilding the fishery and for which restoration is technologically and economically feasible. Once the fishery is no longer considered overfished, the EFH identification should be reviewed and amended, if appropriate.

(D) Areas described as EFH will normally be greater than or equal to aquatic areas that have been identified as ''critical habitat'' for any managed species listed as threatened or endangered under the Endangered Species Act.

(E) Ecological relationships among species and between the species and their habitat require, where possible, that an ecosystem approach be used in determining the EFH of a managed species. EFH must be designated for each managed species, but, where appropriate, may be designated for assemblages of species or life stages that have similar habitat needs and requirements. If grouping species or using species assemblages for the purpose of designating EFH, FMPs must include a justification and scientific rationale. The extent of the EFH should be based on the judgment of the Secretary and the appropriate Council(s) regarding the quantity and quality of habitat that are necessary to maintain a sustainable fishery and the managed species' contribution to a healthy ecosystem.

(F) If degraded or inaccessible aquatic habitat has contributed to reduced yields of a species or assemblage and if, in the judgment of the Secretary and the appropriate Council(s), the degraded conditions can be reversed through such actions as improved fish passage techniques (for stream or river blockages), improved water quality measures (removal of contaminants or increasing flows), and similar measures that are technologically and economically feasible, EFH should include those habitats that would be necessary to the species to obtain increased yields.

(v) *EFH mapping requirements.* (A) FMPs must include maps that display, within the constraints of available information, the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found. Maps should identify the different types of habitat designated as EFH to the extent possible. Maps should explicitly distinguish EFH from non-EFH areas. Councils should confer with NMFS regarding mapping standards to ensure that maps from different Councils can be combined and shared efficiently and effectively. Ultimately, data used for mapping should be incorporated into a geographic information system (GIS) to facilitate analysis and presentation.

(B) Where the present distribution or stock size of a species or life stage is different from the historical distribution or stock size, then maps of historical habitat boundaries should be included in the FMP, if known.

(C) FMPs should include maps of any habitat areas of particular concern identified under paragraph (a)(8) of this section.

(2) *Fishing activities that may adversely affect EFH*—(i)*Evaluation.* Each FMP must contain an evaluation of the potential adverse effects of fishing on EFH designated under the FMP, including effects of each fishing activity regulated under the FMP or other Federal FMPs. This evaluation should consider the effects of each fishing

activity on each type of habitat found within EFH. FMPs must describe each fishing activity, review and discuss all available relevant information (such as information regarding the intensity, extent, and frequency of any adverse effect on EFH; the type of habitat within EFH that may be affected adversely; and the habitat functions that may be disturbed), and provide conclusions regarding whether and how each fishing activity adversely affects EFH. The evaluation should also consider the cumulative effects of multiple fishing activities on EFH. The evaluation should list any past management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The evaluation should give special attention to adverse effects on habitat areas of particular concern and should identify for possible designation as habitat areas of particular concern any EFH that is particularly vulnerable to fishing activities. Additionally, the evaluation should consider the establishment of research closure areas or other measures to evaluate the impacts of fishing activities on EFH. In completing this evaluation, Councils should use the best scientific information available, as well as other appropriate information sources. Councils should consider different types of information according to its scientific rigor.

(ii) *Minimizing adverse effects*. Each FMP must minimize to the extent practicable adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. Councils must act to prevent, mitigate, or minimize any adverse effects from fishing, to the extent practicable, if there is evidence that a fishing activity adversely affects EFH in a manner that is more than minimal and not temporary in nature, based on the evaluation conducted pursuant to paragraph (a)(2)(i) of this section and/or the cumulative impacts analysis conducted pursuant to paragraph (a)(5) of this section. In such cases, FMPs should identify a range of potential new actions that could be taken to address adverse effects on EFH, include an analysis of the practicability of potential new actions, and adopt any new measures that are necessary and practicable. Amendments to the FMP or to its implementing regulations must ensure that the FMP continues to minimize to the extent practicable adverse effects on EFH caused by fishing. FMPs must explain the reasons for the Council's conclusions regarding the past and/or new actions that minimize to the extent practicable the adverse effects of fishing on EFH.

(iii) *Practicability*. In determining whether it is practicable to minimize an adverse effect from fishing, Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation, consistent with national standard 7. In determining whether management measures are practicable, Councils are not required to perform a formal cost/benefit analysis.(iv) Options for managing adverse effects from fishing. Fishery management options may include, but are not limited to:

(A) *Fishing equipment restrictions*. These options may include, but are not limited to: seasonal and areal restrictions on the use of specified equipment, equipment modifications to allow escapement of particular species or particular life stages (e.g., juveniles), prohibitions on the use of explosives and chemicals, prohibitions on anchoring or setting equipment in sensitive areas, and prohibitions on fishing activities that cause significant damage to EFH.

(B) *Time/area closures*. These actions may include, but are not limited to: closing areas to all fishing or specific equipment types during spawning, migration, foraging, and nursery activities and designating zones for use as marine protected areas to limit adverse effects of fishing practices on certain vulnerable or rare areas/species/life stages, such as those areas designated as habitat areas of particular concern.

(C) *Harvest limits*. These actions may include, but are not limited to, limits on the take of species that provide structural habitat for other species assemblages or communities and limits on the take of prey species.

(3) *Non-Magnuson-Stevens Act fishing activities that may adversely affect EFH*. FMPs must identify any fishing activities that are not managed under the Magnuson-Stevens Act that may adversely affect EFH. Such activities may include fishing managed by state agencies or other authorities.

(4) *Non-fishing related activities that may adversely affect EFH.* FMPs must identify activities other than fishing that may adversely affect EFH. Broad categories of such activities include, but are not limited to: dredging, filling, excavation, mining, impoundment, discharge, water diversions, thermal additions, actions that contribute to non-point source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. For each activity, the FMP should describe known and potential adverse effects to EFH.

(5) *Cumulative impacts analysis*. Cumulative impacts are impacts on the environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of who undertakes such actions. Cumulative impacts can result from individually minor, but collectively significant actions taking place over a period of time. To the extent feasible and practicable, FMPs should analyze how the cumulative impacts of fishing and non-fishing activities influence the function of EFH on an ecosystem or watershed scale. An assessment of the cumulative and synergistic effects of multiple threats, including the effects of natural stresses (such as storm damage or climate-based environmental shifts) and an assessment of the ecological risks resulting from the impact of those threats on EFH, also should be included.

(6) *Conservation and enhancement.* FMPs must identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects identified pursuant to paragraphs (a)(3) through (5) of this section, especially in habitat areas of particular concern.

(7) *Prey species*. Loss of prey may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat, and the definition of EFH includes waters and substrate necessary to fish for feeding. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to cause a reduction in the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. FMPs should list the major prey species for the species in the fishery management unit and discuss the location of prey species' habitat. Adverse effects on prey species and their habitats may result from fishing and non-fishing activities.

(8) *Identification of habitat areas of particular concern*. FMPs should identify specific types or areas of habitat within EFH as habitat areas of particular concern based on one or more of the following considerations:

(i) The importance of the ecological function provided by the habitat.

(ii) The extent to which the habitat is sensitive to human-induced environmental degradation.

(iii) Whether, and to what extent, development activities are, or will be, stressing the habitat type.

(iv) The rarity of the habitat type.

(9) *Research and information needs.* Each FMP should contain recommendations, preferably in priority order, for research efforts that the Councils and NMFS view as necessary to improve upon the description and identification of EFH, the identification of threats to EFH from fishing and other activities, and the development of conservation and enhancement measures for EFH.

(10) *Review and revision of EFH components of FMPs.* Councils and NMFS should periodically review the EFH provisions of FMPs and revise or amend EFH provisions as warranted based on available information. FMPs should outline the procedures the Council will follow to review and update EFH information. The review of information should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data. Councils should report on their review of EFH information as part of the annual Stock Assessment and Fishery Evaluation (SAFE) report prepared pursuant to § 600.315(e). A complete review of all EFH information should be conducted as recommended by the Secretary, but at least once every 5 years.

(b) *Development of EFH recommendations for Councils.* After reviewing the best available scientific information, as well as other appropriate information, and in consultation with the Councils, participants in the fishery, interstate commissions, Federal agencies, state agencies, and other interested parties, NMFS will develop written recommendations to assist each Council in the identification of EFH, adverse impacts to EFH, and actions that should be considered to ensure the conservation and enhancement of EFH for each FMP. NMFS will provide such recommendations for the initial incorporation of EFH information into an FMP and for any subsequent modification of the EFH components of an FMP. The NMFS EFH recommendations may be provided either before the Council's development of a draft EFH document or later as a review of a draft EFH document developed by a Council, as appropriate.

(c) *Relationship to other fishery management authorities.* Councils are encouraged to coordinate with state and interstate fishery management agencies where Federal fisheries affect state and interstate managed fisheries or where state or interstate fishery regulations affect the management of Federal fisheries. Where a state or interstate fishing activity adversely affects EFH, NMFS will consider that action to be an adverse effect on EFH pursuant to paragraph (a)(3) of this section and will provide EFH Conservation Recommendations to the appropriate state or interstate fishery management agency on that activity.

Subpart K—EFH Coordination, Consultation, and Recommendations

§ 600.905 Purpose, scope, and NMFS/Council cooperation.

(a) *Purpose.* These procedures address the coordination, consultation, and recommendation requirements of sections 305(b)(1)(D) and 305(b)(2–4) of the Magnuson-Stevens Act. The purpose of these procedures is to promote the protection of EFH in the review of Federal and state actions that may adversely affect EFH.

(b) *Scope.* Section 305(b)(1)(D) of the Magnuson-Stevens Act requires the Secretary to coordinate with, and provide information to, other Federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all Federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Sections 305(b)(3) and (4) direct the Secretary and the Councils to provide comments and EFH Conservation Recommendations to Federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. Section 305(b)(4)(B) requires Federal agencies to respond in writing to such comments. The following procedures for coordination, consultation, and recommendations allow all parties involved to understand and implement the requirements of the Magnuson-Stevens Act.

(c) *Cooperation between Councils and NMFS.* The Councils and NMFS should cooperate closely to identify actions that may adversely affect EFH, to develop comments and EFH Conservation Recommendations to Federal and state agencies, and to provide EFH information to Federal and state agencies. NMFS will work with each Council to share information and to coordinate Council and NMFS comments and recommendations on actions that may adversely affect EFH. However, NMFS and the Councils also have the authority to act independently.

§ 600.910 Definitions and word usage.

(a) *Definitions.* In addition to the definitions in the Magnuson-Stevens Act and § 600.10, the terms in this subpart have the following meanings:

Adverse effect means any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Anadromous fishery resource under Council authority means an anadromous species managed under an FMP.

Federal action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a Federal agency.

Habitat areas of particular concern means those areas of EFH identified pursuant to § 600.815(a)(8).

State action means any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by a state agency.

(b) *Word usage.* The terms ''must'', ''shall'', ''should'', ''may'', ''may not'', ''will'', ''could'', and ''can'' are used in the same manner as in § 600.305(c).

§ 600.915 Coordination for the conservation and enhancement of EFH.

To further the conservation and enhancement of EFH in accordance with section 305(b)(1)(D) of the Magnuson-Stevens Act, NMFS will compile and make available to other Federal and state agencies, and the general public, information on the locations of EFH, including maps and/or narrative descriptions. NMFS will also provide information on ways to improve ongoing Federal operations to promote the conservation and enhancement of EFH. Federal and state agencies empowered to authorize, fund, or undertake actions that may adversely affect EFH are encouraged to contact NMFS and the Councils to become

familiar with areas designated as EFH, potential threats to EFH, and opportunities to promote the conservation and enhancement of EFH.

§ 600.920 Federal agency consultation with the Secretary.

(a) *Consultation generally*—(1) *Actions requiring consultation.* Pursuant to section 305(b)(2) of the Magnuson-Stevens Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken that may adversely affect EFH. EFH consultation is not required for actions that were completed prior to the approval of EFH designations by the Secretary, e.g., issued permits. Consultation is required for renewals, reviews, or substantial revisions of actions if the renewal, review, or revision may adversely affect EFH. Consultation on Federal programs delegated to non-Federal entities is required at the time of delegation, review, and renewal of the delegation. EFH consultation is required for any Federal funding of actions that may adversely affect EFH. NMFS and Federal agencies responsible for funding actions that may adversely affect EFH should consult on a programmatic level under paragraph (j) of this section, if appropriate, with respect to these actions. Consultation is required for emergency Federal actions that may adversely affect EFH, such as hazardous material clean-up, response to natural disasters, or actions to protect public safety. Federal agencies should contact NMFS early in emergency response planning, but may consult after-the-fact if consultation on an expedited basis is not practicable before taking the action.

(2) *Approaches for conducting consultation.* Federal agencies may use one of the five approaches described in paragraphs (f) through (j) of this section to fulfill the EFH consultation requirements. The selection of a particular approach for handling EFH consultation depends on the nature and scope of the actions that may adversely affect EFH. Federal agencies should use the most efficient approach for EFH consultation that is appropriate for a given action or actions. The five approaches are: use of existing environmental review procedures, General Concurrence, abbreviated consultation, expanded consultation, and programmatic consultation.

(3) *Early notification and coordination.* The Federal agency should notify NMFS in writing as early as practicable regarding actions that may adversely affect EFH. Notification will facilitate discussion of measures to conserve EFH. Such early coordination should occur during pre-application planning for projects subject to a Federal permit or license and during preliminary planning for projects to be funded or undertaken directly by a Federal agency.

(b) *Designation of lead agency.* If more than one Federal agency is responsible for a Federal action, the consultation requirements of sections 305(b)(2) through (4) of the Magnuson-Stevens Act may be fulfilled through a lead agency. The lead agency should notify NMFS in writing that it is representing one or more additional agencies. Alternatively, if one Federal agency has completed an EFH consultation for an action and another Federal agency acts separately to authorize, fund, or undertake the same activity (such as issuing a permit for an activity that was funded via a separate Federal action), the completed EFH consultation may suffice for both Federal actions if it adequately addresses the adverse effects of the actions on EFH. Federal agencies may need to consult with NMFS separately if, for example, only one of the agencies has the authority to implement measures necessary to minimize adverse effects on EFH and that agency does not act as the lead agency.

(c) *Designation of non-Federal representative.* A Federal agency may designate a non-Federal representative to conduct an EFH consultation by giving written notice of such designation to NMFS. If a non-Federal representative is used, the Federal action agency remains ultimately responsible for compliance with sections 305(b)(2) and 305(b)(4)(B) of the Magnuson-Stevens Act.

(d) *Best available information.* The Federal agency and NMFS must use the best scientific information available regarding the effects of the action on EFH and the measures that can be taken to avoid, minimize, or offset such effects. Other appropriate sources of information may also be considered.

(e) *EFH Assessments*—(1) *Preparation requirement.* For any Federal action that may adversely affect EFH, Federal agencies must provide NMFS with a written assessment of the effects of that action on EFH. For actions covered by a General Concurrence under paragraph (g) of this section, an EFH Assessment should be completed during the development of the General Concurrence and is not required for the individual actions. For actions addressed by a programmatic consultation under paragraph (j) of this section, an EFH Assessment should be completed during the programmatic consultation and is not required for individual actions implemented under the program, except in those instances identified by NMFS in the programmatic consultation as requiring separate EFH consultation. Federal agencies are not required to provide NMFS with assessments regarding actions that they have determined would not adversely affect EFH. Federal agencies may incorporate an EFH Assessment into documents prepared for other purposes such as Endangered Species Act (ESA) Biological Assessments pursuant to 50 CFR part 402 or National Environmental Policy Act (NEPA) documents and public notices pursuant to 40 CFR part 1500. If an EFH Assessment is contained in another document, it must include all of the information required in paragraph (e)(3) of this section and be clearly identified as an EFH Assessment. The procedure for combining an EFH consultation with other environmental reviews is set forth in paragraph (f) of this section.

(2) *Level of detail.* The level of detail in an EFH Assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the action. For example, for relatively simple actions involving minor adverse effects on EFH, the assessment may be very brief. Actions that may pose a more serious threat to EFH warrant a correspondingly more detailed EFH Assessment.

(3) *Mandatory contents.* The assessment must contain:

(i) A description of the action.

(ii) An analysis of the potential adverse effects of the action on EFH and the managed species.

(iii) The Federal agency's conclusions regarding the effects of the action on EFH.

(iv) Proposed mitigation, if applicable.

(4) *Additional information.* If appropriate, the assessment should also include:

(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.

(ii) The views of recognized experts on the habitat or species that may be affected.

(iii) A review of pertinent literature and related information.

(iv) An analysis of alternatives to the action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH.

(v) Other relevant information.

(5) *Incorporation by reference.* The assessment may incorporate by reference a completed EFH Assessment prepared for a similar action,

supplemented with any relevant new project specific information, provided the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting. It may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with the EFH Assessment.

(f) *Use of existing environmental review procedures*—(1) *Purpose and criteria.* Consultation and commenting under sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as NEPA, the Fish and Wildlife Coordination Act, Clean Water Act, ESA, and Federal Power Act. The requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act, including consultations that would be considered to be abbreviated or expanded consultations under paragraphs (h) and (i) of this section, can be combined with existing procedures required by other statutes if such processes meet, or are modified to meet, the following criteria:

(i) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH. The Federal agency should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing process. Whenever possible, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and the action agency may agree to use shorter timeframes provided that they allow sufficient time for NMFS to develop EFH Conservation Recommendations.

(ii) Notification must include an assessment of the impacts of the action on EFH that meets the requirements for EFH Assessments contained in paragraph (e) of this section. If the EFH Assessment is contained in another document, the Federal agency must identify that section of the document as the EFH Assessment.

(iii) NMFS must have made a finding pursuant to paragraph (f)(3) of this section that the existing process can be used to satisfy the requirements of sections 305(b)(2) and 305(b)(4) of the Magnuson-Stevens Act.

(2) *NMFS response to Federal agency.* If an existing environmental review process is used to fulfill the EFH consultation requirements, the comment deadline for that process should apply to the submittal of NMFS EFH Conservation Recommendations under section 305(b)(4)(A) of the Magnuson-Stevens Act, unless NMFS and the Federal agency agree to a different deadline. If NMFS EFH Conservation Recommendations are combined with other NMFS or NOAA comments on a Federal action, such as NOAA comments on a draft Environmental Impact Statement, the EFH Conservation Recommendations will be clearly identified as such (e.g., a section in the comment letter entitled ''EFH Conservation Recommendations'') and a Federal agency response pursuant to section 305(b)(4)(B) of the Magnuson-Stevens Act is required for only the identified portion of the comments.

(3) *NMFS finding.* A Federal agency with an existing environmental review process should contact NMFS at the appropriate level (regional offices for regional processes, headquarters office for national processes) to discuss how to combine the EFH consultation requirements with the existing process, with or without modifications. If, at the conclusion of these discussions, NMFS determines that the existing or modified process meets the criteria of paragraph (f)(1) of this section, NMFS will make a finding that the process can be used to satisfy the EFH consultation requirements of the Magnuson-Stevens Act. If NMFS does not make such a finding, or if there are no existing consultation processes relevant to the Federal agency's actions, the agency and NMFS should follow one of the approaches for consultation discussed in the following sections.

(g) *General Concurrence*—(1) *Purpose.* A General Concurrence identifies specific types of Federal actions that may adversely affect EFH, but for which no further consultation is generally required because NMFS has determined, through an analysis of that type of action, that it will likely result in no more than minimal adverse effects individually and cumulatively. General Concurrences may be national or regional in scope.

(2) *Criteria.* (i) For Federal actions to qualify for General Concurrence, NMFS must determine that the actions meet all of the following criteria:

(A) The actions must be similar in nature and similar in their impact on EFH.

(B) The actions must not cause greater than minimal adverse effects on EFH when implemented individually.

(C) The actions must not cause greater than minimal cumulative adverse effects on EFH.

(ii) Actions qualifying for General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. In most cases, tracking actions covered by a General Concurrence will be the responsibility of the Federal agency. However, NMFS may agree to track such actions. Tracking should include numbers of actions and the amount and type of habitat adversely affected, and should specify the baseline against which the actions will be tracked. The agency responsible for tracking such actions should make the information available to NMFS, the applicable Council(s), and to the public on an annual basis.

(iii) Categories of Federal actions may also qualify for General Concurrence if they are modified by appropriate conditions that ensure the actions will meet the criteria in paragraph (g)(2)(i) of this section. For example, NMFS may provide General Concurrence for additional actions contingent upon project size limitations, seasonal restrictions, or other conditions.

(iv) If a General Concurrence is proposed for actions that may adversely affect habitat areas of particular concern, the General Concurrence should be subject to a higher level of scrutiny than a General Concurrence not involving a habitat area of particular concern.

(3) *General Concurrence development.* A Federal agency may request a General Concurrence for a category of its actions by providing NMFS with an EFH Assessment containing a description of the nature and approximate number of the actions, an analysis of the effects of the actions on EFH, including cumulative effects, and the Federal agency's conclusions regarding the magnitude of such effects. If NMFS agrees that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will provide the Federal agency with a written statement of General Concurrence that further consultation is not required. If NMFS does not agree that the actions fit the criteria in paragraph (g)(2)(i) of this section, NMFS will notify the Federal agency that a General Concurrence will not be issued and that another type of consultation will be required. If NMFS identifies specific types of Federal actions that may meet the requirements for a General Concurrence, NMFS may initiate and complete a General Concurrence.

(4) *Further consultation.* NMFS may request notification for actions covered under a General Concurrence if NMFS concludes there are circumstances under which such actions could result in more than a minimal impact on EFH, or if it determines that there is no process in place to adequately assess the cumulative impacts of actions covered

under the General Concurrence. NMFS may request further consultation for these actions on a case-by-case basis. Each General Concurrence should establish specific procedures for further consultation, if appropriate.

(5) *Notification.* After completing a General Concurrence, NMFS will provide a copy to the appropriate Council(s) and will make the General Concurrence available to the public by posting the document on the internet or through other appropriate means.

(6) *Revisions.* NMFS will periodically review and revise its General Concurrences, as appropriate.

(h) *Abbreviated consultation procedures*—(1) *Purpose and criteria.* Abbreviated consultation allows NMFS to determine quickly whether, and to what degree, a Federal action may adversely affect EFH. Federal actions that may adversely affect EFH should be addressed through the abbreviated consultation procedures when those actions do not qualify for a General Concurrence, but do not have the potential to cause substantial adverse effects on EFH. For example, the abbreviated consultation procedures should be used when the adverse effect(s) of an action could be alleviated through minor modifications.

(2) *Notification by agency and submittal of EFH Assessment.* Abbreviated consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for consultation.

(3) *NMFS response to Federal agency.* If NMFS determines, contrary to the Federal agency's assessment, that an action would not adversely affect EFH, or if NMFS determines that no EFH Conservation Recommendations are needed, NMFS will notify the Federal agency either informally or in writing of its determination. If NMFS believes that the action may result in substantial adverse effects on EFH, or that additional analysis is needed to assess the effects of the action, NMFS will request in writing that the Federal agency initiate expanded consultation. Such request will explain why NMFS believes expanded consultation is needed and will specify any new information needed. If expanded consultation is not necessary, NMFS will provide EFH Conservation Recommendations, if appropriate, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 60 days prior to a final decision on the action. NMFS must respond in writing within 30 days. NMFS and the Federal agency may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 30 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(i) *Expanded consultation procedures*—(1) *Purpose and criteria.* Expanded consultation allows maximum opportunity for NMFS and the Federal agency to work together to review the action's impacts on EFH and to develop EFH Conservation Recommendations. Expanded consultation procedures must be used for Federal actions that would result in substantial adverse effects to EFH. Federal agencies are encouraged to contact NMFS at the earliest opportunity to discuss whether the adverse effects of an action make expanded consultation appropriate.

(2) *Notification by agency and submittal of EFH Assessment.* Expanded consultation begins when NMFS receives from the Federal agency an EFH Assessment in accordance with paragraph (e) of this section and a written request for expanded consultation. Federal agencies are encouraged to provide in the EFH Assessment the additional information identified under paragraph (e)(4) of this section to facilitate review of the effects of the action on EFH.

(3) *NMFS response to Federal agency.* NMFS will:

(i) Review the EFH Assessment, any additional information furnished by the Federal agency, and other relevant information.

(ii) Conduct a site visit, if appropriate, to assess the quality of the habitat and to clarify the impacts of the Federal agency action. Such a site visit should be coordinated with the Federal agency and appropriate Council(s), if feasible.

(iii) Coordinate its review of the action with the appropriate Council(s).

(iv) Discuss EFH Conservation Recommendations with the Federal agency and provide such recommendations to the Federal agency, pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act.

(4) *Timing.* The Federal agency must submit its EFH Assessment to NMFS as soon as practicable, but at least 90 days prior to a final decision on the action. NMFS must respond within 60 days of submittal of a complete EFH Assessment unless consultation is extended by agreement between NMFS and the Federal agency. NMFS and Federal agencies may agree to use a compressed schedule in cases where regulatory approvals or emergency situations cannot accommodate 60 days for consultation, or to conduct consultation earlier in the planning cycle for actions with lengthy approval processes.

(5) *Extension of consultation.* If NMFS determines that additional data or analysis would provide better information for development of EFH Conservation Recommendations, NMFS may request additional time for expanded consultation. If NMFS and the Federal agency agree to an extension, the Federal agency should provide the additional information to NMFS, to the extent practicable. If NMFS and the Federal agency do not agree to extend consultation, NMFS must provide EFH Conservation Recommendations to the Federal agency using the best scientific information available to NMFS.

(j) *Programmatic consultation*—(1) *Purpose.* Programmatic consultation provides a means for NMFS and a Federal agency to consult regarding a potentially large number of individual actions that may adversely affect EFH. Programmatic consultation will generally be the most appropriate option to address funding programs, large-scale planning efforts, and other instances where sufficient information is available to address all reasonably foreseeable adverse effects on EFH of an entire program, parts of a program, or a number of similar individual actions occurring within a given geographic area.

(2) *Process.* A Federal agency may request programmatic consultation by providing NMFS with an EFH Assessment in accordance with paragraph (e) of this section. The description of the proposed action in the EFH Assessment should describe the program and the nature and approximate number (annually or by some other appropriate time frame) of the actions. NMFS may also initiate programmatic consultation by requesting pertinent information from a Federal agency.

(3) *NMFS response to Federal agency.* NMFS will respond to the Federal agency with programmatic EFH Conservation Recommendations and, if applicable, will identify any potential adverse effects that could not be addressed programmatically and require project-specific consultation. NMFS may also determine that programmatic consultation is not appropriate, in which case all EFH Conservation Recommendations will be deferred to project-specific consultations. If appropriate, NMFS' response may include a General Concurrence for activities that qualify under paragraph (g) of this section.

(k) *Responsibilities of Federal agency following receipt of EFH Conservation Recommendations*—(1) *Federal agency response.* As required by section 305(b)(4)(B) of the Magnuson-Stevens Act, the Federal agency must provide a detailed response in writing to NMFS and to any Council commenting on the action under section 305(b)(3) of the Magnuson-Stevens Act within 30 days after receiving an EFH Conservation Recommendation from NMFS. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations, unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

(2) *Further review of decisions inconsistent with NMFS or Council recommendations.* If a Federal agency decision is inconsistent with a NMFS EFH Conservation Recommendation, the Assistant Administrator for Fisheries may request a meeting with the head of the Federal agency, as well as with any other agencies involved, to discuss the action and opportunities for resolving any disagreements. If a Federal agency decision is also inconsistent with a Council recommendation made pursuant to section 305(b)(3) of the Magnuson-Stevens Act, the Council may request that the Assistant Administrator initiate further review of the Federal agency's decision and involve the Council in any interagency discussion to resolve disagreements with the Federal agency. The Assistant Administrator will make every effort to accommodate such a request. NMFS may develop written procedures to further define such review processes.

(l) *Supplemental consultation.* A Federal agency must reinitiate consultation with NMFS if the agency substantially revises its plans for an action in a manner that may adversely affect EFH or if new information becomes available that affects the basis for NMFS EFH Conservation Recommendations.

§ 600.925 NMFS EFH Conservation Recommendations to Federal and state agencies.

(a) *General.* Under section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS is required to provide EFH Conservation Recommendations to Federal and state agencies for actions that would adversely affect EFH. NMFS will not recommend that state or Federal agencies take actions beyond their statutory authority.

(b) *Recommendations to Federal agencies.* For Federal actions, EFH Conservation Recommendations will be provided to Federal agencies as part of EFH consultations conducted pursuant to § 600.920. If NMFS becomes aware of a Federal action that would adversely affect EFH, but for which a Federal agency has not initiated an EFH consultation, NMFS may request that the Federal agency initiate EFH consultation, or NMFS will provide EFH Conservation Recommendations based on the information available.

(c) *Recommendations to state agencies*—(1) *Establishment of procedures.* The Magnuson-Stevens Act does not require state agencies to consult with the Secretary regarding EFH. NMFS will use existing coordination procedures or establish new procedures to identify state actions that may adversely affect EFH, and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

(2) *Coordination with states on recommendations to Federal agencies.* When an action that would adversely affect EFH is authorized, funded, or undertaken by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH Conservation Recommendations developed as part of the Federal consultation procedures in § 600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

(d) *Coordination with Councils.* NMFS will coordinate with each Council to identify the types of actions on which Councils intend to comment pursuant to section 305(b)(3) of the Magnuson-Stevens Act. For such actions NMFS will share pertinent information with the Council, including copies of NMFS' EFH Conservation Recommendations.

§ 600.930 Council comments and recommendations to Federal and state agencies.

Under section 305(b)(3) of the Magnuson-Stevens Act, Councils may comment on and make recommendations to the Secretary and any Federal or state agency concerning any activity or proposed activity authorized, funded, or undertaken by the agency that, in the view of the Council, may affect the habitat, including EFH, of a fishery resource under its authority. Councils must provide such comments and recommendations concerning any activity that, in the view of the Council, is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource under Council authority.

(a) *Establishment of procedures.* Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the habitat, including EFH, of a species under its authority. Each Council may receive information on actions of concern by methods such as directing Council staff to track proposed actions, recommending that the Council's habitat committee identify actions of concern, or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions of concern that would adversely affect EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Each Council should provide NMFS with copies of its comments and recommendations to state and Federal agencies.

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Proposed Rules

Federal Register
Vol. 67, No. 12
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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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 01N–0401]

Revision of the Definition of the Term ''No Residue''

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding carcinogenic compounds used in food-producing animals. Specifically, FDA is deleting the operational definition of the term ''no residue'' and is making conforming amendments to other parts of these regulations. FDA is proposing these amendments in response to a legal opinion issued by the Department of Justice (DOJ), Office of Legal Counsel, which concluded that the operational definition of ''no residue'' is not legally supportable.

DATES: Submit written or electronic comments on the proposed rule by April 17, 2002.

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

FOR FURTHER INFORMATION CONTACT: Steven D. Brynes, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6975.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 31, 1985 (50 FR 45530), FDA issued a proposed rule implementing the diethylstilbestrol (DES) proviso of the Delaney clause in sections 409, 512, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348, 360b, and 379e). The DES proviso provides that we (FDA) can approve an animal feed or color additive or a new animal drug that induces cancer if we find that ''no residue'' of such additive or drug ''will be found (by methods of examination prescribed or approved by the Secretary by regulations * * *), in any edible portion of such animals after slaughter.'' See e.g., 21 U.S.C. 360b(d)(1)(I). We issued final regulations based on the 1985 proposal in the **Federal Register** of December 31, 1987 (52 FR 49572).

The final rule, which was codified in part 500 (21 CFR part 500) in §§ 500.80 to 500.92, included an operational definition of ''no residue'' in § 500.84. That definition provides that FDA will consider that ''no residue'' of a carcinogenic compound remains in the edible tissue of treated animals when the ''concentration of the residue of carcinogenic concern in the total diet of people will not exceed S_o.'' Section 500.82 defines S_o as ''the concentration of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.'' Section 500.82 further provides that FDA will assume that the ''S_o will correspond to the concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people.'' Therefore, under these regulations, it is possible for a residue detected by the method approved by FDA to be considered ''no residue'' if the detectable residue is below the level that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million (''insignificant risk'' or ''no significant risk'' level).

In the final rule of December 31, 1987, we explained the rationale for this operational definition of ''no residue.'' The preamble to the final rule stated:

> Application of * * * the ''DES Proviso,'' hinges therefore on the finding of ''no residue'' of the substance in edible products.
>
> As a practical matter, however, FDA has been unable to conclude that no trace of any given substance will remain in edible products. The new procedures, therefore, provide an operational definition of ''no residue.'' That is, the procedures are designed to permit the determination of the concentration of residue of a carcinogenic compound that presents an insignificant risk of cancer to the consuming public. That concentration corresponds to a maximum lifetime risk of cancer to the test animal on the order of 1 in 1 million. Thus, the procedures provide for a quantitative estimation of the risk of cancer presented by the residues of a carcinogenic compound proposed for use in food-producing animals. ''No residue'' remains in food products when conditions of use, including any required preslaughter withdrawal period or milk discard time, ensure that the concentration of the residue of carcinogenic concern in the total diet of people will not exceed the concentration that has been determined to present an insignificant risk.

On October 13, 1995, the DOJ, Office of Legal Counsel, responding to questions posed by the Environmental Protection Agency and FDA, issued a legal opinion entitled ''The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term 'No Residue' Pursuant to the Federal Food, Drug, and Cosmetic Act'' (DOJ Opinion on FDA Implementation of the DES Proviso) (Ref. 1). Specifically, the opinion addressed the following questions: (1) Whether the FDA has the discretion to refuse to permit the use of an additive in animal feed if the agency finds that there is no method that can ''reliably measure and confirm'' the presence of residues of carcinogenic concern at and above the ''no residue'' level for such residues, (2) whether the FDA must revise its regulations to adopt more sensitive methods when they become available once the agency has approved a method of detection, and (3) whether the FDA has the discretion to determine that an edible tissue contains ''no residue'' when a method of detection reveals the presence of residues of carcinogenic concern that is below the ''no significant risk'' level.

With respect to the first question, the opinion determined that FDA is under no obligation to approve at least one method for the detection of a residue of a carcinogenic animal food additive and that it has the discretion to refuse to permit the use of unsatisfactory detection methods. In so concluding, the DOJ further stated that FDA may use the ''no significant risk'' level (defined in § 500.84) as a benchmark for rejecting analytical methods. These conclusions are consistent with FDA's current interpretations of the DES proviso regarding analytical methods.

The second question asks whether FDA must revise its regulations to adopt the ''best available'' methods for the detection of carcinogenic residues or

whether it has discretion to continue to accept results from less sensitive methods. The DOJ asserted that, although one interpretation of the proviso could allow the best available method approach, the statute does not compel that course of action. Thus, the opinion concluded that the statute does not require FDA to replace currently approved methods with more sensitive methods as they become available. Once again, this conclusion agrees with the position taken by FDA.

In considering the third question, the DOJ reasoned that ''[g]iving 'no residue' its ordinary meaning, the detected presence of any residue by an approved method would be incompatible with a finding of 'no residue,' and thus would preclude a finding that the [DES] proviso applies.'' Furthermore, the opinion stated that ''[t]here is nothing * * * to suggest that a finding of 'no residue ' could be based upon the detected presence of residue, however insignificant * * *.''

DOJ's conclusion that ''FDA may not accept a finding that residue is present, but below the 'no significant risk' level, as satisfying the statutory requirement of 'no residue,''' contradicts FDA's present operational definition of ''no residue'' issued in § 500.84. Therefore, we are proposing amendments to the regulations to make them consistent with the DOJ legal opinion.

II. Description of the Proposed Rule

The agency is proposing to revise the regulations to delete the operational definition of ''no residue.'' Therefore, for a substance to be approved under the DES proviso, no residue can be detectable by the approved regulatory method; that is, any residue in the target tissue must be nondetectable or below the limit of detection (LOD) of the approved regulatory method. Inasmuch as: (1) The regulatory method currently is defined in § 500.82 as the aggregate of all experimental procedures for measuring and [emphasis added] confirming the presence of the marker residue in the target tissue, and (2) FDA must, for regulatory and scientific reasons, be capable of identifying the detected residue with a high degree of certainty, FDA is proposing to define the LOD, for the purposes of this rule, as the lowest concentration of analyte that can be confirmed by the approved regulatory method.

The agency is proposing the following conditions that a sponsor of a carcinogenic compound must satisfy with respect to the sponsor's proposed regulatory method. First, the sponsor must provide a method that is at least capable of reliably quantitating residues at and above the R_m (the concentration of marker residue that the regulatory method must be capable of measuring in the target tissue), which we will continue to calculate in the manner provided in the current regulations in §§ 500.80 to 500.92. Therefore, FDA will use the ''no significant risk'' level determined through appropriate toxicological testing as a benchmark for assessing the acceptability of a regulatory method. Second, under the proposed regulations, a sponsor must provide sufficient data to permit us to estimate the LOD of the method as defined above and in proposed § 500.82. Given the first requirement, the LOD will likely be below the R_m, and consequently, the LOD will replace the R_m as the ''no residue'' determinant.

Under the proposed regulations, we have defined the LOD as the lowest concentration of analyte that can be confirmed by the approved regulatory method. Believing that there are several valid procedures to estimate the LOD, we have chosen not to specify in this proposed rule any one specific procedure or protocol as a standard requirement for establishing the LOD. Therefore, under the proposed rule, we would consider and evaluate any reasonable, generally recognized procedure that is consistent with the aims and requirements of regulatory exposure estimation and risk assessment practices of FDA.

III. Environmental Impact

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

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency concludes that this proposed rule is consistent with the principles set forth in the Executive order and in these two statutes. The agency expects only very slight, if any, compliance costs to result from the proposed rule. Companies have requested approvals for carcinogenic compounds under the current regulation in only a few cases since it was published as a final rule in 1987, probably at least in part because of concerns over public acceptance of such products. We anticipate that, for the same reasons, companies will rarely request approvals for carcinogenic compounds under a final version of the proposed rule. As a result, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Further, we certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about $110 million.

We are proposing to amend the regulations regarding the carcinogenic compounds used in food-producing animals by deleting the operational definition of ''no residue.'' Under the proposed rule, for a carcinogenic compound to be approved, no residue of the compound can be detectable using an approved regulatory method. Any residue in the target tissue would have to be nondetectable or below the LOD.

As stated previously, we are making this change in response to a DOJ opinion that the current operational definition of ''no residue'' is not legally supportable. The benefit of this change would be an increase in the clarity of

the current regulations concerning carcinogenic compounds used in food-producing animals.

The deletion of the definition is not expected to impose any measurable compliance costs on the sponsors of compounds that are submitted to us for approval as new animal drugs or feed or color additives. The submission of data to meet the requirements of the proposed rule will be in place of, and nearly identical to, data that were submitted to meet the operational definition of ''no residue.'' We do not expect a noticeable increase in the level of effort expended in preparing a submission. To the extent that incremental compliance costs exist, we believe them to be inconsequential. In theory, another result of this proposal might be the possible increase in the withdrawal period for some number of compounds submitted for approval, which would represent some loss of value to the sponsor. However, because we anticipate very few requests for approval of new animal drug applications or feed additives under the provisions of the proposed rule, we believe any loss of value would be insignificant.

As stated above, the Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant economic impact on a substantial number of small entities. Since we have determined that the possible compliance costs to any sponsor would be extremely small, if they occur at all, we are certifying that the proposal would not have a significant economic impact on a substantial number of small entities. No further small business analysis is required.

V. Federalism

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

VI. Paperwork Reduction Act of 1995

The information collected in § 500.88 has been approved by the Office of Management and Budget (OMB) under OMB control number 0910–0032. This proposed rule amends § 500.88, but does not substantively modify the information collection. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposal by April 17, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Justice, ''The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term 'No Residue' Pursuant to the Federal Food, Drug, and Cosmetic Act: Memorandum Opinion for the Assistant Administrator and General Counsel Environmental Protection Agency and the General Counsel Department of Health and Human Services,'' October 13, 1995.

List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 500 be amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR part 500 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

§ 500.80 [Amended]

2. Section 500.80 *Scope of this subpart* is amended in paragraph (a) by removing the phrase ''provides an operational definition of no residue and''.

§ 500.82 [Amended]

3. Section 500.82 *Definitions* is amended in paragraph (b) by alphabetically adding ''*Limit of Detection (LOD)* means the lowest concentration of analyte that can be confirmed by the approved regulatory method.''; by removing from the definition of ''*Marker residue*'' the phrase ''permitted concentration'' and by adding in its place ''S_m''; by removing from the definition for ''*Preslaughter withdrawal period or milk discard time* '' the phrase ''for the residue of carcinogenic concern in the edible product to deplete to the concentration that will satisfy the operational definition of no residue'' and by adding in its place ''at which no residue is detectable in the edible product using the approved regulatory method (i.e., the marker residue is below the LOD)''; by removing from the definition of ''R_m'' the phrase ''in the last tissue to deplete to its permitted concentration''; and by revising the definition of ''S_m'' to read ''S_m means the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.''.

4. Section 500.84 is amended by revising the section heading, by adding two sentences at the end of paragraph (c)(1), by revising paragraph (c)(2), and by adding paragraph (c)(3) to read as follows:

§ 500.84 Conditions for approval of the sponsored compound.

* * * * *

(c) * * *

(1) * * * Because the total diet is not derived from food-producing animals, FDA will make corrections for food intake. FDA will designate as S_m the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in test animals of 1 in 1 million.

(2) From the appropriate residue chemistry data FDA will calculate the R_m as described in § 500.86(c). The sponsor must provide a regulatory method in accordance with § 500.88(b). FDA will calculate the LOD of the method from data submitted by the sponsor under § 500.88. The LOD must be less than or equal to R_m.

(3) FDA will conclude that the provisions of this subpart are satisfied when no residue of the compound is detectable (that is, the marker residue is below the LOD) using the approved regulatory method under the conditions of use of the sponsored compound, including any required preslaughter withdrawal period or milk discard time.

5. Section 500.88 is revised to read as follows:

§ 500.88 Regulatory method.

(a) The sponsor shall submit for evaluation and validation a regulatory

method developed to monitor compliance with this subpart.

(b) The regulatory method must be able to confirm the identity of the marker residue in the target tissue at a minimum concentration corresponding to the R_m. FDA will determine the LOD from the submitted analytical method validation data.

(c) FDA will publish in the **Federal Register** the complete regulatory method for ascertaining the marker residue in the target tissue in accordance with the provisions of sections 409(c)(3)(A), 512(d)(1)(I), and 721(b)(5)(B) of the act.

Dated: January 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1170 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–159079–01]

RIN 1545–BA38

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Immediate Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these proposed regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations on this subject in this issue of the **Federal Register**, also serves as the text of these proposed regulations set forth in this cross-referenced notice of proposed rulemaking.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–159079–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–159079–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting comments directly to the IRS internet site at *http://irs.gov/tax_regs/reglist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Sambur at (202) 622–3840; concerning submissions, Donna Poindexter, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 1 and 301. The temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1441–1 is amended as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

[The text of the proposed amendments to this section is the same as the text of § 1.1441–1T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1441–6 is amended as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

[The text of the proposed amendments to this section is the same as the text of § 1.1441–6T published elsewhere in this issue of the **Federal Register**].

PART 301— ADMINISTRATIVE PRACTICES AND PROCEDURE, INCOME TAXES, REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6109–1 is amended as follows:

§ 301.6109–1 Identifying numbers.

[The text of the proposed amendments to this section is the same as the text of § 301.6109–1T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–1126 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Realignment of Buffalo and Pittsburgh Postal Facilities for Deposit of DBMC Rate Standard Mail and Package Services Machinable Parcels

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Domestic Mail Manual (DMM) to realign permissible points for mailer deposit of Standard Mail machinable parcels and Package Services machinable parcels currently taken to the Buffalo, New York, Auxiliary Service Facility (ASF), and claimed at destination bulk mail center (DBMC) rates. The proposed rule would require such mail to be taken to and postage calculated from the Pittsburgh Bulk Mail Center (BMC) to qualify for the DBMC rates.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mail Preparation and Standards, USPS, 1735 N Lynn Street, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Library, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: OB Akinwole, (703) 292–3643; or Cheryl Beller (202) 268–5166.

SUPPLEMENTARY INFORMATION:

Background

Currently machinable and nonmachinable parcels deposited at the Buffalo ASF are eligible for destination bulk mail center (DBMC) rates if the applicable preparation standards are met (e.g., pieces are prepared in 5-digit containers or Buffalo ASF containers) and the pieces deposited are addressed for delivery within the ZIP Code range of the Buffalo ASF service area as defined in DMM E650, Exhibit 5.1 and E751, Exhibit 1.3. For the DBMC rates, that service area currently comprises destination 3-digit ZIP Code prefixes 130 through 136 and 140 through 149. All machinable parcels and nonmachinable parcels entered at the Buffalo ASF are sorted manually by the Postal Service to the first three digits of the delivery address ZIP Codes. They are then transported to sectional center facilities (SCFs) in Rochester, Syracuse, Elmira, and Utica. At the SCFs the parcels are sorted by 5-digit ZIP Code to the associated delivery offices and subsequently transported to those delivery offices.

In contrast to this manual operation in Buffalo, machinable parcels entered at the Pittsburgh BMC are sorted on parcel sorting machines (PSMs) and finalized to 5-digit ZIP Codes in the 130–136 and 140–149 range in one or two passes. Sorted parcels destined for the Buffalo ASF service area are then transported directly from the Pittsburgh BMC to the appropriate SCFs for cross docking to the delivery offices without further sortation at the SCFs. Approximately 31 percent of the parcel volume now handled by the Pittsburgh BMC is destined for the Buffalo ASF service area ZIP Codes and, of that volume, nearly 90 percent is sorted to 5-digit ZIP Codes on the PSMs.

The diversion of machinable parcels from the Buffalo ASF to the Pittsburgh BMC is generally not the result of redirection of that volume by the Buffalo ASF. Almost since the inception of the DBMC entry rate, most drop shippers have deposited machinable parcels and some nonmachinable parcels destined for the Buffalo ASF service area at the Pittsburgh BMC, either under a 1995 Postal Service exception letter or at the direction of the Buffalo ASF.

In order to calculate postage for these diverted parcels, some mailers depositing machinable parcels at the Pittsburgh BMC zone their mail from the Buffalo ASF, and others zone their mail from the Pittsburgh BMC. Since 1993, the Buffalo ASF has received extremely few drop shipments of machinable parcels. In fact, current records indicate that more than three years have passed since the Buffalo ASF has received any drop shipments.

Officials at the Pittsburgh BMC confirm that mailers are making appointments and dropping machinable parcels destined for the Buffalo ASF service area at the Pittsburgh BMC rather than the Buffalo ASF. This arrangement coincides with the fact that western New York is not an originating site for parcel shippers, and the volume that is destined for Buffalo generally originates outside the local area by mailers who are also likely to have parcels destined for the Pittsburgh BMC service area.

Facility restrictions at the Buffalo ASF also make it desirable that the Postal Service redirect machinable parcels from Buffalo to Pittsburgh. The Buffalo ASF lacks sufficient space to handle a large volume of parcels. Additionally, since it does not have PSMs even machinable parcels must be handled in manual operations.

Moreover, if the current parcel diversion were stopped, the cost to process the 21.5 million parcels annually that would shift from the Pittsburgh BMC to the Buffalo ASF would greatly increase because additional work hours would be required at the downstream SCFs within the Buffalo ASF to sort the parcels to the five-digit delivery offices. As previously noted, these parcels are currently finalized to 5-digits at the Pittsburgh BMC. At the same time, there would be no reduced transportation costs for the Postal Service between Pittsburgh and Buffalo because the volume of Standard Mail, not Package Services mail, primarily determines the number of daily trips between the two facilities.

Effective Date

The Postal Service is proposing that the following revisions become effective March 31, 2002. Mailers are permitted to enter mail under the revised standards immediately upon publication of the final rule with required compliance by June 1, 2002.

Proposed Changes

Under the proposed realignment, all machinable parcels claiming DBMC rates for Standard Mail, Parcel Select, and Bound Printed Matter for ZIP Codes currently listed under the Buffalo ASF service area in DMM L602 would be

entered, by mailers, at the Pittsburgh BMC. Machinable parcels for those ZIP Codes claimed at DBMC rates, would be sorted to the Pittsburgh BMC, rather than the Buffalo ASF, using DMM Labeling list L601. This processing is currently done by the Pittsburgh BMC.

In addition, mailers would be permitted, as an option, to deposit nonmachinable parcels, at non DBMC rates, for the Buffalo ASF service area ZIP Codes listed in DMM labeling list L602 at the Pittsburgh BMC if the parcels were commingled in bedloads with the DBMC rate machinable parcels deposited at the Pittsburgh BMC. Mailers would continue to claim DBMC rates for the following types of mail deposited at the Buffalo ASF for delivery to Buffalo ASF service area ZIP Codes as prescribed in DMM E650, Exhibit 5.1 and E751, Exhibit 1.3:

- Parcel Post nonmachinable parcels not commingled in DBMC bedloads with machinable parcels.
- Parcel Select perishables.
- Bound Printed Matter flats and irregular parcels.
- Standard Mail flats, irregular parcels, and letters.

Under this proposal, Standard Mail, Parcel Select, and Bound Printed Matter machinable parcels sorted to 5-digit ZIP Codes within the Buffalo SCF service area, as defined in DMM L005, would still be required to be entered at Buffalo to qualify for the DSCF rate. Standard Mail machinable parcels claimed at DSCF rates and entered at Buffalo would continue to be eligible for a parcel barcode discount.

As part of this proposal, machinable and nonmachinable parcels—both Parcel Post and Bound Printed Matter—would be zoned from the Pittsburgh BMC using Postal Service zone chart 150. Barcoded machinable parcels for the Buffalo ASF service area would also be eligible for the parcel barcode discount when entered at the Pittsburgh BMC. The Postal Service believes that this realignment of ZIP Codes for DBMC rate eligibility between the Pittsburgh BMC and the Buffalo ASF will provide consistent customer service and promote the most efficient and cost-effective method for processing machinable parcels for mailers and for the Postal Service.

The Postal Service also believes that this proposal will eliminate any confusion concerning the applicable standards for the deposit of DBMC machinable parcels in the affected service areas.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual (DMM) modules E and L as follows:

Domestic Mail Manual (DMM)

* * * * *

E ELIGIBILITY

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

* * * * *

5.0 DBMC DISCOUNT

5.1 Definition

[Amend Exhibit 5.1 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

* * * * *

Eligible destination ZIP Codes	Entry facility
* * * * * * *	
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140.
150–168, 260–266, 439–447 [Except machinable parcels]	BMCPITTSBURGH PA 15195.
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195.
* * * * * * *	

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5.5 Additional Standards for Machinable Parcels

[Amend 5.5a by adding the phrase ''except as shown in Exhibit 5.1'' to the second sentence to explain when sortation of parcels to ASFs is optional to read as follows:]

* * * * *

a. Destination BMC/ASF Containers. Machinable parcels palletized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. When machinable parcels are sorted to both destination BMCs and ASFs under L601 and L602, they qualify for DBMC rates under 5.2. Except as provided in Exhibit 5.1, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates.

* * *

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E700 Package Services

* * * * *

E750 Destination Entry

E751 Parcel Select

* * * * *

1.0 BASIC STANDARDS

* * * * *

1.3 Definition

[Amend Item and Exhibit 1.3 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

* * * * *

b. Except as provided in Exhibit 1.3, pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

Eligible destination ZIP Codes	Entry
* * * * * * *	
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140.
150–168, 260–266, 439–447 [Except machinable parcels]	BMCPITTSBURGH PA 15195.
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195.
* * * * * * *	

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E752 Bound Printed Matter

* * * * *

2.0 Destination Bulk Mail Center (DBMC) Rates

* * * * *

2.3 Presorted Machinable Parcels

[Amend 2.3 by adding the phrase ''except as shown in Exhibit E751.1.3'' to the third sentence to read as follows:]

Presorted machinable parcels in sacks or on pallets at all sort levels may claim DBMC rates. Machinable parcels palletized under M045 or sacked under M722 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. Except as provided in Exhibit E751.1.3, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates. * * *

* * * * *

L Labeling Lists

* * * * *

L600 Standard Mail and Package Services

L601 BMCs

[Amend L601 by revising items to read as follows:]

* * * * *

a. Standard Mail machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC.

* * * * *

c. Bound Printed Matter machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC.

* * * * *

e. Parcel Post except for ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates and nonmachinable BMC Presort or OBMC Presort rate mail. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC if bedloaded and presented with machinable parcels.

* * * * *

L602 ASFs

[Amend L602 by revising L602a, L602c, and L602e to read as follows:]

L602 defines the service area by individual 3-digit ZIP Code prefix for Standard Mail and Package Services mail that must be sorted to ASFs.

Use this list for:

a. Standard Mail machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

c. Bound Printed Matter machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

e. Parcel Post machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC under L601 if bedloaded and presented with machinable parcels.

* * * * *

An appropriate amendment to 39 CFR part 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–1272 Filed 1–16–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7129–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a delegation request submitted by the State of Maine. Pursuant to section 112(l) of the Clean Air Act (CAA), Maine Department of Environmental Protection (ME DEP) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. EPA is proposing to grant ME DEP the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements. This action is being taken under the Clean Air Act.

DATES: Written comments must be received by February 7, 2002.

ADDRESSES: Comments should be addressed to: Steven Rapp, Manager, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023.

Copies of the submitted request are available for public inspection at EPA's Region I office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023, Telephone: (617) 918–1655.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (see 63 FR 18617), which has been codified in 40 CFR part 63, subpart S, ''National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry'' (Pulp and Paper MACT I). On July 16, 1999, EPA delegated its authority to implement and enforce 40 CFR part 63, subpart S, the Pulp and Paper MACT Standard, to ME DEP. Lincoln Pulp and Paper Company of Lincoln, Maine (Lincoln Pulp and Paper), is one of several sources in Maine currently subject to subpart S.

On September 25, 2001, ME DEP requested delegation of subpart S under § 63.94 for Lincoln Pulp and Paper. EPA received the request on October 5, 2001. ME DEP requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart S for Lincoln Pulp and Paper under the process outlined in 40 CFR 63.94. ME DEP will continue to implement and enforce subpart S without changes for the remainder of sources in Maine subject to subpart S. As part of its request to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable federal section 112 standards, ME DEP also requested approval of its demonstration that ME DEP has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 federal rules, emission standards, or requirements. The federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (see 65 FR 55810, dated September 14, 2000). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category-specific regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (see 40 CFR 63.94(a) and (b)) is the ''up-front approval'' of the state EBP program. The second step (see 40 CFR 63.94(c) and (d)) is EPA review and approval of the state alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (see 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the ''up-front approval'' of the EBP program, is three fold: (1) It ensures that ME DEP meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for ME DEP to replace the otherwise applicable federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and federal emission standards for which ME DEP will be accepting delegation under the EBP option.

Under §§ 63.91 and 63.94(b), ME's request for approval is required to include the identification of the sources and the source categories for which the state is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources. EPA's review of the request for approval of ME DEP's EBP program for subpart S indicates that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. EPA is proposing to approve ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper for subpart S. The requirement applicable to the source and the ''applicable requirement'' for title V purposes remains the federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

II. Proposed Action

EPA is proposing to approve ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper for subpart S.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this action.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.'' This rule is not subject to Executive Order 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

EPA has concluded that this proposed rule may have tribal implications. Lincoln Pulp and Paper is located near the Penobscot Nation. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with

representatives early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA has discussed this with representatives of the Penobscot Indian Tribe. EPA has agreed to work with the State, the Tribe, and the company to ensure that whatever alternative EPA approves will have no discernible environmental effect on the Tribe. We are conducting ongoing consultation with the Penobscot Nation on this request by the State of Maine and have explained that while this action gives Maine flexibility, it does not increase its authority. This federal action will allow the State of Maine to implement equivalent alternative permit requirements to replace pre-existing requirements under federal law.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

C. Executive Order 13132

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will simply allow Maine to implement equivalent alternative requirements to replace a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this proposed rule.

D. Executive Order 13211

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* 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 not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This proposed rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but will simply allow the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action will allow Maine to implement equivalent alternative requirements to replace pre-existing requirements under federal law, and will impose no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. 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, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

H. National Technology Transfer and Advancement Act

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

List of Subjects in 40 CFR Part 63

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

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: January 10, 2002.

Robert W. Varney,

Regional Administrator, EPA-New England.

EPA is proposing to amend Title 40, chapter I, part 63 of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

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

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(20) to read as follows:

§ 63.99 Delegated Federal authorities.

(a)* * *

(20) Maine.

(i) [Reserved].

(ii) Maine Department of Environmental Services (ME DEP) may implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper, located in Lincoln, Maine, for subpart S–National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. This action is contingent upon ME DEP including, in title V permits, terms and conditions that are no less stringent than the Federal standard and have been approved by EPA. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 02–1244 Filed 1–16–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301210; FRL–6818–2]

RIN 2070–AC18

Sodium Starch Glycolate; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of sodium starch glycolate when used as an inert ingredient (disintegrant) in granular or tableted pesticide products, in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: Comments, identified by docket control number OPP–301210, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301210 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301210. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301210 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in

this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301210. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Statutory Findings

In a letter to the Agency dated June 28, 1994, Generichem Corp, now located at 755 Union Boulevard in Totowa, NJ 07511–0457 requested that 40 CFR 180.1001(c) and (e), be amended by establishing an exemption from the requirement of a tolerance for residues of sodium starch glycolate. The action was assigned pesticide petition (PP) number 5E4433. Neither a Proposed Rule nor a Notice of Filing has been previously published for PP 5E4433. After consideration of the petition, EPA is proposing to establish an exemption from the requirement of a tolerance for residues of sodium starch glycolate.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sodium starch glycolate (CAS Reg. No. 9063-38-1) are discussed in this unit.Sodium starch glycolate is manufactured from potato starch. It is produced by crossing-linking and carboxymethylation of the potato starch. Sodium starch glycolate is a polymer which has a molecular weight of approximately 2 million daltons.

A. Medical Uses

Sodium starch glycolate has been approved for use by the Food and Drug Administration (FDA) as a disintegrant in both prescription and over-the-counter drug products. In addition to these uses, sodium starch glycolate is also often used as a disintegrant in a number of dietary supplements. Typically, sodium starch glycolate is incorporated into oral dosage forms of drugs (*e.g.,* tablets) at levels up to 8% by weight. When the tablet is ingested, the sodium starch glycolate readily absorbs many times its weight in water, resulting in swelling which leads to the disintegration and enhanced dissolution of the tablet.

B. SAR (Structure Activity Relationship) Assessment

Sodium starch glycolate is an inert ingredient. To the best of the Agency's knowledge sodium starch glycolate has no active ingredient properties. Toxicity was assessed by a process called structure activity relationship (SAR). In this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and

sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high.

For sodium starch glycolate the SAR assessment determined that the chemical was not structurally related to any known carcinogens or developmental/reproductive toxicants. The following human exposures were examined as part of the analysis: Inhalation, dermal, exposures to the eyes, and drinking water. Absorption was expected to be nil for all routes of exposure based on the high molecular weight. Digestion in the gastrointestinal tract is possible, but the amounts that could be absorbed would be extremely small. The only health concern was for inhalation of respirable particles (less than 10 microns). Since sodium starch glycolate will absorb many times its own weight in water and swell (in volume), inhalation of respirable particles can lead to lung effects. Thus, there is a moderate concern for inhalation of respirable particles only. For all other routes of exposure, concern is low.

C. Rat Feeding Study

This 21-day rat feeding study was conducted using a modified starch compound that is very similar to sodium starch glycolate. It was performed by the Central Institute for Nutrition and Food Research (referred to as TNO) in 1963. The Agency has not reviewed this study. Rats were fed diets that contained 60% wheat starch (control), 20%, 40%, or 60% of the modified starch. The institute summarized the study as follows: It ''appears that good growth occurred on rations with 20% modified starch, although slight loss of hair was observed; 40% modified starch supported good growth, but caused loss of hair and slight diarrhea; 60% modified starch caused slight growth retardation, moderate diarrhea and loss of hair and distinctly increased water intake.''

In 1993, in correspondence dated July 29, TNO discussed the 1963 21-day rat feeding study. The reviewer indicated sodium starch glycolate would be well-tolerated at a level of 5% which would correspond to a daily intake of about 5 g/kg body weight.

D. Information from the Internet

To ascertain whether additional information on sodium starch glycolate were available, the Agency also searched the Tox Net website at the National Library of Medicine (*http://www.toxnet.nlm.nih.gov*). The internet site did not contain any information on sodium starch glycolate by name or CAS Reg. No.

V. Exposure Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

For the purposes of assessing potential exposure under this exemption, EPA considered that sodium starch glycolate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible.

1. *Dietary exposure*—i. *Food.* As previously stated, sodium starch glycolate is a high molecular weight material that is derived from potato starch. It is widely used in pharmaceuticals and dietary supplements as a disintegrant. In its 1993 correspondence TNO estimated the maximum amount of sodium starch glycolate that would be consumed by humans as a result of these FDA-approved uses as 13 mg/kg/day for adults and 80 mg/kg/day for children. EPA will regulate only the use of sodium starch glycolate as an inert ingredient in pesticide formulations. Based on its high molecular weight any sodium starch glycolate that may be ingested would not be expected to undergo any significant amount of absorption into the body from the gastrointestinal (GI) tract. From its proposed use as a disintegrant in granular and tableted pesticide products (which should be soil-directed), any food exposure to sodium starch glycolate as a result of its use in a pesticide product as an inert ingredient would be expected to be significantly lower than the exposure that currently occurs from those uses permitted by FDA.

ii. *Drinking water.* Sodium starch glycolate is water-absorbing and therefore does not readily dissolve in water. The hydrated form of sodium starch glycolate would be practically insoluble in water. Given this insolubility, the Agency has determined that exposure for all human population groups through drinking water would be extremely low.

2. *Other non-occupational exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The Agency believes that the potential for the use of sodium starch glycolate in and around the home exists. However, given its high molecular weight absorption is expected to be nil for dermal exposure. The concern would be, as previously stated, for inhalation of respirable particles. This concern will be addressed by end-product acute inhalation toxicity testing at the time of product registration.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Given the low toxicity of sodium starch glycolate, by all routes of exposure except inhalation, the Agency does not believe it likely that sodium starch glycolate in combination with other substances could result in cumulative adverse effects.

VII. Determination of Safety for U.S. Population

EPA's analysis shows that this derivative of potato starch is unlikely to pose any significant toxic potential through dietary exposure. Not only can a compound similar to sodium starch glycolate serve as a significant portion of the animal diet, but sodium starch glycolate cannot be absorbed in the intestinal tract in significant amounts. The moderate inhalation toxicity concern with sodium starch glycolate

will be addressed by end-product acute inhalation toxicity testing and appropriate label restrictions at the time of product registration. Accordingly, the Agency concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of sodium starch glycolate. A tolerance is not necessary because sodium starch glycolate residues will pose no appreciable risks to human health under reasonably forseeable circumstances.

VIII. Additional Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of sodium starch glycolate by the oral and dermal pathways of exposure, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . . .'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing sodium starch glycolate for endocrine effects may be required.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing exemptions for sodium starch glycolate.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for sodium starch glycolate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

E. Conditions

Given the moderate concern for sodium starch glycolate inhalation toxicity, the Agency would normally require testing of formulated end use pesticide products incorporating sodium starch glycolate to ascertain theLC_{50} in the acute inhalation toxicity test (OPPTS 870.1300). Since the use of sodium starch glycolate will be restricted to granular and tableted products only, it is likely that a waiver for the acute inhalation toxicity study would be granted. In order to determine the amount of fine particulate materials that could form during product transportation and storage, an attrition study will be required as part of the registration process for any end use product that contains sodium starch glycolate.

X. Conclusions

Based on the information in this preamble and considering the restriction to granular and tableted formulations, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to sodium starch glycolate (CAS Reg. No. 9063–38–1). Accordingly, EPA finds that exempting sodium starch glycolate from the requirement of a tolerance will be safe.

XI. Regulatory Assessment Requirements

This proposed rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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).

This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq*., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since this tolerance exemption would be established on the basis of a petition under FFDCA section 408(d), the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq*.) do not apply.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled*Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * * * *	
Sodium starch glycolate (CAS Reg. No. 9063–38–1)	Granular and tableted products only; not to exceed 8% of the formulated product	Disintegrant
* *	* * * * *	

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* * * * *	
Sodium starch glycolate (CAS Reg. No. 9063–38–1)	Granular and tableted products only; not to exceed 8% of the formulated product	Disintegrant
* *	* * * * *	

[FR Doc. 02–1247 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 81

RIN: 0920–ZA00

Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Health and Human Services(DHHS) is reopening the comment period for the proposed rule on the guidelines for determining probability of causation for certain claims for cancer under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** of Friday, October 5, 2001. After considering these comments, comments previously received, and the technical review and comments from the Advisory Board on Radiation and Worker Health (ABRWH), DHHS will publish a final rule.

DATES: Any public written comments not submitted at the meeting of the ABRWH must be received on or before Wednesday, January 23, 2002.

ABRWH must submit any comments and recommendations on the probability of causation to DHHS by Wednesday, February 6, 2002.

ADDRESSES: Submit written comments to: Attention—Dose Reconstruction Comments, Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 533–8450, Fax: (513) 533–8285, e-mail: *NIOCINDOCKET@CDC.GOV*.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–841–4498 (this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION: On October 5, 2001, HHS published a notice of proposed rulemaking proposing guidelines for determining the probability of causation for certain cancer claims filed under EEOICPA, Public Law 106–398 [See FR Vol. 66, No. 194, 50967]. The notice included a public comment period that ended on December 4, 2001. However, EEOICPA requires ABRWH to complete a technical review of the proposed guidelines before they are promulgated as an effective regulation. ABRWH will be conducting its technical review during a meeting of the ABRWH scheduled for Tuesday, January 22, 2002 and Wednesday, January 23, 2002.

To provide the public with the opportunity to participate in this review, HHS will reopen the public comment period to include the ABRWH Meeting transcript and any statements submitted for the record of that meeting in the docket of this rule. DHHS will also accept additional public written

comments submitted to its docket office on or before Wednesday, January 23, 2002. The record for this rulemaking will close on Wednesday, February 6, 2002, by which time ABRWH must submit its final recommendations on the probability of causation to DHHS.

Dated: January 14, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1319 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–17–P

Proposed Rules

Federal Register
Vol. 67, No. 12
Thursday, January 17, 2002

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 01N–0401]

Revision of the Definition of the Term ''No Residue''

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding carcinogenic compounds used in food-producing animals. Specifically, FDA is deleting the operational definition of the term ''no residue'' and is making conforming amendments to other parts of these regulations. FDA is proposing these amendments in response to a legal opinion issued by the Department of Justice (DOJ), Office of Legal Counsel, which concluded that the operational definition of ''no residue'' is not legally supportable.

DATES: Submit written or electronic comments on the proposed rule by April 17, 2002.

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

FOR FURTHER INFORMATION CONTACT: Steven D. Brynes, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6975.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 31, 1985 (50 FR 45530), FDA issued a proposed rule implementing the diethylstilbestrol (DES) proviso of the Delaney clause in sections 409, 512, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348, 360b, and 379e). The DES proviso provides that we (FDA) can approve an animal feed or color additive or a new animal drug that induces cancer if we find that ''no residue'' of such additive or drug ''will be found (by methods of examination prescribed or approved by the Secretary by regulations * * *), in any edible portion of such animals after slaughter.'' See e.g., 21 U.S.C. 360b(d)(1)(I). We issued final regulations based on the 1985 proposal in the **Federal Register** of December 31, 1987 (52 FR 49572).

The final rule, which was codified in part 500 (21 CFR part 500) in §§ 500.80 to 500.92, included an operational definition of ''no residue'' in § 500.84. That definition provides that FDA will consider that ''no residue'' of a carcinogenic compound remains in the edible tissue of treated animals when the ''concentration of the residue of carcinogenic concern in the total diet of people will not exceed S_o.'' Section 500.82 defines S_o as ''the concentration of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.'' Section 500.82 further provides that FDA will assume that the ''S_o will correspond to the concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people.'' Therefore, under these regulations, it is possible for a residue detected by the method approved by FDA to be considered ''no residue'' if the detectable residue is below the level that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million (''insignificant risk'' or ''no significant risk'' level).

In the final rule of December 31, 1987, we explained the rationale for this operational definition of ''no residue.'' The preamble to the final rule stated:

> Application of * * * the ''DES Proviso,'' hinges therefore on the finding of ''no residue'' of the substance in edible products.
>
> As a practical matter, however, FDA has been unable to conclude that no trace of any given substance will remain in edible products. The new procedures, therefore, provide an operational definition of ''no residue.'' That is, the procedures are designed to permit the determination of the concentration of residue of a carcinogenic compound that presents an insignificant risk of cancer to the consuming public. That concentration corresponds to a maximum lifetime risk of cancer to the test animal on the order of 1 in 1 million. Thus, the procedures provide for a quantitative estimation of the risk of cancer presented by the residues of a carcinogenic compound proposed for use in food-producing animals. ''No residue'' remains in food products when conditions of use, including any required preslaughter withdrawal period or milk discard time, ensure that the concentration of the residue of carcinogenic concern in the total diet of people will not exceed the concentration that has been determined to present an insignificant risk.

On October 13, 1995, the DOJ, Office of Legal Counsel, responding to questions posed by the Environmental Protection Agency and FDA, issued a legal opinion entitled ''The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term 'No Residue' Pursuant to the Federal Food, Drug, and Cosmetic Act'' (DOJ Opinion on FDA Implementation of the DES Proviso) (Ref. 1). Specifically, the opinion addressed the following questions: (1) Whether the FDA has the discretion to refuse to permit the use of an additive in animal feed if the agency finds that there is no method that can ''reliably measure and confirm'' the presence of residues of carcinogenic concern at and above the ''no residue'' level for such residues, (2) whether the FDA must revise its regulations to adopt more sensitive methods when they become available once the agency has approved a method of detection, and (3) whether the FDA has the discretion to determine that an edible tissue contains ''no residue'' when a method of detection reveals the presence of residues of carcinogenic concern that is below the ''no significant risk'' level.

With respect to the first question, the opinion determined that FDA is under no obligation to approve at least one method for the detection of a residue of a carcinogenic animal food additive and that it has the discretion to refuse to permit the use of unsatisfactory detection methods. In so concluding, the DOJ further stated that FDA may use the ''no significant risk'' level (defined in § 500.84) as a benchmark for rejecting analytical methods. These conclusions are consistent with FDA's current interpretations of the DES proviso regarding analytical methods.

The second question asks whether FDA must revise its regulations to adopt the ''best available'' methods for the detection of carcinogenic residues or

whether it has discretion to continue to accept results from less sensitive methods. The DOJ asserted that, although one interpretation of the proviso could allow the best available method approach, the statute does not compel that course of action. Thus, the opinion concluded that the statute does not require FDA to replace currently approved methods with more sensitive methods as they become available. Once again, this conclusion agrees with the position taken by FDA.

In considering the third question, the DOJ reasoned that ''[g]iving 'no residue' its ordinary meaning, the detected presence of any residue by an approved method would be incompatible with a finding of 'no residue,' and thus would preclude a finding that the [DES] proviso applies.'' Furthermore, the opinion stated that ''[t]here is nothing * * * to suggest that a finding of 'no residue ' could be based upon the detected presence of residue, however insignificant * * *.''

DOJ's conclusion that ''FDA may not accept a finding that residue is present, but below the 'no significant risk' level, as satisfying the statutory requirement of 'no residue,''' contradicts FDA's present operational definition of ''no residue'' issued in § 500.84. Therefore, we are proposing amendments to the regulations to make them consistent with the DOJ legal opinion.

II. Description of the Proposed Rule

The agency is proposing to revise the regulations to delete the operational definition of ''no residue.'' Therefore, for a substance to be approved under the DES proviso, no residue can be detectable by the approved regulatory method; that is, any residue in the target tissue must be nondetectable or below the limit of detection (LOD) of the approved regulatory method. Inasmuch as: (1) The regulatory method currently is defined in § 500.82 as the aggregate of all experimental procedures for measuring and [emphasis added] confirming the presence of the marker residue in the target tissue, and (2) FDA must, for regulatory and scientific reasons, be capable of identifying the detected residue with a high degree of certainty, FDA is proposing to define the LOD, for the purposes of this rule, as the lowest concentration of analyte that can be confirmed by the approved regulatory method.

The agency is proposing the following conditions that a sponsor of a carcinogenic compound must satisfy with respect to the sponsor's proposed regulatory method. First, the sponsor must provide a method that is at least capable of reliably quantitating residues at and above the R_m (the concentration of marker residue that the regulatory method must be capable of measuring in the target tissue), which we will continue to calculate in the manner provided in the current regulations in §§ 500.80 to 500.92. Therefore, FDA will use the ''no significant risk'' level determined through appropriate toxicological testing as a benchmark for assessing the acceptability of a regulatory method. Second, under the proposed regulations, a sponsor must provide sufficient data to permit us to estimate the LOD of the method as defined above and in proposed § 500.82. Given the first requirement, the LOD will likely be below the R_m, and consequently, the LOD will replace the R_m as the ''no residue'' determinant.

Under the proposed regulations, we have defined the LOD as the lowest concentration of analyte that can be confirmed by the approved regulatory method. Believing that there are several valid procedures to estimate the LOD, we have chosen not to specify in this proposed rule any one specific procedure or protocol as a standard requirement for establishing the LOD. Therefore, under the proposed rule, we would consider and evaluate any reasonable, generally recognized procedure that is consistent with the aims and requirements of regulatory exposure estimation and risk assessment practices of FDA.

III. Environmental Impact

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

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency concludes that this proposed rule is consistent with the principles set forth in the Executive order and in these two statutes. The agency expects only very slight, if any, compliance costs to result from the proposed rule. Companies have requested approvals for carcinogenic compounds under the current regulation in only a few cases since it was published as a final rule in 1987, probably at least in part because of concerns over public acceptance of such products. We anticipate that, for the same reasons, companies will rarely request approvals for carcinogenic compounds under a final version of the proposed rule. As a result, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Further, we certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about $110 million.

We are proposing to amend the regulations regarding the carcinogenic compounds used in food-producing animals by deleting the operational definition of ''no residue.'' Under the proposed rule, for a carcinogenic compound to be approved, no residue of the compound can be detectable using an approved regulatory method. Any residue in the target tissue would have to be nondetectable or below the LOD.

As stated previously, we are making this change in response to a DOJ opinion that the current operational definition of ''no residue'' is not legally supportable. The benefit of this change would be an increase in the clarity of

the current regulations concerning carcinogenic compounds used in food-producing animals.

The deletion of the definition is not expected to impose any measurable compliance costs on the sponsors of compounds that are submitted to us for approval as new animal drugs or feed or color additives. The submission of data to meet the requirements of the proposed rule will be in place of, and nearly identical to, data that were submitted to meet the operational definition of ''no residue.'' We do not expect a noticeable increase in the level of effort expended in preparing a submission. To the extent that incremental compliance costs exist, we believe them to be inconsequential. In theory, another result of this proposal might be the possible increase in the withdrawal period for some number of compounds submitted for approval, which would represent some loss of value to the sponsor. However, because we anticipate very few requests for approval of new animal drug applications or feed additives under the provisions of the proposed rule, we believe any loss of value would be insignificant.

As stated above, the Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant economic impact on a substantial number of small entities. Since we have determined that the possible compliance costs to any sponsor would be extremely small, if they occur at all, we are certifying that the proposal would not have a significant economic impact on a substantial number of small entities. No further small business analysis is required.

V. Federalism

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

VI. Paperwork Reduction Act of 1995

The information collected in § 500.88 has been approved by the Office of Management and Budget (OMB) under OMB control number 0910–0032. This proposed rule amends § 500.88, but does not substantively modify the information collection. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposal by April 17, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Justice, ''The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term 'No Residue' Pursuant to the Federal Food, Drug, and Cosmetic Act: Memorandum Opinion for the Assistant Administrator and General Counsel Environmental Protection Agency and the General Counsel Department of Health and Human Services,'' October 13, 1995.

List of Subjects in 21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Packaging and containers, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 500 be amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR part 500 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371, 379e.

§ 500.80 [Amended]

2. Section 500.80 *Scope of this subpart* is amended in paragraph (a) by removing the phrase ''provides an operational definition of no residue and''.

§ 500.82 [Amended]

3. Section 500.82 *Definitions* is amended in paragraph (b) by alphabetically adding ''*Limit of Detection (LOD)* means the lowest concentration of analyte that can be confirmed by the approved regulatory method.''; by removing from the definition of ''*Marker residue*'' the phrase ''permitted concentration'' and by adding in its place ''S_m''; by removing from the definition for ''*Preslaughter withdrawal period or milk discard time* '' the phrase ''for the residue of carcinogenic concern in the edible product to deplete to the concentration that will satisfy the operational definition of no residue'' and by adding in its place ''at which no residue is detectable in the edible product using the approved regulatory method (i.e., the marker residue is below the LOD)''; by removing from the definition of ''R_m'' the phrase ''in the last tissue to deplete to its permitted concentration''; and by revising the definition of ''S_m'' to read ''S_m means the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in the test animals of 1 in 1 million.''.

4. Section 500.84 is amended by revising the section heading, by adding two sentences at the end of paragraph (c)(1), by revising paragraph (c)(2), and by adding paragraph (c)(3) to read as follows:

§ 500.84 Conditions for approval of the sponsored compound.

* * * * *

(c) * * *

(1) * * * Because the total diet is not derived from food-producing animals, FDA will make corrections for food intake. FDA will designate as S_m the concentration of residue in a specific edible tissue corresponding to a maximum lifetime risk of cancer in test animals of 1 in 1 million.

(2) From the appropriate residue chemistry data FDA will calculate the R_m as described in § 500.86(c). The sponsor must provide a regulatory method in accordance with § 500.88(b). FDA will calculate the LOD of the method from data submitted by the sponsor under § 500.88. The LOD must be less than or equal to R_m.

(3) FDA will conclude that the provisions of this subpart are satisfied when no residue of the compound is detectable (that is, the marker residue is below the LOD) using the approved regulatory method under the conditions of use of the sponsored compound, including any required preslaughter withdrawal period or milk discard time.

5. Section 500.88 is revised to read as follows:

§ 500.88 Regulatory method.

(a) The sponsor shall submit for evaluation and validation a regulatory

method developed to monitor compliance with this subpart.

(b) The regulatory method must be able to confirm the identity of the marker residue in the target tissue at a minimum concentration corresponding to the R_m. FDA will determine the LOD from the submitted analytical method validation data.

(c) FDA will publish in the **Federal Register** the complete regulatory method for ascertaining the marker residue in the target tissue in accordance with the provisions of sections 409(c)(3)(A), 512(d)(1)(I), and 721(b)(5)(B) of the act.

Dated: January 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1170 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–159079–01]

RIN 1545–BA38

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Immediate Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that provide additional guidance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these proposed regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations on this subject in this issue of the **Federal Register**, also serves as the text of these proposed regulations set forth in this cross-referenced notice of proposed rulemaking.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–159079–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–159079–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting comments directly to the IRS internet site at *http://irs.gov/tax_regs/reglist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Sambur at (202) 622–3840; concerning submissions, Donna Poindexter, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 1 and 301. The temporary regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent, yet do not possess the required individual taxpayer identification number. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1441–1 is amended as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

[The text of the proposed amendments to this section is the same as the text of § 1.1441–1T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1441–6 is amended as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

[The text of the proposed amendments to this section is the same as the text of § 1.1441–6T published elsewhere in this issue of the **Federal Register**].

PART 301— ADMINISTRATIVE PRACTICES AND PROCEDURE, INCOME TAXES, REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6109–1 is amended as follows:

§ 301.6109–1 Identifying numbers.

[The text of the proposed amendments to this section is the same as the text of § 301.6109–1T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–1126 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Realignment of Buffalo and Pittsburgh Postal Facilities for Deposit of DBMC Rate Standard Mail and Package Services Machinable Parcels

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Domestic Mail Manual (DMM) to realign permissible points for mailer deposit of Standard Mail machinable parcels and Package Services machinable parcels currently taken to the Buffalo, New York, Auxiliary Service Facility (ASF), and claimed at destination bulk mail center (DBMC) rates. The proposed rule would require such mail to be taken to and postage calculated from the Pittsburgh Bulk Mail Center (BMC) to qualify for the DBMC rates.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mail Preparation and Standards, USPS, 1735 N Lynn Street, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Library, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: OB Akinwole, (703) 292–3643; or Cheryl Beller (202) 268–5166.

SUPPLEMENTARY INFORMATION:

Background

Currently machinable and nonmachinable parcels deposited at the Buffalo ASF are eligible for destination bulk mail center (DBMC) rates if the applicable preparation standards are met (e.g., pieces are prepared in 5-digit containers or Buffalo ASF containers) and the pieces deposited are addressed for delivery within the ZIP Code range of the Buffalo ASF service area as defined in DMM E650, Exhibit 5.1 and E751, Exhibit 1.3. For the DBMC rates, that service area currently comprises destination 3-digit ZIP Code prefixes 130 through 136 and 140 through 149. All machinable parcels and nonmachinable parcels entered at the Buffalo ASF are sorted manually by the Postal Service to the first three digits of the delivery address ZIP Codes. They are then transported to sectional center facilities (SCFs) in Rochester, Syracuse, Elmira, and Utica. At the SCFs the parcels are sorted by 5-digit ZIP Code to the associated delivery offices and subsequently transported to those delivery offices.

In contrast to this manual operation in Buffalo, machinable parcels entered at the Pittsburgh BMC are sorted on parcel sorting machines (PSMs) and finalized to 5-digit ZIP Codes in the 130–136 and 140–149 range in one or two passes. Sorted parcels destined for the Buffalo ASF service area are then transported directly from the Pittsburgh BMC to the appropriate SCFs for cross docking to the delivery offices without further sortation at the SCFs. Approximately 31 percent of the parcel volume now handled by the Pittsburgh BMC is destined for the Buffalo ASF service area ZIP Codes and, of that volume, nearly 90 percent is sorted to 5-digit ZIP Codes on the PSMs.

The diversion of machinable parcels from the Buffalo ASF to the Pittsburgh BMC is generally not the result of redirection of that volume by the Buffalo ASF. Almost since the inception of the DBMC entry rate, most drop shippers have deposited machinable parcels and some nonmachinable parcels destined for the Buffalo ASF service area at the Pittsburgh BMC, either under a 1995 Postal Service exception letter or at the direction of the Buffalo ASF.

In order to calculate postage for these diverted parcels, some mailers depositing machinable parcels at the Pittsburgh BMC zone their mail from the Buffalo ASF, and others zone their mail from the Pittsburgh BMC. Since 1993, the Buffalo ASF has received extremely few drop shipments of machinable parcels. In fact, current records indicate that more than three years have passed since the Buffalo ASF has received any drop shipments.

Officials at the Pittsburgh BMC confirm that mailers are making appointments and dropping machinable parcels destined for the Buffalo ASF service area at the Pittsburgh BMC rather than the Buffalo ASF. This arrangement coincides with the fact that western New York is not an originating site for parcel shippers, and the volume that is destined for Buffalo generally originates outside the local area by mailers who are also likely to have parcels destined for the Pittsburgh BMC service area.

Facility restrictions at the Buffalo ASF also make it desirable that the Postal Service redirect machinable parcels from Buffalo to Pittsburgh. The Buffalo ASF lacks sufficient space to handle a large volume of parcels. Additionally, since it does not have PSMs even machinable parcels must be handled in manual operations.

Moreover, if the current parcel diversion were stopped, the cost to process the 21.5 million parcels annually that would shift from the Pittsburgh BMC to the Buffalo ASF would greatly increase because additional work hours would be required at the downstream SCFs within the Buffalo ASF to sort the parcels to the five-digit delivery offices. As previously noted, these parcels are currently finalized to 5-digits at the Pittsburgh BMC. At the same time, there would be no reduced transportation costs for the Postal Service between Pittsburgh and Buffalo because the volume of Standard Mail, not Package Services mail, primarily determines the number of daily trips between the two facilities.

Effective Date

The Postal Service is proposing that the following revisions become effective March 31, 2002. Mailers are permitted to enter mail under the revised standards immediately upon publication of the final rule with required compliance by June 1, 2002.

Proposed Changes

Under the proposed realignment, all machinable parcels claiming DBMC rates for Standard Mail, Parcel Select, and Bound Printed Matter for ZIP Codes currently listed under the Buffalo ASF service area in DMM L602 would be

entered, by mailers, at the Pittsburgh BMC. Machinable parcels for those ZIP Codes claimed at DBMC rates, would be sorted to the Pittsburgh BMC, rather than the Buffalo ASF, using DMM Labeling list L601. This processing is currently done by the Pittsburgh BMC.

In addition, mailers would be permitted, as an option, to deposit nonmachinable parcels, at non DBMC rates, for the Buffalo ASF service area ZIP Codes listed in DMM labeling list L602 at the Pittsburgh BMC if the parcels were commingled in bedloads with the DBMC rate machinable parcels deposited at the Pittsburgh BMC. Mailers would continue to claim DBMC rates for the following types of mail deposited at the Buffalo ASF for delivery to Buffalo ASF service area ZIP Codes as prescribed in DMM E650, Exhibit 5.1 and E751, Exhibit 1.3:

- Parcel Post nonmachinable parcels not commingled in DBMC bedloads with machinable parcels.
- Parcel Select perishables.
- Bound Printed Matter flats and irregular parcels.
- Standard Mail flats, irregular parcels, and letters.

Under this proposal, Standard Mail, Parcel Select, and Bound Printed Matter machinable parcels sorted to 5-digit ZIP Codes within the Buffalo SCF service area, as defined in DMM L005, would still be required to be entered at Buffalo to qualify for the DSCF rate. Standard Mail machinable parcels claimed at DSCF rates and entered at Buffalo would continue to be eligible for a parcel barcode discount.

As part of this proposal, machinable and nonmachinable parcels—both Parcel Post and Bound Printed Matter—would be zoned from the Pittsburgh BMC using Postal Service zone chart 150. Barcoded machinable parcels for the Buffalo ASF service area would also be eligible for the parcel barcode discount when entered at the Pittsburgh BMC. The Postal Service believes that this realignment of ZIP Codes for DBMC rate eligibility between the Pittsburgh BMC and the Buffalo ASF will provide consistent customer service and promote the most efficient and cost-effective method for processing machinable parcels for mailers and for the Postal Service.

The Postal Service also believes that this proposal will eliminate any confusion concerning the applicable standards for the deposit of DBMC machinable parcels in the affected service areas.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual (DMM) modules E and L as follows:

Domestic Mail Manual (DMM)

* * * * *

E ELIGIBILITY

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

* * * * *

5.0 DBMC DISCOUNT

5.1 Definition

[Amend Exhibit 5.1 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

* * * * *

Eligible destination ZIP Codes	Entry facility
* * * * * * *	
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140.
150–168, 260–266, 439–447 [Except machinable parcels]	BMCPITTSBURGH PA 15195.
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195.
* * * * * * *	

* * * * *

5.5 Additional Standards for Machinable Parcels

[Amend 5.5a by adding the phrase ''except as shown in Exhibit 5.1'' to the second sentence to explain when sortation of parcels to ASFs is optional to read as follows:]

* * * * *

a. Destination BMC/ASF Containers. Machinable parcels palletized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. When machinable parcels are sorted to both destination BMCs and ASFs under L601 and L602, they qualify for DBMC rates under 5.2. Except as provided in Exhibit 5.1, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates.

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E700 Package Services

* * * * *

E750 Destination Entry

E751 Parcel Select

* * * * *

1.0 BASIC STANDARDS

* * * * *

1.3 Definition

[Amend Item and Exhibit 1.3 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

* * * * *

b. Except as provided in Exhibit 1.3, pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

Eligible destination ZIP Codes	Entry
* * * * * * *	
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140.
150–168, 260–266, 439–447 [Except machinable parcels]	BMCPITTSBURGH PA 15195.
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195.
* * * * * * *	

* * * * *

E752 Bound Printed Matter

* * * * *

2.0 Destination Bulk Mail Center (DBMC) Rates

* * * * *

2.3 Presorted Machinable Parcels

[Amend 2.3 by adding the phrase ''except as shown in Exhibit E751.1.3'' to the third sentence to read as follows:]

Presorted machinable parcels in sacks or on pallets at all sort levels may claim DBMC rates. Machinable parcels palletized under M045 or sacked under M722 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. Except as provided in Exhibit E751.1.3, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates. * * *

* * * * *

L Labeling Lists

* * * * *

L600 Standard Mail and Package Services

L601 BMCs

[Amend L601 by revising items to read as follows:]

* * * * *

a. Standard Mail machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC.

* * * * *

c. Bound Printed Matter machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC.

* * * * *

e. Parcel Post except for ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates and nonmachinable BMC Presort or OBMC Presort rate mail. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC if bedloaded and presented with machinable parcels.

* * * * *

L602 ASFs

[Amend L602 by revising L602a, L602c, and L602e to read as follows:]

L602 defines the service area by individual 3-digit ZIP Code prefix for Standard Mail and Package Services mail that must be sorted to ASFs.

Use this list for:

a. Standard Mail machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

c. Bound Printed Matter machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

e. Parcel Post machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC under L601 if bedloaded and presented with machinable parcels.

* * * * *

An appropriate amendment to 39 CFR part 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–1272 Filed 1–16–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7129–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a delegation request submitted by the State of Maine. Pursuant to section 112(l) of the Clean Air Act (CAA), Maine Department of Environmental Protection (ME DEP) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. EPA is proposing to grant ME DEP the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements. This action is being taken under the Clean Air Act.

DATES: Written comments must be received by February 7, 2002.

ADDRESSES: Comments should be addressed to: Steven Rapp, Manager, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023.

Copies of the submitted request are available for public inspection at EPA's Region I office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023, Telephone: (617) 918–1655.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (see 63 FR 18617), which has been codified in 40 CFR part 63, subpart S, ''National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry'' (Pulp and Paper MACT I). On July 16, 1999, EPA delegated its authority to implement and enforce 40 CFR part 63, subpart S, the Pulp and Paper MACT Standard, to ME DEP. Lincoln Pulp and Paper Company of Lincoln, Maine (Lincoln Pulp and Paper), is one of several sources in Maine currently subject to subpart S.

On September 25, 2001, ME DEP requested delegation of subpart S under § 63.94 for Lincoln Pulp and Paper. EPA received the request on October 5, 2001. ME DEP requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart S for Lincoln Pulp and Paper under the process outlined in 40 CFR 63.94. ME DEP will continue to implement and enforce subpart S without changes for the remainder of sources in Maine subject to subpart S. As part of its request to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable federal section 112 standards, ME DEP also requested approval of its demonstration that ME DEP has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 federal rules, emission standards, or requirements. The federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (see 65 FR 55810, dated September 14, 2000). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category-specific regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (see 40 CFR 63.94(a) and (b)) is the ''up-front approval'' of the state EBP program. The second step (see 40 CFR 63.94(c) and (d)) is EPA review and approval of the state alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (see 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the ''up-front approval'' of the EBP program, is three fold: (1) It ensures that ME DEP meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for ME DEP to replace the otherwise applicable federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and federal emission standards for which ME DEP will be accepting delegation under the EBP option.

Under §§ 63.91 and 63.94(b), ME's request for approval is required to include the identification of the sources and the source categories for which the state is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources. EPA's review of the request for approval of ME DEP's EBP program for subpart S indicates that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. EPA is proposing to approve ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper for subpart S. The requirement applicable to the source and the ''applicable requirement'' for title V purposes remains the federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

II. Proposed Action

EPA is proposing to approve ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper for subpart S.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this action.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.'' This rule is not subject to Executive Order 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

EPA has concluded that this proposed rule may have tribal implications. Lincoln Pulp and Paper is located near the Penobscot Nation. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with

representatives early in the process of developing this regulation to permit them to have meaningful and timely input into its development. EPA has discussed this with representatives of the Penobscot Indian Tribe. EPA has agreed to work with the State, the Tribe, and the company to ensure that whatever alternative EPA approves will have no discernible environmental effect on the Tribe. We are conducting ongoing consultation with the Penobscot Nation on this request by the State of Maine and have explained that while this action gives Maine flexibility, it does not increase its authority. This federal action will allow the State of Maine to implement equivalent alternative permit requirements to replace pre-existing requirements under federal law.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

C. Executive Order 13132

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will simply allow Maine to implement equivalent alternative requirements to replace a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this proposed rule.

D. Executive Order 13211

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

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* 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 not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This proposed rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but will simply allow the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this proposed approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action will allow Maine to implement equivalent alternative requirements to replace pre-existing requirements under federal law, and will impose no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. 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, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

H. National Technology Transfer and Advancement Act

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

List of Subjects in 40 CFR Part 63

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

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: January 10, 2002.

Robert W. Varney,

Regional Administrator, EPA-New England.

EPA is proposing to amend Title 40, chapter I, part 63 of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

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

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(20) to read as follows:

§ 63.99 Delegated Federal authorities.

(a)* * *

(20) Maine.

(i) [Reserved].

(ii) Maine Department of Environmental Services (ME DEP) may implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper, located in Lincoln, Maine, for subpart S–National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. This action is contingent upon ME DEP including, in title V permits, terms and conditions that are no less stringent than the Federal standard and have been approved by EPA. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 02–1244 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301210; FRL–6818–2]

RIN 2070–AC18

Sodium Starch Glycolate; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of sodium starch glycolate when used as an inert ingredient (disintegrant) in granular or tableted pesticide products, in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: Comments, identified by docket control number OPP–301210, must be received on or before March 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301210 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301210. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301210 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in

this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301210. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Statutory Findings

In a letter to the Agency dated June 28, 1994, Generichem Corp, now located at 755 Union Boulevard in Totowa, NJ 07511–0457 requested that 40 CFR 180.1001(c) and (e), be amended by establishing an exemption from the requirement of a tolerance for residues of sodium starch glycolate. The action was assigned pesticide petition (PP) number 5E4433. Neither a Proposed Rule nor a Notice of Filing has been previously published for PP 5E4433. After consideration of the petition, EPA is proposing to establish an exemption from the requirement of a tolerance for residues of sodium starch glycolate.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sodium starch glycolate (CAS Reg. No. 9063-38-1) are discussed in this unit.Sodium starch glycolate is manufactured from potato starch. It is produced by crossing-linking and carboxymethylation of the potato starch. Sodium starch glycolate is a polymer which has a molecular weight of approximately 2 million daltons.

A. Medical Uses

Sodium starch glycolate has been approved for use by the Food and Drug Administration (FDA) as a disintegrant in both prescription and over-the-counter drug products. In addition to these uses, sodium starch glycolate is also often used as a disintegrant in a number of dietary supplements. Typically, sodium starch glycolate is incorporated into oral dosage forms of drugs (*e.g.,* tablets) at levels up to 8% by weight. When the tablet is ingested, the sodium starch glycolate readily absorbs many times its weight in water, resulting in swelling which leads to the disintegration and enhanced dissolution of the tablet.

B. SAR (Structure Activity Relationship) Assessment

Sodium starch glycolate is an inert ingredient. To the best of the Agency's knowledge sodium starch glycolate has no active ingredient properties. Toxicity was assessed by a process called structure activity relationship (SAR). In this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and

sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high.

For sodium starch glycolate the SAR assessment determined that the chemical was not structurally related to any known carcinogens or developmental/reproductive toxicants. The following human exposures were examined as part of the analysis: Inhalation, dermal, exposures to the eyes, and drinking water. Absorption was expected to be nil for all routes of exposure based on the high molecular weight. Digestion in the gastrointestinal tract is possible, but the amounts that could be absorbed would be extremely small. The only health concern was for inhalation of respirable particles (less than 10 microns). Since sodium starch glycolate will absorb many times its own weight in water and swell (in volume), inhalation of respirable particles can lead to lung effects. Thus, there is a moderate concern for inhalation of respirable particles only. For all other routes of exposure, concern is low.

C. Rat Feeding Study

This 21-day rat feeding study was conducted using a modified starch compound that is very similar to sodium starch glycolate. It was performed by the Central Institute for Nutrition and Food Research (referred to as TNO) in 1963. The Agency has not reviewed this study. Rats were fed diets that contained 60% wheat starch (control), 20%, 40%, or 60% of the modified starch. The institute summarized the study as follows: It ''appears that good growth occurred on rations with 20% modified starch, although slight loss of hair was observed; 40% modified starch supported good growth, but caused loss of hair and slight diarrhea; 60% modified starch caused slight growth retardation, moderate diarrhea and loss of hair and distinctly increased water intake.''

In 1993, in correspondence dated July 29, TNO discussed the 1963 21-day rat feeding study. The reviewer indicated sodium starch glycolate would be well-tolerated at a level of 5% which would correspond to a daily intake of about 5 g/kg body weight.

D. Information from the Internet

To ascertain whether additional information on sodium starch glycolate were available, the Agency also searched the Tox Net website at the National Library of Medicine (*http://www.toxnet.nlm.nih.gov*). The internet site did not contain any information on sodium starch glycolate by name or CAS Reg. No.

V. Exposure Assessment

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

For the purposes of assessing potential exposure under this exemption, EPA considered that sodium starch glycolate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible.

1. *Dietary exposure*—i. *Food.* As previously stated, sodium starch glycolate is a high molecular weight material that is derived from potato starch. It is widely used in pharmaceuticals and dietary supplements as a disintegrant. In its 1993 correspondence TNO estimated the maximum amount of sodium starch glycolate that would be consumed by humans as a result of these FDA-approved uses as 13 mg/kg/day for adults and 80 mg/kg/day for children. EPA will regulate only the use of sodium starch glycolate as an inert ingredient in pesticide formulations. Based on its high molecular weight any sodium starch glycolate that may be ingested would not be expected to undergo any significant amount of absorption into the body from the gastrointestinal (GI) tract. From its proposed use as a disintegrant in granular and tableted pesticide products (which should be soil-directed), any food exposure to sodium starch glycolate as a result of its use in a pesticide product as an inert ingredient would be expected to be significantly lower than the exposure that currently occurs from those uses permitted by FDA.

ii. *Drinking water.* Sodium starch glycolate is water-absorbing and therefore does not readily dissolve in water. The hydrated form of sodium starch glycolate would be practically insoluble in water. Given this insolubility, the Agency has determined that exposure for all human population groups through drinking water would be extremely low.

2. *Other non-occupational exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The Agency believes that the potential for the use of sodium starch glycolate in and around the home exists. However, given its high molecular weight absorption is expected to be nil for dermal exposure. The concern would be, as previously stated, for inhalation of respirable particles. This concern will be addressed by end-product acute inhalation toxicity testing at the time of product registration.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Given the low toxicity of sodium starch glycolate, by all routes of exposure except inhalation, the Agency does not believe it likely that sodium starch glycolate in combination with other substances could result in cumulative adverse effects.

VII. Determination of Safety for U.S. Population

EPA's analysis shows that this derivative of potato starch is unlikely to pose any significant toxic potential through dietary exposure. Not only can a compound similar to sodium starch glycolate serve as a significant portion of the animal diet, but sodium starch glycolate cannot be absorbed in the intestinal tract in significant amounts. The moderate inhalation toxicity concern with sodium starch glycolate

will be addressed by end-product acute inhalation toxicity testing and appropriate label restrictions at the time of product registration. Accordingly, the Agency concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of sodium starch glycolate. A tolerance is not necessary because sodium starch glycolate residues will pose no appreciable risks to human health under reasonably forseeable circumstances.

VIII. Additional Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of sodium starch glycolate by the oral and dermal pathways of exposure, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . . .'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing sodium starch glycolate for endocrine effects may be required.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing exemptions for sodium starch glycolate.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for sodium starch glycolate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

E. Conditions

Given the moderate concern for sodium starch glycolate inhalation toxicity, the Agency would normally require testing of formulated end use pesticide products incorporating sodium starch glycolate to ascertain theLC_{50} in the acute inhalation toxicity test (OPPTS 870.1300). Since the use of sodium starch glycolate will be restricted to granular and tableted products only, it is likely that a waiver for the acute inhalation toxicity study would be granted. In order to determine the amount of fine particulate materials that could form during product transportation and storage, an attrition study will be required as part of the registration process for any end use product that contains sodium starch glycolate.

X. Conclusions

Based on the information in this preamble and considering the restriction to granular and tableted formulations, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to sodium starch glycolate (CAS Reg. No. 9063–38–1). Accordingly, EPA finds that exempting sodium starch glycolate from the requirement of a tolerance will be safe.

XI. Regulatory Assessment Requirements

This proposed rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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).

This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq*., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since this tolerance exemption would be established on the basis of a petition under FFDCA section 408(d), the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq*.) do not apply.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled*Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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 will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.1001, the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * * * *	
Sodium starch glycolate (CAS Reg. No. 9063–38–1)	Granular and tableted products only; not to exceed 8% of the formulated product	Disintegrant
* *	* * * * *	

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* * * * *	
Sodium starch glycolate (CAS Reg. No. 9063–38–1)	Granular and tableted products only; not to exceed 8% of the formulated product	Disintegrant
* *	* * * * *	

[FR Doc. 02–1247 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 81

RIN: 0920–ZA00

Guidelines for Determining the Probability of Causation Under the Energy Employees Occupational Illness Compensation Program Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Health and Human Services(DHHS) is reopening the comment period for the proposed rule on the guidelines for determining probability of causation for certain claims for cancer under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** of Friday, October 5, 2001. After considering these comments, comments previously received, and the technical review and comments from the Advisory Board on Radiation and Worker Health (ABRWH), DHHS will publish a final rule.

DATES: Any public written comments not submitted at the meeting of the ABRWH must be received on or before Wednesday, January 23, 2002.

ABRWH must submit any comments and recommendations on the probability of causation to DHHS by Wednesday, February 6, 2002.

ADDRESSES: Submit written comments to: Attention—Dose Reconstruction Comments, Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 533–8450, Fax: (513) 533–8285, e-mail: *NIOCINDOCKET@CDC.GOV*.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–841–4498 (this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION: On October 5, 2001, HHS published a notice of proposed rulemaking proposing guidelines for determining the probability of causation for certain cancer claims filed under EEOICPA, Public Law 106–398 [See FR Vol. 66, No. 194, 50967]. The notice included a public comment period that ended on December 4, 2001. However, EEOICPA requires ABRWH to complete a technical review of the proposed guidelines before they are promulgated as an effective regulation. ABRWH will be conducting its technical review during a meeting of the ABRWH scheduled for Tuesday, January 22, 2002 and Wednesday, January 23, 2002.

To provide the public with the opportunity to participate in this review, HHS will reopen the public comment period to include the ABRWH Meeting transcript and any statements submitted for the record of that meeting in the docket of this rule. DHHS will also accept additional public written

comments submitted to its docket office on or before Wednesday, January 23, 2002. The record for this rulemaking will close on Wednesday, February 6, 2002, by which time ABRWH must submit its final recommendations on the probability of causation to DHHS.

Dated: January 14, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1319 Filed 1–16–02; 8:45 am]

BILLING CODE 4160–17–P

Notices

Federal Register
Vol. 67, No. 12
Thursday, January 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–027N]

Bovine Spongiform Encephalopathy (BSE) Current Thinking Paper; Notice of Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the Agency's current thinking paper on possible actions to minimize human exposure to meat food products from cattle that could contain the infective agent that causes Bovine Spongiform Encephalopathy (BSE). BSE, commonly referred to as ''Mad Cow Disease,'' is a chronic degenerative disease affecting the nervous system of cattle. Worldwide, there have been more than 178,000 cases since the disease was first diagnosed in 1986 in Great Britain, although no cases of BSE have been confirmed in the United States. Recent laboratory and epidemiological research indicate that there is a causal association between BSE and a variant of Creutzfeldt-Jakob Disease, a slow degenerative disease that affects the central nervous system of humans.

The Agency current thinking paper follows the recent publication of a risk assessment conducted by the Harvard University School of Public Health to analyze and evaluate the U.S. Department of Agriculture's current measures to prevent BSE. FSIS requests comments on both the current thinking paper and the Harvard risk assessment.

ADDRESSES: Copies of the current thinking paper and the Harvard risk assessment are available from the FSIS Docket Clerk, FSIS Docket Room, Room 102, 300 12th Street, SW., Washington, DC 20250–3700. Copies of both documents also are available on the Internet at: *http://www.fsis.usda.gov/OPPDE/rdad/default.htm.* Send all written comments on the current thinking paper and the risk assessment to the FSIS Docket Room. All comments received will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Director, Regulations and Directives Development Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 720–5627.

Done in Washington, DC on: January 15, 2002.

Ronald F. Hicks,

Acting Associate Administrator.

[FR Doc. 02–1342 Filed 1–15–02; 2:09 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Greendale Project, Green Mountain National Forest, Manchester Ranger District, Town of Weston, Windsor County, Vermont

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Greendale Project (Project Area) is located on the Green Mountain National Forest (GMNF) in the Town of Weston on lands north of the Landgrove-Weston Road and west of Route 155, and affects National Forest Service System Lands adjacent to the Trout Club Rd., Moses Pond Rd., Jenny Coolidge Rd., and the Greendale Rd. The Project Area covers approximately 5,404 acres and includes portions of Forest Plan designated Management Areas 2.1A, 3.1, 4.1, and 6.2A encompassing Compartments 27, 29, 30, 31, 32, and 45. The 1986 Green Mountain National Forest Land and Resource Management Plan (Forest Plan) determined that these lands are administratively available for recreation, wildlife, fisheries and vegetation management to meet a range of resource management objectives.

The Proposed Action would treat approximately 895 acres through evenage and unevenage tree harvest using three or more commercial timber sales; harvesting approximately 4 million board feet of timber.

Evenage management would include 26 acres of overstory removal, 267 acres of thinning, 62 acres of clear-cutting scattered throughout the project area, and 154 acres of delayed shelter-wood harvest. Unevenage management would consist of 282 acres of individual and 104 acres of group tree selection harvest. The objective is to promote both aspen and softwood tree regeneration, maintain and restore the diversity of tree species & age classes, promote forest health, improve winter deer habitat, and maintain a diversity of wildlife habitats within the Project Area. The project would also restore and maintain approximately 32 acres of historic apple orchards and improve stream and fish habitat on approximately 1.5 miles of Jenny Coolidge Brook. There would be no new road construction or reconstruction of existing roads.

DATES: Written comments concerning the scope of the analysis should be received by February 20, 2002 to ensure timely consideration. The Forest Service will also conduct one or more public scoping meetings regarding this vegetation management proposal. The public will be notified as to the date, time and location of these meeting as they are scheduled.

ADDRESSES: Please send written comments to: Dennis Roy, District Ranger, Manchester Ranger District, 2538 Depot Street, Manchester Center, Vermont 05255.

FOR FURTHER INFORMATION CONTACT: Edward Toth, project leader either by writing to him at the Manchester Ranger District, 2538 Depot Street, Manchester Center, Vermont 05255 or by telephone at (802) 362–2307 Ext: 212 if you have questions about the project and the preparation of the EIS or if you would like to be on the mailing list for this project.

SUPPLEMENTARY INFORMATION: The Project Area is located within the Town Of Weston, Windsor County, Vermont. It encompasses approximately 5,404 acres of National Forest System Lands on the GMNF. The 1986 Forest Plan determined these public lands to be administratively available for recreation, wildlife and fisheries habitat improvement and vegetation management provided: (1) The proposed

activities are consistent with the management prescription for each Management Area (MA), and (2) that site-specific restrictions, in the form of standards and guidelines, are implemented to protect the Project Area's natural and cultural resource values. MAs found in the Project Area are:

Management Area 2.1 (38% of the Project Area)—Uneven age management is the preferred forest management method to maintain continuous forest cover and both roaded natural and dispersed recreation opportunities.

Management Area 3.1 (16% of the Project Area)—Even age management is the preferred forest management method to maintain a mosaic of vegetative conditions in a roaded, intensively managed but natural appearing environment.

Management Area 4.1 (13% of the Project Area)—Both evenage and uneven age management would be used to provide long-term suitable, stable deer winter habitat with a mix of forest age.

Management Area 6.2a (32% of the Project Area)—Even age management, using extended rotation lengths, is the preferred silvicultural method to maintain a physical setting that provides opportunities for solitude and a feeling of closeness to nature.

General standards and guidelines found in the Forest Plan as well as site-specific measures resulting from the EIS analysis would be applied to protection Forest resources including, but not limited to: Open water, wetlands, streams and riparian areas; wet, steep, and shallow soils; designated trails; developed recreational areas; and habitat for endangered, threatened, and sensitive plant and animals.

Public participation has been, and will be, an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, state county and local agencies, individuals and organizations that may be interested in or affected by the proposed activities. Initial public scoping was held on April 6, 1998, and an open house was held during the same month. Preliminary issues identified for analysis in the EIS include the potential effects by, or on: (1) Recreational use of the Project Area, (2) the solitude and a feeling of closeness to nature in MA 6.2a, (3) wildlife and wildlife habitat, (4) deer habitat management, (5) project size and intensity of vegetation management, (6) economics, (7) opportunities for ecosystem restoration, (8) the spiritual setting of the Weston Priory, (9) fish and aquatic habitat and (10) threatened, endangered and sensitive species; including the federally-listed Indiana bat.

We expect these preliminary issues to be carried through this analysis. Additional scoping will be completed to coincide with this notice, giving the public an opportunity to identify any new issues or concerns.

Based on the results of scoping and the resource conditions within the Project Area, alternatives (including a no-action alternative) will be developed for the Draft EIS.

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in June, 2002. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date EPA's Notice of Availability appears in the **Federal Register**. The final EIS is anticipated in October, 2002.

The Forest Service believes, at this early stage, it is important to notify reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that publics interested in this proposed action participate by the close of the 45 day comment period on the draft EIS, so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Interested parties may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Lead and Cooperating Agencies: The USDA Forest Service, Green Mountain National Forest is the lead agency for preparation of this document.

Responsible Official: Dennis P. Roy, District Ranger, Manchester Ranger District is the responsible Forest Service official. In making the decisions, the responsible official will consider the comments; responses; disclosure of environmental consequences; and applicable laws, regulations and policies. The responsible officials will state the rationale for the chosen alternative in the Records of Decision.

Dated: January 7, 2002.

Paul K. Brewster,

Forest Supervisor.

[FR Doc. 02–1217 Filed 1–16–02; 8:45 am]

BILLING CODE 3401–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on January 25 and February 8, 2002, in Quincy, California. The purpose of the meetings is to review the Resource Advisory Committee's role in implementing the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) and to determine how to proceed with project solicitation and selection.

DATES: The January 25, 2002, meeting will be held from 9–4 p.m. The February 8, 2002, meeting time will be determined at the meeting on the 25th.

ADDRESSES: Both meetings will be held at the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California, 95971.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the January 25 meeting include: (1) Review applicable laws including: Federal Advisory Committee Act (FACA), the Secure Rural Schools and Community Self-Determination Act of 2000, the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA); (2) Discuss Collaboration and Interest-Based Bargaining; (3) Continue project solicitation/design and selection process; (4) Review ongoing public and private programs of work that fit Title 2 parameters; (5) Public Comment; and, (6) Future meeting schedule/logistics/ agenda. The meeting is open to the public and individuals may address the Committee at the time provided on the agenda. Agenda items for the February 8 meeting will be determined at the meeting on the 25th.

Dated: January 10, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–1216 Filed 1–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 011402B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region).

Form Number(s): None.

OMB Approval Number: 0648–0243.

Type of Request: Regular submission.

Burden Hours: 3.

Number of Respondents: 40.

Average Hours Per Response: 5 minutes.

Needs and Uses: A telephone survey is conducted of fishery processors, joint venture companies, and fishermen's trade associations in the Pacific Northwest to determine the tonnage of fish processed or harvested, and their estimated tonnage for the next year. The information is used to help form allocations of groundfish quotas.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Office.

[FR Doc. 02–1273 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011402A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Data Collection on Marine Protected and Managed Areas.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 5,000.

Number of Respondents: 1,000.

Average Hours Per Response: 5.

Needs and Uses: Executive Order 13158 directs the Department of Commerce and the Department of the Interior to work with partners to inventory the protection of U.S. ocean and coastal resources by developing a national system of marine protected areas. The Departments of Commerce and the Interior plan to work closely with state, territorial, local, and tribal governments, as well as other stakeholders, to identify and inventory the nation's existing marine protected and managed areas. Toward this end, the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) have created a dataform to be used as a survey tool to collect and analyze information on these existing sites. This survey will allow NOAA and DOI to better understand and evaluate the existing protections for marine resources within marine protected and managed areas in the United States.

Affected Public: State, local, or tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1274 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2002]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Application for Subzone, Schering-Plough Products, L.L.C., (Pharmaceutical Products), Las Piedras, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Corporation, grantee of FTZ 7, requesting special-purpose subzone status for the pharmaceutical manufacturing plant of Schering-Plough Products, L.L.C. in Las Piedras, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 10, 2002.

Schering-Plough's Las Piedras plant (3 bldgs./401,814 sq. ft. (including 84,814 square feet proposed) on 40 acres) is located at State Road No. 183, Km 2.6, Las Piedras, Puerto Rico. The facility (500 employees) produces finished pharmaceutical products and their

intermediates, including Theo-Dur®, K–Dur®, Uni-Dur®, Normodayne/Labetalol®, Eulexin®, Claritin®, and Rebetol®. Foreign-sourced materials will account for some 40–50 percent of finished product value, and include items from the following general categories: chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

Zone procedures would exempt Schering-Plough from Customs duty payments on foreign materials used in production for export. Some 30–35 percent of the plant's shipments are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products and intermediates (primarily duty-free) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 20.0 percent). At the outset, zone savings would primarily involve choosing the finished product duty rate on a cholesterol absorption inhibitor, (HTSUS 3004.90.9060–duty-free), rather than the rate for a foreign-sourced active ingredient (bulk ezetimibe, HTSUS 2933.79.0800–7.9%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 2, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: January 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–1271 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending the time limits for the preliminary results of the antidumping administrative review.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Ross, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4794.

The Applicable Statute

Unless otherwise indicated, all citations made 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 by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Reviews

The Department has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. On June 19, 2001, the Department initiated these administrative reviews covering the period May 1, 2000, through April 30, 2001. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 66 FR 32934, June 19, 2001.

Because of the complexity of certain issues in each review and the large number of respondents in each review, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results of these administrative reviews until April 1, 2002.

Dated: January 10, 2002.

Susan H. Kuhbach,

Deputy Assistant Secretary, Acting, for AD/CVD Enforcement I.

[FR Doc. 02–1270 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and rescission in part of antidumping duty administrative review of certain cased pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) has preliminarily determined that sales by the respondents in this review, covering the

period December 1, 1999, through November 30, 2000, have been made below normal value (NV). In addition, we are preliminarily rescinding this review with respect to Three Star Stationery Industry Co., Ltd. (Three Star) and Guangdong Provincial Stationary & Sporting Goods Import and Export Corporation (GSSG). If these preliminary results are adopted in the final results of this review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Michele Mire, Crystal Crittenden, or Paul Stolz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4711, (202) 482–0989, and (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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's regulations are to the regulations at 19 CFR part 351 (2000).

Period of Review

The period of review (POR) is December 1, 1999 through November 30, 2000.

Background

On December 20, 2000, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC), covering the period December 1, 1999 through November 30, 2000. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR 79802–02 (December 20, 2000).

On December 21, 2000, in accordance with 19 CFR 351.213(b), the respondent, Kaiyuan Group Corporation (Kaiyuan), requested an administrative review of its exports of subject merchandise to the United States during the POR. On December 29, 2000, China First Pencil Co., Ltd. (CFP) requested an administrative review of its exports of subject merchandise to the United States. In addition, on January 2, 2001, in accordance with 19 CFR 351.213(b), the Writing Instrument Manufacturers Association, Inc., Pencil Section; Sanford Corp.; Berol Corp.; General Pencil Co., Inc; J.R. Moon Pencil Co.; Tennessee Pencil Co.; and Musgrave Pencil Co. (collectively, the petitioners), requested that we conduct an administrative review of exports of the subject merchandise made by an additional 37 producers/exporters. The Department published a notice of initiation of this review on January 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 21 (January 31, 2001).

On February 12, 2001, we issued antidumping duty questionnaires to all parties named in the notice of initiation for whom we were able to obtain addresses.[1] In addition, on March 6, 2001, we issued a questionnaire to the PRC embassy in order to collect information relevant to the calculation of the PRC-wide rate. CFP, Orient International Holding Shanghai Foreign Trade Corporation (OIHSFTC), Kaiyuan, GSSG, and Three Star responded to our February 12, 2001, questionnaire. In their March 21, 2001, response to the Department's questionnaire, Three Star and GSSG stated that they did not export subject merchandise to the United States during the POR. Specifically, Three Star stated that it had no exports of subject merchandise to the United States. GSSG stated that it shipped pencils to the United States during the POR which were produced by Three Star. GSSG noted that this was not subject merchandise because GSSG was excluded from the antidumping duty order with respect to merchandise it exported which was produced by Three Star.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On August 6, 2001, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until December 1, 2001 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 65 FR 53701). On November 28, 2001, the deadline was extended a second time until December 31, 2001 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 63018).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Preliminary Partial Rescission

We are preliminarily rescinding this review with respect to Three Star and GSSG because they made no shipments of subject merchandise to the United States during the POR. The Department reviewed Customs data which indicates that Three Star and GSSG did not export subject merchandise to the United States during the POR.

[1] On February 9, 2001, we sent a letter to the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) requesting that it deliver questionnaires to twelve parties for whom we could not find addresses. On August 7, 2001, we sent a letter to MOFTEC repeating our request that MOFTEC deliver the questionnaires to the twelve parties. We also requested that it deliver questionnaires to 5 parties for whom questionnaires were returned to us as undeliverable due to incorrect addresses or contact information. We requested that MOFTEC contact us by August 24, 2001, if it could not deliver any of these questionnaires and advised MOFTEC that if we did not receive its response within the time provided, we would be required to base our findings with respect to these firms on facts available which could be adverse to the firms' interests. The China Chamber of Commerce For Import & Export of Light Industrial Products and Arts—Crafts (CCCLA) faxed us on August 21, 2001, informing us that MOFTEC had asked it to transmit questionnaires to listed parties but could contact only two companies: China National Light Industrial Products Import/Export Corp. (CNLIP) and Jiangsu Light Industrial Products Import and Export Group Corp. (JP). However, we did not receive questionnaire responses from these firms.

Verification

As provided in section 782(i) of the Act, during October 2001, the Department conducted verifications of OIHSFTC and its suppliers. The Department intends to conduct verifications of CFP, GSSG, Three Star and Kaiyuan subsequent to the publication of these preliminary results. During the verification of OIHSFTC and its suppliers, we followed standard procedures in order to test information submitted by the respondents. These procedures included on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the report: Verification of the Sales Responses of OIHSFTC in the 1999–2000 Administrative Review of Certain Cased Pencils from the People's Republic of China (Verification Report), the public version of which is on file in the Department's Central Records Unit, Room B099, of the Main Commerce building (CRU–Public File).

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. OIHSFTC, CFP and Kaiyuan provided the separate rates information requested by the Department and reported that their export activities are not subject to government control.

We examined the separate rates information provided by OIHSFTC, CFP and Kaiyuan in order to determine whether the companies are eligible for a separate rate. The Department's separate rates test which is used to determine whether an exporter is independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20508 (May 6, 1991).

OIHSFTC, CFP and Kaiyuan reported that the subject merchandise was not restricted to any government list regarding export provisions or export licensing, and was not subject to export quotas during the POR. OIHSFTC, CFP and Kaiyuan submitted copies of their business licenses in their questionnaire responses. We inspected OIHSFTC's original business license at verification. We found no inconsistencies with their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, OIHSFTC, CFP and Kaiyuan submitted copies of PRC legislation demonstrating the statutory authority for establishing the de jure absence of government control over the companies. Thus, we believe that the evidence on the record supports a preliminary finding of absence of de jure governmental control based on: (1) An absence of restrictive stipulations associated with the business licenses of OIHSFTC, CFP and Kaiyuan; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

OIHSFTC, CFP and Kaiyuan reported that they determine prices for sales of the subject merchandise based on the cost of the merchandise, movement expenses, overhead, profit, and the market situation in the United States. Moreover, OIHSFTC, CFP and Kaiyuan stated that they negotiated the price directly with their customers. Also, OIHSFTC, CFP and Kaiyuan claimed that their prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that OIHSFTC, CFP and Kaiyuan have the authority to negotiate and sign contracts and other agreements. Further, OIHSFTC, CFP and Kaiyuan claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, CFP and Kaiyuan reported that they have autonomy in making decisions regarding the selection of management. CFP and

Kaiyuan claimed that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of CFP and Kaiyuan. Although there is evidence on the record indicating that the Shanghai State Assets Administration plays an indirect role in the appointment of OIHSFTC management, we do not find that this constitutes de facto government control of the business operations of the company relating to its export activity.

Finally, OIHSFTC, CFP and Kaiyuan reported that they retain the proceeds of their export sales, they use profits according to their business needs, and their management determines how to allocate profits. There is no evidence on the record to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, we find that the evidence on the record supports a preliminary finding of absence of de facto governmental control based on record statements and supporting documentation showing that: (1) OIHSFTC, CFP and Kaiyuan set their own export prices independent of the government and without the approval of a government authority; (2) OIHSFTC, CFP and Kaiyuan have the authority to negotiate and sign contracts and other agreements; (3) OIHSFTC, CFP and Kaiyuan have adequate autonomy from the government regarding the selection of management; and (4) OIHSFTC, CFP and Kaiyuan retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this investigation by OIHSFTC, CFP and Kaiyuan demonstrates an absence of government control, both in law and in fact, with respect to their exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of this preliminary determination, we are granting a separate rate to OIHSFTC, CFP and Kaiyuan.[2]

[2] In the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625 (November 8, 1994) (LTFV), the Department granted separate rates to CFP and Shanghai Foreign Trade Corporation (SFTC). In December of 1999, SFTC was merged into Orient International (Holding) Co., Ltd. (OIH) and was renamed Orient International Holding Shanghai Foreign Trade Co., Ltd. (OIHSFTC). While CFP and OIHSFTC received separate rates in a previous segment of this proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12441 (March 13, 1998).

Country-Wide Rate

As noted below, Anhui, CNLIP and JP failed to respond to the Department's questionnaire. As these exporters do not qualify for separate rates, they will continue to be subject to the PRC country-wide rate of 53.65 percent.

Normal Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than normal value (NV), we compared for all responding entities, the export price (EP) to NV, as described in the *Export Price* and *Normal Value* sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for sales to the United States because the subject merchandise was sold directly to an unaffiliated customer in the United States prior to importation and constructed export price methodology was not otherwise indicated. We made deductions from the sales price for foreign inland freight, foreign brokerage and handling, and domestic inland insurance. Each of these services was provided by a NME vendor, and thus, we based the deductions for these movement charges on surrogate values.

We valued foreign brokerage and handling using Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review,* 63 FR 48184 (September 9, 1998) (*India Wire Rod*). We valued domestic inland insurance using the Department's recently revised Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC (available on the Department's website). We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*.

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if: (1) The subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Since none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOPs utilized in producing pencils include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See Memorandum From Jeff May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement,* dated July 30, 2001, which is on file in the CRU–Public File. In instances where Indian surrogate value information was not available, we relied on Indonesian values and, as noted below, U.S. values. Indonesia is also comparable to the PRC in terms of per capita gross national product and the national distribution of labor, and it is a significant producer of comparable merchandise. We valued Chinese Lindenwood, the wood product used to produce pencils in the PRC, using U.S. publicly available, published prices for American Basswood because price information for Chinese Lindenwood

and for American Basswood is not available elsewhere.[3]

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. However, when we were unable to obtain the surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We calculated a surrogate value for Chinese Lindenwood Pencil Slats based on the publicly available U.S. lumber prices for Basswood published in the ©§ 2001 Hardwood Market Report for the period December 1999 to November 2000.

(2) We valued Chinese Lindenwood Logs using prices for grade 2 U.S. basswood, kiln dried, 9/4 lumber prices set forth in the Sawlog Bulletin for the period January 2000 to November 2000.

(3) We valued the following material inputs based on Indian import data from the Monthly Statistics of the Foreign Trade of India (MSFTI) for April–August 2000[4]: graphite, kaolin clay, bees wax, mixed wax, wax, clear wax, lacquer, paint, dipping lacquer, glue, clear glue, foil, sealing paper, stearic acid, printing ink, key chain, plastic, foam grip, glitter, talcum powder, heat transfer film, pigment, dye, dyestuff, diluent, hardening oil, and cellulose.

(4) We valued the following material inputs based on Indian import data from the MSFTI for January–December 2000: black cores, color cores, raw pencils, erasers, and ferrules.

(5) We valued the following material inputs based on Indonesian import data from the Foreign Trade Statistical Bulletin of Indonesia (FTSBI) for January–December, 2000: petrol wax, tallow, paraffin wax, emulsified paraffin wax.

(6) In accordance with section 351.408(c)(1) of the Department's regulations, we valued solid glue at the actual purchase price because it was purchased from a market economy in U.S. Dollars.

(7) We valued the following packing materials based on Indian import data from MSFTI for April–August, 2000: paperboard blister cards (sleeves), inner paperboard boxes, master paperboard cartons, pencil paperboard packaging, non-corrugated paper cartons, cardboard boxes, inner paper boxes, cards, sticker paper, corrugated cardboard, PVC covers for blister cards, plastic shrink wrap, plastic film, plastic strips, poly bags, plastic twisty, plastic canisters, plastic boxes, packing tape and paper labels.

(8) We valued energy inputs as follows. We valued coal based on Indian import data from MSFTI for April–August 2000. We valued steam based on Asian Development Bank data published in October, 1997. We valued electricity based on the 1998/1999 consumer category-wise average tariff of electricity (paise/kWh) for industrial enterprises from the publicly available 1999–2000 ''Energy Data Directory & Yearbook'' published by Tata Energy Research Institute.

(9) In accordance with 19 CFR 351.408(c)(3) we valued labor using a regression-based wage rate for the PRC listed in the Import Administration Web site under ''Expected Wages of Selected NME Countries.'' *See http://ia.ita.doc.gov/wages*.

(10) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1999–2000 in the *Reserve Bank of India Bulletin* of March 31, 2001. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(11) We used the following sources to value truck and rail freight services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to the producers. We valued truck freight services using the 1999 rate quotes reported by Indian freight companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000). We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association.

For further discussion of the surrogate values used in this review, see *Memorandum From The Team Regarding Selection of Surrogate Values for Factors of Production for the Preliminary Results of the Administrative Review of Certain Cased Pencils from the People's Republic of China,* (December 31, 2001), which is on file in the CRU–Public File.

Facts Available

On August 7, 2001, in letters to all non-responding parties to whom we issued antidumping duty questionnaires, we noted that the questionnaire deadline had passed without the Department having received either the party's response or a request to extend the deadline for responding. Also, we advised these parties that, pursuant to 19 CFR 351.302(d)(i), we would consider any information submitted after the deadline as untimely filed and would return it to the submitting party. Finally, we advised these parties that since we had not received their responses, we were required by section 776(a)(2)(B) of the Act to rely on facts available in our determination.

Anhui Light Industrial Products Import/Export Corporation (Anhui) submitted a letter dated August 20, 2001, indicating that it would not respond to the Department's questionnaire.

On August 21, 2001 the Department received a facsimile from the CCCLA stating that MOFTEC entrusted CCCLA to transmit the Department's questionnaires to listed respondents. CCCLA stated that it could contact only two firms: CNLIP and JP. CNLIP and JP, however, failed to respond to the Department's questionnaire.

For non-responding parties that received the Department's questionnaire but failed to respond, including Anhui, CNLIP and JP, the Department is applying adverse facts available.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because these firms to whom we sent questionnaires did not respond, we preliminarily determine that these entities did not act to the best of their abilities to comply with our requests. Moreover, we have determined that these firms are not eligible for separate rate status. Therefore, they are all being treated as part of the PRC-wide

[3] Chinese Lindenwood and American Basswood are virtually the same type of wood. U.S. prices for American Basswood were used to value Chinese Lindenwood in the Less Than Fair Value Investigation. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cased Pencils from the People's Republic of China,* 59 FR 55625, 55632 (1994). This methodology was upheld by the Court of International Trade on remand. *See Writing Instrument Manufacturers Association, Pencil Section, et al.* v. *United States,* Slip Op. 97–151 (Ct. Int'l. Trade, Nov. 13, 1997) at 16.

[4] We note that we were unable to collect surrogate value data for certain months of the POR. We intend to continue to research and gather this data for the final results of this review.

entity. Pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margins for the PRC-wide entity. Specifically, for adverse facts available for the PRC-wide entity, we have applied the highest rate from any prior segment of this proceeding, 53.65 percent, which is the current PRC-wide rate. This rate was the ''recalculated'' petition rate from the LTFV investigation.

Corroboration

Section 776(c) of the Act provides that when the Department resorts to facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (H.R. Doc. 103–316 (1994)) (SAA) states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at *870*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In this review, we are using, as adverse facts available, the highest margin from this or any prior segment of the proceeding. Specifically, we are using 53.65 percent, the current PRC-wide rate. This rate was the petition rate which was ''recalculated'' for the final determination in the investigation. *See Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order in Accordance With Final Court Decision,* 64 FR 25275 (May 11, 1999).

The ''recalculated'' petition rate constitutes secondary information within the meaning of the SAA. *See* SAA at 870. This rate is currently applicable to all exporters that do not have separate rates and was corroborated by the Department in a prior segment of this proceeding. Further, nothing on the record of the instant review calls into question the reliability of the ''recalculated'' rate. *See Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Administrative Review,* 63 FR 779 (January 7, 1998). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevancy of the selected margin. Furthermore, the rate has not been judicially invalidated. Moreover, the rate used is the rate currently applicable to the uncooperative exporters. Assigning a lower rate to these firms would reward them for their failure to cooperate. Thus it is appropriate to use the selected rate as adverse facts available in the instant review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1999 through November 30, 2000:

Manufacturer/exporter	Margin (percent)
China First Pencil Co., Ltd.	59.81
Orient International Holding Shanghai Foreign Trade Co., Ltd.	76.46
Kaiyuan Group Corporation	223.60
PRC-wide Rate	53.65

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of case briefs/written comments and rebuttal briefs or rebuttals to written comments, limited to issues raised in such briefs or comments, after verification of CFP, GSSG, Three Star and Kaiyuan. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will issue the final results of these administrative reviews, which will include the results of its analysis of issues raised in interested party comments, within 120 days of publication of these preliminary results.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Duty Assessment Rates

Upon completion of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs upon completion of this review. For assessment purposes, for CFP, OIHSFTC and Kaiyuan we calculated importer-specific assessment rates for pencils from the PRC. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the entered value of the reviewed sale. Where the importer-specific assessment rate is above de minimis, we will direct U.S. Customs to assess the resulting ad valorem rate against the entered value of the entry of the subject merchandise by that importer during the POR. For exporters subject to the PRC-wide rate, we will instruct Customs to assess the PRC-wide rate against the entered value of the subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pencils from the PRC 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 rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in this review, the cash deposit rate will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of this review; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. 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 serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with

sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 31, 2001.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–1269 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On July 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Preliminary Results of Antidumping Administrative Review,* 66 FR 35928 (*Preliminary Results*). The period of review (POR) is February 19, 1999 through May 31, 2000. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. We have determined that Kawasaki did not make sales to the U.S. below normal value during the POR. *See Final Results of the Review* section, below.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2000).

Case History

On June 29, 1999, the Department published in the **Federal Register** an antidumping duty order on certain hot-rolled, flat-rolled, carbon-quality steel products (hot-rolled steel) from Japan. *See Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* 64 FR 34778. On June 30, 2000, the Department received a timely request from Kawasaki Steel Corporation (Kawasaki) to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. On July 31, 2000, the Department published its notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 64 FR 46687. As noted above, on July 10, 2001, the Department published the preliminary results of this antidumping administrative review. *See Preliminary Results.* The Department determined that it was impracticable to complete this antidumping administrative review within the standard time frame, and extended the due date for the final results from November 7, 2001 to January 7, 2002. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Extension of Time Limit for Final Results of Antidumping Administrative Review,* 66 FR 57423 (November 15, 2001).

Scope of the Antidumping Duty Order

The products covered by this antidumping duty order are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14% ...	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the *Issues and Decision Memorandum* from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 7, 2002 (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in B–099 in the main Department of Commerce Building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ia.ita.doc.gov/frn.

The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have changed our approach to the margin calculation for Kawasaki. Below is a list of the changes for the final results. *See* the *Decision Memorandum* for further details.

- The Department treated home market sales made through Channel 1 as having been made at one home market level of trade, and treated home market sales made through Channels 2 and 3 as having been made at a second, more advanced home market level of trade. All U.S. sales were matched at the same LOT, *i.e.,* to home market Channel 1 sales. (*See* Comment 1 in the *Decision Memorandum*.)
- The Department matched Home Market sales to U.S. sales using CONNUMH rather than CONNUM2H. (*See* Comment 4 in the *Decision Memorandum*.)
- The Department included lease income and associated lease expenses in the G&A rate calculation. (*See* Comment 9 in the *Decision Memorandum*.)
- The Department included only the current portion of the gains and losses from cancellation of interest rate swap agreements for the final results. (*See* Comment 10 in the *Decision Memorandum*.)
- The Department included the profit on sale of scrap in the G&A rate calculation. (*See* Comment 11 in the *Decision Memorandum*.)

Currency Conversion

We made currency conversions based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for Kawasaki for the period February 19, 1999 through May 31, 2000:

Manufacturer/exporter	Time period	Margin
Kawasaki Steel Corporation ...	02/19/1999–05/31/2000	0.00 %

Because the weighted-average dumping margin is zero, we will instruct the U.S. Customs Service to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that Kawasaki exported.

In addition, the following deposit requirements will be effective upon publication of this notice for all shipments of hot-rolled steel from Japan, entered or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For Kawasaki, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final determination in which that manufacturer or exporter was covered; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 29.30 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final 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 in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: January 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Level of Trade in the Home Market
2. Level of Trade Adjustment
3. Billing Adjustments
4. Matching Home Market Sales to U.S. Sales Using CONNUMH Rather than CONNUM2H
5. Zeroing Negative Margins
6. Application of the Department's Arm's Length Test
7. Exclusion of Inter-company Profit and Loss from Production Variances
8. Adjustment of Electricity Cost for Affiliated Party Transactions
9. Exclusion of Lease Income and Expenses from G&A Rate Calculation
10. Exclusion of Gain on Cancellation of Interest Rate Swaps from Net Financing Expense
11. Inclusion of Gain on Sale of Steel Scrap in the G&A Expense Rate Calculation
12. Allowing Kawasaki to Report Sales by Kawasho Instead of Downstream Sales

[FR Doc. 02–1268 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083000B]

RIN 0648–AN92

Notice of the Continuing Effect of the List of Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the list of fisheries for 2002.

SUMMARY: The National Marine Fisheries Service is providing notification that the 2001 List of Fisheries (LOF) remains in effect for 2002. Under the Marine Mammal Protection Act (MMPA), NMFS must place a commercial fishery on the LOF under one of three categories, based upon the level of serious injury and mortality of marine mammals that occur incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Sandra Arvilla.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Don Peterson.

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office.

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Emily Menashes, Office of Protected Resources, 301–713–2322 ext. 101; Kim Thounhurst, Northeast Region, 978–281–9138; Katie Moore, Southeast Region, 727–570–5312; Tim Price, Southwest Region, 562–980–4029; Brent Norberg, Northwest Region, 206–526–6733; Amy Van Atten, Alaska Region, 907–586–7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

The 2001 List of Fisheries is accessible by the Internet at http://www.nmfs.noaa.gov/prot—res/PR2/Fisheries—Interactions/list—of—fisheries.html.

Background

This notice provides that the 2001 LOF published in August 15, 2001 (66 FR 42788) remains in effect for 2002 with no changes. NMFS intends to propose changes to the LOF for 2003, which is scheduled to publish as a proposed rule and be available for public comment in the summer of 2002.

What Is the List of Fisheries?

Under section 118 of the MMPA, NMFS must publish, at least annually, a LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

How Does NMFS Determine In Which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR part 229). In addition, these definitions are summarized in the preambles to the final rule implementing section 118 (60 FR 45086, August 30, 1995), the final LOF for 1996 (60 FR 67063, December 28, 1995), and the proposed LOF for 2001 (66 FR 6545, January 22, 2001).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This document includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under 50 CFR 229.4 to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

You must register through NMFS' Regional Offices (see **ADDRESSES**) unless you participate in a fishery that has an integrated registration program. Upon receipt of a completed registration, NMFS will issue vessel or gear owners a decal or other physical evidence of a current and valid registration that must be displayed or that must be in the possession of the master of each vessel while fishing (MMPA Section 118(c)(3)(A)).

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to pay the $25 registration fee.

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA: all Alaska Category II fisheries; all Washington and Oregon Category II fisheries; the Gulf of Maine/U.S. Mid-Atlantic lobster trap/pot fishery; the Federal portion of the Northeast sink gillnet fishery; and, the Federal portion of the Atlantic squid, mackerel, butterfish trawl fishery. Special procedures and instructions for registration in these integrated fisheries are described in the preamble to the final LOF for 1998 (63 FR 5748, February 4, 1998).

How Do I Renew My Registration Under the MMPA?

The Regional Offices annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is your responsibility to ensure that registration or renewal forms are submitted to NMFS at least 30 days in advance of fishing. If you have not received a renewal packet by January 1 or are registering for the first time, request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

Any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must comply with 50 CFR 229.6 and report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard your vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. NMFS may develop and implement take reduction plans for any Category I or II fishery that interacts with a strategic stock. 50 CFR part 229, subpart C provides take reduction plan regulations.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fishers' reports. This list includes all species or stocks known to incur injury or mortality in a given fishery. However, not all species or stocks identified are necessarily independently responsible for a fishery's categorization. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to injure or kill marine mammals, as discussed in the final LOF for 1996.

Commercial fisheries in the Pacific Ocean (including Alaska) are included in Table 1; commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean are included in Table 2. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the Endangered Species Act.

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet	130	Steller sea lion, Eastern U.S.*+ Sperm whale, CA/OR/WA*+ Dall's porpoise, CA/OR/WA Pacific white sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA* Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico* Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern north Pacific Spotted seal, AK Pacific white-sided dolphin, North Pacific
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific* Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+
AK Kodiak salmon set gillnet	188	Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Northern fur seal, Eastern Pacific* Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S.*+ Harbor porpoise, Bering Sea
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA Pacific white-sided dolphin, North Pacific Harbor porpoise, GOA Dall's porpoise, AK Sea Otter, AK
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S.*+ Harbor seal, Southeast AK Pacific white-sided dolphin, North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific*+
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, central North Pacific*+
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA*
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	2	None documented
LONGLINE FISHERIES:		
California longline	45	California sea lion
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
Category III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.*+
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S.*+ Harbor seal, GOA
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA
CA herring purse seine	100	Bottlenose dolphin, CA coastal California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Western U.S.*+ Steller sea lion, Eastern U.S.*+
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES:		HI trolling, rod and reel
AK Bering Sea, Aleutian Islands groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	115	Northern elephant seal, CA breeding Killer whale, Eastern North Pacific resident Killer whale, transient Steller sea lion, Western U.S.*+ Pacific white-sided dolphin, North Pacific Dall's porpoise, AK Harbor seal, Bering Sea
AK Gulf of Alaska groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	876	Steller sea lion, Western U.S.*+ Harbor seal, Southeast AK Northern elephant seal, CA breeding
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.*+
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish).	731	None documented
CA shark/bonito longline/set line	10	None documented
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific*+ False killer whales, HI Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI Sperm whale, HI
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Bering Sea and Aleutian Islands Groundfish Trawl	166	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern pacific* Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Pacific white sided dolphin, North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Harbor seal, GOA Bearded seal, AK Ringed seal, AK Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, AK Pacific walrus, AK Humpback whale, Central North Pacific*+ Humpback whale, Western North Pacific*+
AK food/bait herring trawl	3	None documented
AK Gulf of Alaska groundfish trawl	198	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA Dall's porpoise, AK Northern elephant seal, CA breeding Fin whale, Northeast Pacific
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Gulf of Alaska finfish pot	257	Harbor seal, GOA Harbor seal, Bering Sea Sea otter, AK
AK crustacean pot	1,852	Harbor porpoise, Southeast AK
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal*+
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal*+
Hi inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal*+
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI ''other''	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

* Marine mammal stock is strategic.

+ stock is listed as threatened or endangered under the Endangered Species Act (ESA) or as depleted under the MMPA. List of Abbreviations Used in Table 1: AK, Alaska; CA , California; HI, Hawaii; GOA, Gulf of Alaska; OR, Oregon, and WA, Washington

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Category I		
GILLNET FISHERIES:		
Northeast sink gillnet	341	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA* Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA Common dolphin, WNA * Fin whale, WNA *+ Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LONGLINE FISHERIES:		

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline ..	<200	Humpback whale, WNA*+ Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF*
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Fin whale, WNA*+ Minke whale, Canadian east coast Harbor seal, WNA
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA*
Category II		
GILLNET FISHERIES:		
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal*+
Northeast anchored float gillnet	133	Humpback whale, WNA*+ White-sided dolphin, WNA* Harbor seal, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal* North Atlantic right whale, WNA*+ Atlantic spotted dolphin, WNA
U.S. Mid-Atlantic coastal gillnet	>655	Humpback whale, WNA*+ Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF* Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White sided dolphin, WNA Common dolphin, WNA
TRAWL FISHERIES:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal* West Indian manatee, FL
Northeast trap/pot	unknown	Fin whale, WNA
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal* Harbor porpoise, GME/BF*
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal*
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal*
POUND NET FISHERIES:		

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Virginia pound net	187	Bottlenose dolphin, WNA coastal*
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF
Delaware Bay inshore gillnet	60	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, and Estuarine*
Long Island Sound inshore gillnet	20	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
TRAWL FISHERIES:		
Calico scallops trawl	12	None documented
Crab trawl	400	None documented
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Gulf of Mexico mixed species trawl	20	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* White-sided dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal*+
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA*
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal*+ Humpback whale, WNA*+
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line ..	46	Harbor seal, WNA Gray seal, Northwest North Atlantic Humpback whale, WNA
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.	124	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, U.S. Mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern Gulf of Mexico coastal

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine* West Indian manatee, FL*+
Gulf of Mexico mixed species trap/pot	unknown	None documented
Mid-Atlantic mixed species trap/pot	unknown	Humpback whale, Gulf of Maine Minke whale, Canadian east coast Harbor porpoise, GM/BF
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA* Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/ pound net (except the North Carolina roe mullet stop net).	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented

* Marine mammal stock is strategic.

\+ Stock is listed as threatened or endangered under the ESA or as depleted under the MMPA. List of Abbreviations Used in Table 2 FL - Florida;GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

Dated: January 10, 2002.

Samuel W. Mckeen,

Acting Assistant Administrator, national Marine Fisheries Service.

[FR Doc. 02–1275 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Recognition of Multilateral Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is issuing an Order pursuant to section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act (''FDICIA''). Section 409 provides that the Commission (or one of several other authorized U.S. financial regulators) may determine that the supervision by a foreign financial regulator of a multilateral clearing organization for over-the-counter derivative instruments satisfies appropriate standards. The Commission is issuing this Order pursuant to section 409(b)(3) of FDICIA with respect to the Norwegian Banking, Insurance and Securities Commission and its supervision of NOS Clearing ASA, a Norwegian clearing house.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Issued Pursuant to Section 409 of the Federal Deposit Insurance Corporation Improvement Act Regarding the Multilateral Clearing Activities of NOS Clearing ASA in Connection With Transactions Entered Into on the International Maritime Exchange

On December 21, 2000, the President signed into law the Commodity Futures Modernization Act (''CFMA''), which substantially revised the Commodity Exchange Act (''CEA'') and other federal statutes, including FDICIA.[1] In particular, new section 409 of FDICIA provides that a clearing organization may operate a multilateral clearing organization (''MCO'') [2] for over-the-counter derivatives instruments (''OTC derivatives'') [3] if, among other alternatives, it is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commission, as applicable, has determined satisfies appropriate standards.

NOS Clearing ASA (''NOS'') has requested that the Commission determine that the oversight of its activities by the Norwegian Banking, Insurance and Securities Commission (''BISC'') satisfies the criteria for operating as an MCO set forth in section 409(b)(3) of FDICIA.[4] NOS intends to operate as an MCO with respect to OTC derivatives transactions to be executed on the International Maritime Exchange (''IMAREX'').[5] IMAREX operates an electronic trading facility for cash-settled futures contracts for the transportation of maritime freight.

In its request, NOS provided the Commission with a detailed description of the Norwegian regulatory program applicable to clearing organizations along with English translations of the relevant Norwegian statutes and regulations. NOS also provided the Commission with information comparing the regulatory requirements applicable to NOS and the regulatory requirements applicable to derivatives clearing organizations (''DCOs'') in the U.S., as set forth in Part 39 of the Commission's rules.[6] The Commission also evaluated the oversight activities undertaken by BISC in the context of the Principles and Objectives of Securities Regulation issued by the International Organization of Securities Commissions.

In support of NOS's request for relief, BISC confirmed that:

- BISC is authorized under the Norwegian Securities Trading Act and the Financial Supervision Act to supervise the clearing of financial instruments by persons located in Norway and has the ability to enforce compliance with the applicable laws, rules and regulations;[7]
- Clearing in Norway of financial derivatives, including commodity derivatives, as defined in the Securities Trading Act,[8] as well as financial forward contracts, options or swaps, may be conducted only by a clearing house with authorization from the Norwegian Ministry of Finance, and NOS Clearing ASA has received such authorization;
- Trading on IMAREX that is cleared by NOS is subject to regulatory oversight by BISC;
- BISC is a member of IOSCO, has adopted IOSCO's Principles and Objectives of Securities Regulation, and has established systems consistent with those Principles and Objectives; and
- BISC has the ability and undertakes to share with the Commodity Futures Trading Commission, upon request, information in its possession regarding U.S. persons using NOS as a clearing facility in connection with contracts listed for trading on IMAREX and to otherwise cooperate with the CFTC, subject to Norwegian law.[9]

Based upon the information and materials submitted by NOS, and the representations made by BISC, the Commission has determined that the supervision by BISC of an MCO for OTC derivatives operated by NOS satisfies the criteria set forth in section 409(b)(3) of FDICIA. The Commission has not, however, made any independent investigation or assessment of the Norwegian regulatory program applicable to NOS and its clearing activities. Any material changes or omissions in the facts and circumstances pursuant to which this Order is issued might require the Commission to reconsider this matter.

Issued in Washington, DC on January 11, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1205 Filed 1–16–02; 8:45 am]

BILLING CODE 6351–01–M

[1] *See* Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 408(1) of FDICIA defines MCO to mean ''a system utilized by more than [two] participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.''

[3] Section 408(2) of FDICIA defines over-the-counter derivative instrument to include any agreement, contract, or transaction exempt under section 2(h) of the CEA.

[4] Letter from Joshua M. Cohn, Esq., Allen & Overy, counsel to NOS, to Jean Webb, Secretary, Commodity Futures Trading Commission, dated December 21, 2001, with exhibits.

[5] IMAREX filed a notification with the Commission indicating its intent to operate an electronic trading facility in reliance on the exemption set forth in section 2(h)(3) of the CEA. In accordance with the notification requirement applicable to section 2(h)(3) electronic trading facilities, IMAREX identified NOS as the MCO to which IMAREX will transmit transaction data for the purpose of facilitating clearance and settlement of transactions. IMAREX commenced trading on November 2, 2001.

[6] *See* 66 FR 45604 (August 29, 2001). Part 39 of the Commission's rules stipulates the form and provides guidance for what should be included in applications for DCO registration. Part 39 also addresses ongoing compliance by DCOs with the core principles and other provisions of the CEA and rules thereunder. The guidance set forth in Part 39 merely illustrates the manner in which a clearing organization may meet a core principle and is not intended to be a mandatory checklist.

[7] *See* Act on Securities Trading, No. 79 of 19 June 1997 (''Securities Trading Act''); Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading of 1956 (''Financial Supervision Act''), paragraph 1 No. 13.

[8] *See* Securities Trading Act, section 1–2 paragraph 2 No. 8.

[9] *See* Act of 10 February 1967 Relating to Procedure in Cases Concerning the Public Administration; Act of 19 June 1970 no. 69 on Public Access to Documents in the Public Administration; Financial Supervision Act.

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting That ASTM F400–00, Safety Standard for Lighters, Be Adopted as a Consumer Product Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP 02–1) requesting that the Commission adopt a voluntary standard for cigarette lighters, ASTM F400–00, as a consumer product safety standard. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by March 18, 2002.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned ''Petition CP 02–1,

Petition on Lighters.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Lighter Association, Inc., the national trade association of the lighter industry, requesting that the Commission issue a rule adopting an ASTM voluntary standard as a consumer product safety standard. The Commission is docketing this request as a petition under the Consumer Product Safety Act. 15 U.S.C. 2056 and 2058. The petitioner states that the ASTM standard has the force and effect of law in Canada and Mexico. The petitioner asserts that unreasonable risks of injury are being created by failure to enforce the existing voluntary standard in the U.S. The petitioner states that although most disposable lighters imported to the U.S. are child-resistant, they do not meet minimum safety standards followed by the U.S. lighter industry in accordance with the ASTM standard.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: January 14, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–1278 Filed 1–16–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 18, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 11, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: Reinstatement.

Title: 2002 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 48,110; Burden Hours: 360,825.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is a biennial survey which collects data from schools and school districts on issues of interest to the Office for Civil Rights (OCR), U.S. Department of Education. The Compliance Report may be used by OCR in tracking civil rights issues and trends and may be used by OCR to aid in identifying sites for compliance reviews. The Compliance Report provides a database that can provide information about critical civil rights issues. It is also used to provide contextual information on the state of civil rights in the nation. The Compliance Report collects data related to Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin), Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex) and Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO__RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via her Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1204 Filed 1–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–16: Early Career Principal Investigator Program in Applied Mathematics, Computer Science and High-Performance Networks

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of its

Early Career Principal Investigator Program. The purpose of this program is to support research in applied mathematics, computer science and networks performed by exceptionally talented scientists and engineers early in their careers. The full text of Program Notice 02–16 is available via the Internet using the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

DATES: To permit timely consideration for award in Fiscal Year 2002, completed applications in response to this notice should be received by April 17, 2002, to be accepted for merit review and funding in Fiscal Year 2002.

ADDRESSES: Completed applications referencing Program Notice 02–16, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–16. This address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Walter M. Polansky, Office of Advanced Scientific Computing Research, SC–31, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–5800, e-mail: *walt.polansky@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Program Mission

The primary mission of the Office of Advanced Scientific Computing Research, which is carried out by the Mathematical, Information and Computational Sciences (MICS) Division, is to discover, develop and deploy the computational and networking tools that enable researchers in the scientific disciplines to analyze, model, simulate and predict complex physical, chemical, and biological phenomena important to DOE. To accomplish this mission, the MICS Division fosters and supports fundamental research in advanced scientific computing—applied mathematics, computer science and networking—and operates supercomputers, a high performance network and related facilities. Further descriptions of the base research portion of the MICS portfolio, which is the scope of this Notice is provided below:

Applied Mathematical Sciences Research

The objective of the applied mathematics component of the MICS research portfolio is to support research on the underlying mathematical understanding as well as the numerical algorithms needed to enable effective description and prediction of physical, chemical and biological systems such as fluids, materials, magnetized plasmas, or protein molecules. This includes, but is not limited to, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

In addition to the existing research topics described, MICS plans to invest in new areas of applied mathematics research to support DOE's mission. Such investments may include research in multiscale algorithms, the mathematics of feature identification in large datasets, asymptotically optimal algorithms for solving PDEs, fast multipole and related hybrid methods, and algorithms for handling complex systems with constraints. The MICS research portfolio in Applied Mathematics emphasizes investment in long-term research that will result in the next generation of computational tools for scientific discovery.

Computer Science Research

The objective of the computer science component of the MICS research portfolio is to support research that results in a comprehensive, scalable, and robust high performance software infrastructure that translates the promise and potential of high peak performance to real performance improvements in DOE scientific applications. This software infrastructure must address needs for: portability and interoperability of complex high performance scientific software packages; operating systems tools and support for the effective management of terascale and beyond systems; and effective tools for feature identification, data management and visualization of petabyte-scale scientific data sets. The Computer Science component encompasses a multi-discipline approach with activities in:

- Program development environments and tools—Component-based, fully integrated, terascale program development and runtime tools, which scale effectively and provide maximum performance, functionality and ease-of-use to developers and scientific end users.
- Operating system software and tools—Systems software that scales to tens of thousands of processors, supports high performance application-level communication and provides the highest levels of performance, fault tolerance, reliability, manageability, and ease of use for system administrators, tool developers and end users.
- Visualization and data management systems—Scalable, intuitive systems fully supportive of DOE application requirements for moving, storing, analyzing, querying, manipulating and visualizing multi-petabytes of scientific data and objects.
- Problem Solving Environments—Unified systems focused on the needs of specific scientific applications, which enable radically improved ease-of-use of complex systems software and tools by domain application scientists.

The MICS research portfolio in Computer Science emphasizes investment in long-term research that will result in the next generation of high performance tools for scientific discovery.

High-Performance Networks Research

Scientists working in teams on emerging complex energy problems involving the fundamental building blocks of life and matter are increasingly dependent on advanced networking to harness the capabilities of geographically distributed science facilities and data resources. Networks enable access to distributed terascale computing facilities and remote instrumentation, provide a medium for large-scale scientific collaboration between distributed teams, and make remote visualization possible. Unlike today's commodity Internet, optimized for low-speed commercial applications, networks used to support science infrastructures are high-speed and high-performance networks capable of delivering and sustaining multi-Gigabits/sec to high-end data intensive applications and of providing transparent security to end users.

These networks should be amenable to dynamically controllable end-to-end performance and differentiated services. Designers developing networks with these capabilities are faced with the challenge of:

- Developing high-performance transport protocols that deliver and sustain multi-gigabits/sec to scientific applications.
- Understanding and characterizing large traffic flows generated by single

sources and their impact on aggregate traffic in the core networks.

• Developing innovative formal techniques for estimating the robustness of proactive secure systems.

• Developing network-aware middleware services and toolkits that couple scientific applications to networks.

This announcement calls for proposals to address the fundamental issues of high-performance networks that support DOE's science mission. It focuses on four major topics: (1) High-throughput transport protocols, (2) traffic engineering and characterization, (3) cyber-security science and engineering, and (4) modeling of network-aware middleware and middleboxes (firewalls, NAT, proxies, etc.) deployed in networks to perform functions other than standard routing functions. Responses to this announcement must go beyond the development of tools and software to an emphasis on rigorous techniques and proofs for analyzing and validating the performance of the proposed approaches.

The focus of this announcement is on the fundamental issues of networking technologies that address these challenges.

Background: Early Career Principal Investigator Program

This is the first year of the Early Career Principal Investigator Program. A principal goal of this program is to identify exceptionally talented applied mathematicians, computer scientists and high-performance networks researchers early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is restricted to tenure-track regular academic faculty investigators, who are no more than five years beyond completing either a Ph.D., or equivalent, or a postdoctoral position, and are conducting research in applied mathematics, computer science, or high-performance networks. Applications should be submitted through a U.S. academic institution. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. However, no salary support will be provided for other faculty members or senior personnel.

It is anticipated that up to $4 million will be available for grant awards during Fiscal Year 2002, contingent upon the availability of appropriated funds. DOE expects to make up to forty (40) awards for exceptional applications in Fiscal Year 2002, to meet the needs of the program. Multiple-year funding of grant awards is expected, with funding provided on an annual basis subject to the availability of funds. The typical duration of these grants is three years, and they will not normally be renewed after the project period has been completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to DOE or other Federal funding agencies.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, which are listed in descending order of importance as codified at 10 CFR 605.10(d):

(1) Scientific and/or Technical Merit of the Project;

(2) Appropriateness of the Proposed Method or Approach;

(3) Competency of Applicant's Personnel and Adequacy of Proposed Resources;

(4) Reasonableness and Appropriateness of the Proposed Budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay attention to the responsiveness of the proposed research to the research challenges of the MICS base research programs in Applied Mathematics, Computer Science, and Network Research.

It is expected that the application will include involvement of graduate and/or undergraduate students in the proposed work.

Applicants are encouraged to collaborate with DOE National Laboratory researchers. The collaborations may include one, or more, extended visits to the laboratory by the applicant each year. Such an arrangement, if proposed, must be clearly explained in the grant application. Furthermore, a letter of support from the DOE National Laboratory collaborator(s) should be included with the application. A list of the DOE National Laboratories can be found at: *http://www.sc.doe.gov/sub/lab__map/index.htm.*

Grantees under the Early Career Principal Investigator Program may apply for access to high-performance computing and network resources at several National Laboratories. Such resources include, but are not limited to, the National Energy Research Scientific Computing (NERSC) Center: *http://www.sc.doe.gov/production/octr/mics/nersc/index.html;* the Advanced Computing Research Testbeds *http://www.sc.doe.gov/production/octr/mics/acrt/index.html;* the Energy Sciences Network *http://www.sc.doe.gov/production/octr/mics/esnet/index.html;* and the High-Performance Networking Research effort at the Oak Ridge National Laboratory; *http://www.csm.ornl.gov/net.*

The evaluation under item 2, Appropriateness of the Proposed Method or Approach, will consider the quality of the proposed plan, if any, for interacting with a DOE National Laboratory.

Please note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator and the submitting institution.

Submission Information

The Project Description should be 20 pages or less, exclusive of attachments. It must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, FAX and E-mail listed, and a short curriculum vita for the applicant.

To provide a consistent format for the submission, review, and solicitation of grant applications under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program, 10 CFR part 605. Access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 11, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–1227 Filed 1–16–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

North American Energy Working Group

AGENCY: Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a public workshop sponsored by the US

delegation (Department of Energy, Department of Commerce and Department of State) of the North American Energy Working Group (NAEWG) Electricity Regulatory Issues Group of Experts, and a request for comments.

DATES: The Department of Energy will host a public workshop to hear the views of U.S. stakeholders at the following date, time and location. Those planning to attend the workshop should register by calling 202 586–5125,

—February 13, 2002/9 a.m.—4 p.m./ Washington, DC.Department of Energy, 1000 Independence Ave., SW, Room 1E–245

Public Participation: The workshops are open to the public. Written comments can be submitted at the workshop or to the address below on or before February 13, 2002. E-mailed comments are preferable.

ADDRESSES: Send comments to: Debra.Smith@hq.doe.gov or Debra Smith, US DOE, Office of Policy and International Affairs, PI–32, 1000 Independence Avenue, SW Washington, DC 20585.

SUPPLEMENTARY INFORMATION: President Bush and Mexican President Fox, during President Bush's visit to Mexico on February 16, 2001, and President Bush and Canadian Premier Chretien, during a subsequent visit to Washington, DC, agreed to the development of a North American Energy Initiative. The Initiative is being developed by the NAEWG. In March 2001, Secretary Abraham, Minister of Natural Resources Canada Goodale, and Mexican Secretary of Energy Martens, met in Mexico City and agreed to the overarching principles and approach that would govern the NAEWG. President Bush's National Energy Policy, released in May 2001, directed the Secretaries of Energy, State, Commerce, to engage in a dialogue with Canada and Mexico through the NAEWG.

The broad goals of the NAEWG are to foster communication and cooperation among the governments and energy sectors of the three countries; enhance North American energy trade, development and interconnections; and promote regional integration and increased energy security for the people of North America. The NAEWG agreed to three areas of work to be carried out by three Groups of Experts. One such group, the Electricity Regulatory Issues Group of Experts, was formed to examine key regulatory issues associated with North American electricity markets, such as reliability, regional transmission organizations, and transmission access. Canada led the Electricity Experts Group which drafted a discussion paper and made recommendations to the NAEWG as to further actions. One recommendation accepted by the NAEWG suggested soliciting stakeholder input regarding the Experts Group discussion paper and other issues identified in this Supplementary Information section.

The purpose of the workshop is to solicit public comments on the issues raised in the Draft Discussion Paper with a view to better enable the Group of Experts to further its work and, in particular, to solicit public comments on the following question, drafted by the Group of Experts, to facilitate discussion:

What issues present challenges to Regional Transmission Organizations with international members? Issues that should be explored by stakeholders include, but are not limited to, organization, governance, rates, reliability standards, enforcement, and dispute resolution and transmission access.

Issued in Washington, DC, on January 11, 2002.

Vicky Bailey,

Assistant Secretary, Office of Policy and International Affairs.

[FR Doc. 02–1226 Filed 1–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (IC01–521–001 FERC–521)

January 11, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 9, 2001 (66 FR 51416). The Commission has noted this fact in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before February 19, 2002.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE, Washington, D.C. 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: *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–521 ''Headwaters Benefits''

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* OMB No. 1902–0087. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Section 10(f) of the Federal Power Act (FPA). The reporting requirements associated with FERC–521 are codified at 18 CFR Part 11 of the Commission's regulations.

FERC–521 implements the Commission's regulations for the determination of headwater benefits derived by downstream parties. The regulations set forth a formula for determining an equitable apportionment of the annual charges for interest, maintenance, and depreciation for a storage reservoir or other headwater improvement owned by the United States, a licensee, or pre-1920 permittee. Headwater benefits are the additional energy production possible at a downstream hydropower project. Under Section 10(f) of the Federal Power Act, an owner of a hydropower project is required to reimburse upstream headwater project owners for an

equitable part of the benefits it receives. This includes paying equitable portions of annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury.

The Commissions regulations provide for apportionment of the costs between the headwater project and down-stream 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. In determining energy gains, the size and efficiency of the turbines and their generators, and the load to be served will remain constant, while streamflow, reservoir storage, and head will vary depending on the operating conditions of the upstream reservoirs. Because head and streamflow determine the amount of energy produced at the hydropower project, a relationship that the generation is a function of the head and streamflow can be developed. Commission experience has shown that the relationship between generation and streamflow is an adequate tool for estimating generation in calculating energy gains. The information submitted enables the Commission to carry out its responsibilities in implementing the statutory provisions of the FPA.

Respondent Description: The respondent universe currently comprises on average, five entities subject to the Commission's jurisdiction.

6. *Estimated Burden:* 200 total burden hours, five respondents, one response annually, 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 200 hours ÷ 2,080 hours per year × $117,041 per year = $11,254, average cost per respondent = $2,250.

Statutory Authority: Section 10(f) of the Federal Power Act (16 U.S.C. 803).

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1229 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–143–000]

Kansas Gas Service, A Division of ONEOK, Inc., Complainant, v. Enbridge Pipelines (KPC), Respondent; Notice of Complaint

January 11, 2002.

Take notice that, on January 10, 2002, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2001), Kansas Gas Service, a Division of ONEOK, Inc. (Kansas Gas Service) tendered for filing a Complaint against Enbridge Pipelines (KPC).

Kansas Gas Service alleges that: (1) KPC is violating the terms of certain service agreements with Kansas Gas Service, which are part of KPC's approved FERC Gas tariff, by failing to charge lower rates under those service agreements, and (2) KPC's obligation to charge the lower rates was triggered by a separate written agreement, a July 9, 1997 Settlement Agreement, in which KPC, in consideration for Kansas Gas Service's payment of: (1) $7.5 million in August 1997, and (2) rates based on an annual cost of service of $31 million from August 1997 through July 2001, agreed to charge Kansas Gas Service, under the service agreements, a lower Zone 3 rate, effective August 1, 1998, and lower rates based on Williams Gas Pipelines Central's rates for comparable service, effective August 1, 2001.

Kansas Gas Service requests that the Commission determine that: (1) KPC's actions and inaction described in the Complaint constitute unjust and unreasonable rates and rate practices in violation of its FERC Gas tariff and Section 4 of the Natural Gas Act; and (2) KPC should take steps necessary to implement the Settlement Agreement rates as discounted or negotiated rates (and bill Kansas Gas Service accordingly) in order to comply with its tariff and give full effect to the ''motion rates,'' which KPC urged the Commission to approve in February 1998. Kansas Gas Service further requests that the Commission affirm that: (1) The Commission, in its April 2, 1999 Order in Docket No. CP96–152, 87 FERC ¶ 61,020, did not intend to interpret its various provisions, nor did it intend to void, or otherwise disturb the Agreement, or adjudicate the issue of whether the Settlement Agreement amended the then existing contracts between KPC and Kansas Gas Service; (2) Kansas Gas Service's claims for common law relief based on KPC's breach of contract, repudiation, fraud and breach of the duty of good faith and fair dealing, as pleaded in Kansas Gas Service's Petition in Kansas state court, belong properly in state court in accordance with Commission and court precedent; and (3) if the relief sought by Kansas Gas Service in its state court Petition were granted, such relief would neither violate the filed rate doctrine nor impinge upon the Commission's jurisdiction under the NGA.

Kansas Gas Service requests that the Commission complete action on the Complaint within 110 days, in accordance with the time standards established in Order No. 602 for a decision on the pleadings, III FERC Stats. and Regs. ¶ 31,071, on reh'g and clarification, 88 FERC ¶ 61,114 (1999).

In accordance with subsection (f) of Rule 206, answers, interventions and comments must be filed with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, on or before January 30, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202)208–2222 for assistance).

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1232 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–141–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Technical Conference

January 11, 2002.

On August 6, 2001, the Commission issued an order granting PG&E Gas Transmission, Northwest Corporation (PG&E Transmission) a certificate of public convenience and necessity authorizing a proposed pipeline expansion project. 96 FERC ¶ 61,194 (2001). The PG&E Transmission certificate was conditioned upon PG&E Transmission developing a fuel surcharge mechanism to ensure that expansion shippers, rather than existing shippers, be responsible for all fuel costs above those attributable to fuel absent the proposed expansion's additional 97,500 horsepower of compression. On October 26, 2001, on rehearing, the Commission reiterated its rationale for and affirmed the imposition of this fuel surcharge. 97 FERC ¶ 61,101 (2001).

On November 26, 2001, PG&E Transmission filed a motion requesting the Commission reconsider the fuel surcharge for expansion shippers. Alternatively, PG&E Transmission requests the Commission initiate a technical conference to discuss aspects of the fuel charge. PG&E Transmission states that without further guidance it is unable to develop an incremental

surcharge that both insulates existing shippers from fuel costs attributable to expansion compression, and at the same time, protects expansion shippers from fuel costs which do not reflect their actual share of such costs.

Take notice that a technical conference to discuss issues associated with the PG&E Transmission expansion project's fuel surcharge will be held on Tuesday, February 5, 2002, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Conference will continue through Wednesday, February 6, 2002, if necessary. Parties objecting to aspects of PG&E Transmission's filings should be prepared to discuss alternatives.

All interested parties and staff are permitted to attend.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1228 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030]

Portland General Electric Company Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Authorization for Continued Project Operation

January 11, 2002.

On December 16, 1999, Portland General Electric Company and on December 17, 1999, the Confederated Tribes of the Warm Springs Reservation of Oregon, joint licensees for the Pelton Round Butte Project No. 2030, filed competing applications for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. On June 29, 2001, they filed a joint application for a new or subsequent license. Project No. 2030 is located on the Deschutes River in Jefferson, Wasco, and Marion Counties, Oregon.

The license for Project No. 2030 was issued for a period ending December 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2030 is issued to Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon for a period effective January 1, 2002, through December 31, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or beforeJanuary 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon are authorized to continue operation of the Pelton Round Butte Project No. 2030 until such time as the Commission acts on their application for subsequent license.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1231 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2887–000, ER01–2887–001]

South Point Energy Center, LLC;Notice of Issuance of Order

January 11, 2002.

South Point Energy Center, LLC (South Point), an affiliate of Calpine Energy Services, L.P., submitted for filing a proposed tariff under which South Point will make sales of various electric services at market-based rates, as well as, reassign transmission capacity and resell Firm Transmission Rights. South Point also requested waiver of various Commission regulations. In particular, South Point requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by South Point.

On December 3, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by South Point 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).

Absent a request to be heard in opposition within this period, South Point is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of South Point, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of South Point's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may

also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1233 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–454–002, et al.]

West Penn Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 10, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. West Penn Power Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, dba Allegheny Power

[Docket No.ER02–454–002]

Take notice that on December 31, 2001, West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company, all doing business as Allegheny Power, filed an unexecuted Network Integrated Transmission Service Agreement and an unexecuted Network Operating Agreement for service to Allegheny Electric Cooperative, Inc. Allegheny Power requests an effective date of January 1, 2002.

Comment Date: January 22, 2002.

2. Oildale Energy LLC

[Docket No. EG02–44–000]

Take notice that on December 6, 2001, Oildale Energy LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generators Status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Comment Date: January 17, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. TXU Tradinghouse Company LP

[Docket No. EG02–49–000]

Take notice that on January 7, 2002, TXU Tradinghouse Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TXU DeCordova Company LP

[Docket No. EG02–50–000]

Take notice that on January 7, 2002, TXU DeCordova Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. TXU Mountain Creek Company LP

[Docket No. EG02–51–000]

Take notice that on January 7, 2002, TXU Mountain Creek Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. TXU Big Brown Company LP

[Docket No. EG02–52–000]

Take notice that on January 7, 2002, TXU Big Brown Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. TXU Handley Company LP

[Docket No. EG02–53–000]

Take notice that on January 7, 2002, TXU Handley Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. TXU Generation LP

[Docket No. EG02–54–000]

Take notice that on January 7, 2002, TXU Generation Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Prairie Gen L.P.

[Docket No. EG02–64–000]

Take notice that on January 7, 2002, Prairie Gen L.P., 80 South 8th Street, Suite 4040, Minneapolis, Minnesota 55402, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant is a limited partnership organized under the laws of the state of Minnesota.

The Facility consists of a gas-fired, simple-cycle turbine project located in St. Paul, Ramsey County, Minnesota (the Facility). The Facility will have a maximum net electrical capacity of 49MW. The point of delivery is the point at which the Facility interconnects with Xcel Energy's Highbridge substation.

The applicant will be engaged directly and exclusively in the business of owning an eligible facility and selling the electric energy from the Facility at wholesale.

Copies of the application have been served upon the Minnesota Public Utilities Commission, the ''Affected State Commission,'' and the Securities and Exchange Commission.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. American Electric Power Service Corporation

[Docket No. ER02–141–001]

Take notice that on January 7, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an Amendment to Filing in Docket ER02–141–000 to comply with FERC

Order 614. AEPSC respectfully requests waiver of notice to permit ER02–141–000 to be made effective on or prior to September 20, 2001, as initially requested on October 15, 2001. AEPSC also respectively requests that the Commission accepts its request to terminate those Service Agreements identified in Attachment B and the assignments identified in Attachment C to be effective on, or prior to September 20, 2001, as initially requested in its filing on October 15, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 28, 2002.

11. West Penn Power Company (dba Allegheny Power)

[Docket No. ER02–288–001]

Take notice that on January 7, 2002, West Penn Power Company, dba Allegheny Power, filed with the Federal Energy Regulatory Commission (Commission) an Addendum to its Electric Service Agreement with Allegheny Electric Cooperative. An effective date for the Addendum is December 19, 2001 in accordance with the Commission's Order issued in Docket No. ER02–123–000, 97 FERC 61,274.

Copies of the filing have been provided to all parties of record.

Comment Date: January 28, 2002.

12. San Diego Gas & Electric Company

[Docket No. ER02–613–000]

Take notice that on December 26, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing its forecast of the changes it will pay under its Reliability Must Run (RMR) contracts with the California Independent System operator (ISO) for the year 2002, and proposed allocation for recovering those costs in rates.

SDG&E states that, under Section 5.2.8 of the ISO tariff, it is the Responsible Utility (RU) for payments to operators of RMR units within its service territory. SDG&E recovers its costs for those payments through a dedicated rate component, and requests an effective date of January 1, 2002 for the proposed rate.

SDG&E states that copies of the filing have been served on the California Independent System Operator and on the California Public Utilities Commission.

Comment Date: January 22, 2002.

13. Consolidated Water Power Company

[Docket No. ER02–695–000]

Take notice that Consolidated Water Power Company (CWP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an umbrella service agreement with Wisconsin Public Service Corporation (WPSC) under CWP's market-based rates tariff, FERC Electric Rate Schedule No. 1. CWP states that it has served the Customer with a copy of this filing.

CWP requests that the umbrella service agreement be made effective on June 11, 2001.

Comment Date: January 24, 2002.

14. American Transmission Company LLC

[Docket No. ER02–702–000]

Take notice that on January 7, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Service Agreement No. 90 with additions to the Generation-Transmission Interconnection Agreement between Wisconsin Power and Light Company and ATCLLC.

ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 28, 2002.

15. Puget Sound Energy, Inc.

[Docket No. ER02–703–000]

Take notice that on January 7, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Long-Term Firm Point-To-Point Transmission Service with TransAlta Energy Marketing (US) Inc. (TransAlta), as Transmission Customer. A copy of the filing was served upon TransAlta.

Comment Date: January 28, 2002.

16. Entergy Services, Inc.

[Docket No. ER02–704–000]

Take notice that on January 7, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and City Water and Light Plant of the City of Jonesboro, Arkansas.

Comment Date: January 28, 2002.

17. Michigan Electric Transmission Company

[Docket No. ER02–705–000]

Take notice that on January 7, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with each of the following: Detroit Edison Merchant Operation; Exelon Generation Company, LLC; FirstEnergy Solutions Corp.; and Virginia Electric & Power Company (jointly, Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 127 through 134 under that tariff.

Michigan Transco is requesting an effective date of January 1, 2002 for the Agreements. Copies of all filed agreements were served upon the Michigan Public Service Commission and ITC. And each Customer was served with its own Service Agreements.

Comment Date: January 28, 2002.

18. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–706–000]

Take notice that on January 7, 2002, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements with NRG Power Marketing Inc., establishing NRG Power Marketing Inc., as a Short-Term Firm and Non-Firm Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., Open Access Transmission Tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of November 30, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment Date: January 28, 2002.

19. Cinergy Services, Inc.

[Docket No. ER02–707–000]

Take notice that on January 7, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Network Service Agreement, Network Operating Agreement, and Specifications for Network Integration Service under Cinergy's Open Access Transmission Tariff (OATT) entered into between Cinergy and Union Light, Heat and Power Company (Union). An application for Network Integration Service for Union has been included as an Exhibit to the Service Agreement under OATT. Copies of the filing were served upon Union.

Cinergy and Union are requesting an effective date of January 1, 2002.

Comment Date: January 28, 2002.

20. Central Illinois Light Company

[Docket No. ER02–708–000]

Take notice that on January 7, 2002, Central Illinois Light Company (CILCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a new tariff, the Ancillary Service Tariff, and revised transmission rates to be effective through Attachment O of the Midwest Independent System Operator's Open Access Transmission Tariff. Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

CILCO requested an effective date of February 1, 2002.

Comment Date: January 28, 2002.

21. Generator Coalition, consisting of: Calcasieu Power, LLC; Calpine Central, L.P.; Exelon Generation Company, LLC; Mirant Americas Energy, Marketing, LP, Perryville Energy Partners, LLC, and Wrightsville Power Facility, LLC; Mississippi Delta Energy Agency, the Clarksdale Public Utilities, Commission, and the Public Service Commission of Yazoo City; Occidental Chemical Corporation, PLC II, LLC; Reliant Energy Power Generation, Inc.; TECO Power Services Corp.; Tenaska Frontier Partners, Ltd.; Williams Energy Marketing & Trading Company, Complainants, v. Entergy Services, Inc., Respondent

[Docket No. EL02–46–000]

Take notice that on January 8, 2002, The Generator Coalition, comprised of Calcasieu Power, LLC, Calpine Central, L.P., Exelon Generation Company, LLC, Mirant Americas Energy Marketing LP, Perryville Energy Partners, LLC, Wrightsville Power Facility, LLC, Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, Occidental Chemical Corporation, PLC II, LLC, Reliant Energy Power Generation, Inc., TECO Power Services Corp., Tenaska Frontier Partners, Ltd., and Williams Energy Marketing & Trading Company, submitted a complaint against Entergy Services, Inc. (''Entergy'') requesting fast track processing by the Commission.

The Generator Coalition alleges that Entergy is charging independent generating facility customers unjust, unreasonable, and unduly discriminatory rates for energy imbalances resulting from generation under deliveries by overstating its incremental cost for supplying such balancing energy in rates under its Generator Imbalance Agreement (''GIA''). The Generator Coalition also alleges that Entergy refuses to credit non-offending generators with the penalties it collects under the GIA. Entergy is also preventing unaffiliated generators from self-supplying imbalance service or obtaining imbalance service from third parties, and thus forces generators into paying these inflated ''incremental costs.'' Further, The Generator Coalition contends that Entergy is violating the Standards of Conduct by allowing its wholesale merchant arm, the entity that competes with independent generators in the Entergy control area, to control numerous transmission-related functions under the guise of implementing Entergy's generator imbalance agreements. Entergy has also refused to include an appropriate RTO clause in its GIA, making clear that generators may, at their discretion, properly obtain generator imbalance services from an RTO-wide generator imbalance market that may be implemented by the Commission in the future. Lastly, the Generator Coalition contends that Entergy has failed to explain or justify the criteria it utilizes when it declares a ''Low-Load Event'' under the GIA.

Comment Date: January 28, 2002. Answers to the complaint shall also be filed on or before January 28, 2002.

22. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–713–000]

Take notice that on January 7, 2002, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement Nos. 369 and 370 to add Service Agreements with Old Dominion Electric Cooperative to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the Service Agreements is January 1, 2002.

Copies of the filing have been provided to the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment Date: January 28, 2002.

23. Wisconsin Public Service Corporation

[Docket No. ER02–714–000]

Take notice that on January 7, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to its February 22, 1993 Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service Requests waiver of the Commission's regulations to permit the amendment to become effective on January 1, 2002.

Comment Date: January 28, 2002.

24. Northern Indiana Public Service Company

[Docket No. ER02–715–000]

Take notice that on January 7, 2002, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with American Electric Power Service Corporation (AEP). Northern Indiana has requested an effective date of January 7, 2002.

Copies of this filing have been sent to AEP, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: January 28, 2002.

25. Ameren Energy, Inc. on Behalf of Union Electric Company, D/b/a Ameren UE and Ameren Energy Generating Company

[Docket No. ER02–716–000]

Take notice that on January 7, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a Ameren UE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the FPA and the market rate authority granted to the Ameren Parties, submitted for filing to the Federal Energy Regulatory Commission (Commission) umbrealla power sales service agreements under the Ameren parties' market rate authorizations entered into with Mirant Americas Energy Marketing, LP.

Ameren Energy seeks Commission acceptance of these service agreements effective November 30, 2001.

Comment Date: January 28, 2002.

26. Southwest Power Pool, Inc.

[Docket No. ER02–709–000]

Take notice that on January 7, 2002, Southwest Power Pool, Inc. (SPP) tendered for filing an unexecuted service agreement with Power Resources Group, Inc. (PRG) for long-term firm point-to-point transmission service under the SPP Open Access Transmission Tariff. This agreement was filed at the direction of PRG.

SPP request an effective date of October 1, 2004 for this service

agreement. A copy of this filing was served on representatives of PRG and other affected parties.

Comment Date: January 28, 2002.

27. Duke Energy Corporation

[Docket No. ER02–710–000]

Take notice that on January 7, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed a revised service agreement (First Revised Service Agreement No. 170) with Rockingham Power L.L.C. in this proceeding.

Comment Date: January 28, 2002.

28. American Electric Power Service Corporation

[Docket No. ER02–711–000]

Take notice that on January 7, 2002, American Electric Power Service Corporation submitted for filing an unexecuted interconnection and Parallel Operation Agreement between Southwestern Electric Power Company (SWEPCO), Entergy Power Ventures, L.P., Northeast Texas Electric Cooperative, Inc. and EN Services, L.P. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

SWEPCO requests an effective date of March 5, 2002. Copies of SWEPCO's filing have been served upon Entergy Power Ventures, LP, Northeast Texas Electric Cooperative, Inc., NE Services, L.P. and the Public Utility Commission of Texas.

Comment Date: January 28, 2002.

29. PJM Interconnection, L.L.C.

[Docket No. ER02–712–000]

Take notice that on January 7, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the currently effective PJM Open Access Transmission Tariff (PJM Tariff) and the PJM Tariff that will implement PJM West as well as the currently effective Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) and the Operating Agreement that will implement PJM West to accommodate providers of last resort under the New Jersey Basic Generation Service (BGS) program and other similar state programs for the provision of provider of last resort services.

Copies of this filing were served upon all PJM members, Allegheny Power, and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: January 28, 2002.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1207 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket Nos. CP01–22–002 and CP01–23–000; CA Clearinghouse No. 2001011020; BLM Reference No. CACA–42662]

North Baja Pipeline, LLC; Notice of Availability/Completion of the Final Environmental Impact Statement/Report and Proposed Land Use Plan Amendment for the North Baja Pipeline Project

January 3, 2002.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission), the California State Lands Commission (CSLC), and the Bureau of Land Management (BLM) have prepared a final environmental impact statement/report (EIS/EIR) and proposed land use plan amendment (plan amendment) to address natural gas pipeline facilities proposed by North Baja Pipeline, LLC (NBP).

The final EIS/EIR and proposed plan amendment was prepared as required by the National Environmental Policy Act (NEPA), the California Environmental Quality Act, and the Federal Land Management and Policy Act. Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures that would reduce any significant adverse impacts to the maximum extent possible and, where feasible, to a less than significant level. The FERC, the CSLC, and the BLM staffs conclude that if the project is constructed as modified and in accordance with NBP's proposed mitigation and our recommendations it would be an environmentally acceptable action.

The BLM is participating as a cooperating agency in the preparation of the final EIS/EIR and proposed plan amendment because the project would cross Federal land under the jurisdiction of the Palm Springs, El Centro, and Yuma Field Offices. The Bureau of Reclamation (BOR) is also a cooperating agency in the preparation of the document because lands administered by the BOR would be crossed by the project. The final EIS/EIR and proposed plan amendment will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on lands managed by the BLM and the BOR. The document will also be used by the BLM to consider amending the California Desert Conservation Area (CDCA) Plan (as amended), which would be necessary for pipeline construction outside of designated utility corridors, as well as amending the Yuma District Resource Management Plan (Yuma District Plan), which would be necessary for pipeline construction across the Milpitas Wash Special Management Area. The BLM proposes to adopt the final EIS/EIR and proposed plan amendment per Title 40 Code of Federal Regulations (CFR) part 1506.3 to meet its responsibilities under NEPA and its planning regulations per Title 43 CFR part 1610. The BLM Arizona and California State Directors have approved the proposed plan amendments for their respective planning areas. The BLM will present separate Records of Decision for the right-of-way grant and the plan amendment for the North Baja Pipeline Project after the issuance of the final EIS/EIR and proposed plan amendment.

The final EIS/EIR and proposed plan amendment addresses the potential environmental effects of the construction and operation of the following facilities in Arizona and California:

• About 79.9 miles of 36-inch-diameter (11.8 miles) and 30-inch-diameter (68.1 miles) natural gas pipeline (North Baja pipeline) extending from an interconnection with El Paso Natural Gas Company (El Paso) in La Paz County, Arizona, through Riverside and Imperial Counties, California to the international border between the United States and Mexico;

• A new compressor station (Ehrenberg Compressor Station) consisting of three 7,200-horsepower (hp) gas-fired centrifugal compressor units for a total of 21,600 hp (with one additional 7,200-hp spare unit) at the El Paso interconnect in La Paz County, Arizona;

• Two meter stations, one at the interconnect with El Paso at the Ehrenberg Compressor Station site (Ehrenberg Meter Station) and one in Imperial County, California near the interconnect at the international border (Ogilby Meter Station);

• A pig launcher at the Ehrenberg Compressor Station site; a pig launcher and receiver at the Ogilby Meter Station site; and a separate pig launcher and receiver facility (Rannells Trap) in Riverside County, California; and

• Seven mainline valves, one each at the Ehrenberg Compressor Station site, Rannells Trap, and Ogilby Meter Station site, and another four spaced as required along the proposed pipeline route.

The final EIS/EIR and proposed plan amendment has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Regulatory Energy Commission
Public Reference and Files Maintenance Branch
888 First Street, NE., Room 2A
Washington, DC 20426
(202) 208–1371
and
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825–8202
(916) 574–1889

The final EIS/EIR and proposed plan amendment has been mailed to appropriate Federal, state, and local agencies; elected officials; Native American groups; newspapers; public libraries; intervenors to the FERC's proceeding; and other interested parties who provided scoping comments, commented on the draft EIS/EIR and draft plan amendment, or wrote to the FERC, the CSLC, or the BLM asking to receive a copy of the document. A formal notice indicating that the final EIS/EIR and proposed plan amendment is available was sent to the remaining parties on the environmental mailing list.

A limited number of copies of the final EIS/EIR and proposed plan amendment are available from the FERC's Public Reference and Files Maintenance Branch identified above. Copies may also be obtained from Goodyear K. Walker, CSLC, at the address above. The final EIS/EIR and proposed plan amendment is also available for viewing on the CSLC Web site at the Internet address below.

Additional information about the proposed project is available from Goodyear K. Walker at the CSLC at (916) 574–1893, or on the CSLC Web site at *http://www.slc.ca.gov,* or from the FERC's Office of External Affairs at (202) 208–1088, or on the FERC Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call (202) 208–2222 for assistance). Access to the text of formal documents issued by the Commission with regard to these dockets, such as orders and notices, is also available on the FERC Web site using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Information concerning the proposed CDCA and Yuma District Plan amendments and the involvement of the BLM in the EIS/EIR and plan amendment process is available from Lynda Kastoll, BLM Project Manager, at (760) 337–4421.

The CSLC is expected to certify the final EIS/EIR and act on NBP's application at a regularly scheduled meeting in early 2002. Interested parties will be notified of the date, time, and place of the meeting. If you have any questions regarding the CSLC hearing, or wish to testify, please contact Goodyear K. Walker at the number above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–462 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amended Application for the St. Anthony Falls Project and Extension of Time for Comments, Recommendations, Terms and Conditions, and Prescriptions

January 11, 2002.

Take notice that the following hydroelectric application has been amended by the applicant as identified in the project description below. By notice dated November 11, 2001, the Commission requested Comments, Recommendations, Terms and Conditions, and Prescriptions, due within 60 days of the notice. In order to give parties time to comment on the revised Application, the due date for Comments, Recommendations, Terms and Conditions, and Prescriptions has been extended to 60 days from the date of this notice. Changes proposed by the Applicant include removal of the Lower Development from the Project, revision of proposal for facilities for public access and usage at the new Main Street and Hennepin Island Dams, a new park on Upper Hennepin Island, and a combination of canoe access site, shoreline fishing structure, and observation deck at the Lower Development. The Applicant no longer proposes moving the Pillsbury Substation, diverting flows for a waterfall in the east Bluff area, donation of Hennepin Islands or direct funding to the Minnesota Park and Recreation Board.

a. *Type of Application:* New Major License

b. *Project No.:* P–2056–016

c. *Date filed:* Application filed December 21, 1998; Application amended October 11, 2001, and November 2, 2001.

d. *Applicant:* Northern States Power Company (NSP)

e. *Name of Project:* St. Anthony Falls Project

f. *Location:* On the Mississippi River, near Minneapolis and St. Paul, Hennepin County, Minnesota. There are no federal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mark H. Holmberg, P.E., Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401; (612) 330–6568

i. *FERC Contact:* Any questions on this notice should be addressed to Monte TerHaar, E-mail: *monte.terhaar@ferc.fed.us*, or telephone (202) 219–2768.

j. *Deadline Date:* March 18, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments, protests and interventions 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 under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission

to serve a copy of that document on each person whose name appears on 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.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a draft and a final Environmental Assessment.

l. *Description of the Project:* The St. Anthony Falls Project currently consists of two developments on the Mississippi River, the Upper Development and the Lower Development.

Upper Main Dam Development

The Upper Main Dam development of the project consists of the Horseshoe dam spillway, main spillway, roll dams, Hennepin Island earthen dam, two abandoned wasteways, the Hennepin Island hydro entrance canal and powerhouse, the Main Street/Hennepin Island dam, and the Main Street plant. The U.S. Army Corps of Engineers (COE) Upper St. Anthony Lock is on the right (south) bank of the river adjacent to the Upper Dam development. The headrace canal for the Crown Mill Hydroelectric Project (FERC No. 11175) is being developed just upstream of the lock.

NSP has completed construction of a replacement, multiple-circular-cell sheetpile dam to replace the existing Main Street/GE Dam and adjacent intake structure. A similar cellular dam structure has been constructed at the Wasteway No. 2 Intake Gates.

Lower Development

The Lower Development consists of an upstream closure dam, a downstream closure dam, and left retaining wall which encompass approximately 3.53 acres of land owned by NSP. There are currently no hydropower facilities at the Lower Development. In November of 1987, the St. Anthony Falls Lower Dam Hydro Plant experienced an undermining failure. On August 19, 1988, the Commission issued an order authorizing complete demolition and removal of the lower facility. Demolition of the powerhouse was completed by the end of 1988. As of August 2001, all necessary remedial work necessary to ensure dam safety at the Lower Development has been completed to the Commission's satisfaction. In their application, and by a letter dated November 2, 2001, NSP has proposed to remove the lower development from the project.

NSP had proposed a number of recreational enhancements in its original application for license in 1998. These enhancement measures were developed in consultation with the Minnesota Department of Natural Resources, Minnesota Parks and Recreation Board, the City of Minneapolis, and the Mississippi Whitewater Development Corporation. However, NSP states that the consultative process has broken down without an agreement and hence, the NSP has revised its recreational/aesthetic mitigation and enhancement proposal as described below:

(1) Mitigation Measures at the Upper Development

- A straight-line cantilever along the face of the new dams providing an overhang to partially shade or cover the facade of the dam;
- Smooth, broom-swept concrete surface covering for the upstream edge (bridged sections) of the dam excluding the bicycle path;
- Surface covering of dam (excluding concrete slabs and bicycle path) with finely crushed limestone aggregate of compatible color with the concrete slabs;
- Earth fill between the steel sheet pile cells and the old (Main Street) powerhouse limited to reach but not cover the brick of the historic powerhouse; and
- Surface covering for the swale upstream of the powerhouse with finely crushed limestone aggregate of compatible color with the concrete slabs; planting swale areas upstream of the old GE Dam and between the new Hennepin Island Dam and the old wasteway headworks with native vegetation.

NSP has completed the last two items and expects to complete the others shortly.

(2) Other Measures at the Upper Development

- An eight-foot bicycle path of bituminous composition on the powerhouse side of the concrete slabs along the upstream face of the dam;
- A switchback ramp between the old powerhouse and the Main Street to provide bicycle/barrier-free access to the new dam; steps leading straight down the river bank on to the new dam from Main Street;
- Observation areas and benches at four locations on the dams;
- An overlook area on the new dam for interpretive displays;
- An interpretive sign for the Main Street Substation at the trashrack observation area;
- Railings, lights, and interpretive signs to generally match those on the Stone Arch Bridge.
- A pedestrian bridge linking the Main Street Dam to Hennepin Island; and
- New walkways, interpretive nodes, visual overlooks, information shelter, natural areas, landscaping, and other improvements on upper Hennepin Island.

(3) Mitigation Measures at the Lower Development

NSP proposes to provide new facilities for canoe access, shoreline fishing, and public observation at the restored Lower Dam site.

(4) Changes in NSP's Proposed Mitigation Measures

NSP does not propose to move the Pillsbury Substation or diverting water to re-create a waterfall in the East Bluff area from its current location. NSP's revised recreation mitigation plan does not include any funding to the Minnesota Park and Recreation Board for operation and maintenance of the East Bank Park Development, nor donation of Hennepin Island lands to the Minnesota Park and Recreation Board. Instead, NSP proposes to independently develop, operate, and maintain park facilities on the upper part of Hennepin Island and the former Lower Dam site.

Details of the enhancement and mitigation measures were filed with the Commission on October 11, 2001 and are available electronically for review at the Commission's website (www.ferc.gov). Copies may also be requested directly from NSP. The Commission will discuss this alternative in its Environmental Assessment.

m. *Locations of the application:* 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.

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.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see

Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

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.

All filings must (1) bear in all capital letters the title ''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 submitting the filing; 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. An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1230 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 EX01–3–000]

Electricity Market Design & Structure; Notice of Meetings and Conferences on Electric Market Matters

January 11, 2002.

As announced in a recent Commission Meeting, the Federal Energy Regulatory Commission (FERC) is planning a series of discussions on various electric market design issues.

Our Commissioners are especially interested in the views of state Commissioners and in discussing some of these issues with them. The National Association of Regulatory Utility Commissioners (NARUC) has scheduled its winter meetings for February 10th—13th, 2002. NARUC is allowing FERC to have time during its winter meetings to hold two sessions on issues of mutual concern. NARUC is holding its meetings at the Hyatt Regency Washington Hotel, 400 New Jersey Avenue, NW., Washington DC 20001.

The following two sessions on FERC-related issues are in the Hyatt's Regency A Room:

Date: Sunday, February 10, 2002.

Time: 10 a.m.—12 p.m.

Topic: Whether all wholesale and retail transmission services should be under the same rates, terms and conditions.

Date: Monday, February 11, 2002.

Time: 4 p.m.—5:45 p.m.

Topic: Whether the Federal Energy Regulatory Commission should require RTOs to administer a regional, long-term generation capacity obligation, and if so, the form and mechanism for that obligation.

These two sessions are open to everyone. There will be no charge for those attending these two sessions only.

The Commission is also co-sponsoring a conference with the U.S. Department of Energy (DOE) to raise awareness about the potential role of demand response programs in the evolution of efficient electric market operations. A series of panel discussions will address related topics. Some conference details are as follows:

Date: Thursday, February 14, 2002.

Time: 7:30 a.m. to 8:30 a.m.—Registration; Adjournment at 5:00 p.m.

Location: Washington DC Convention Center, 900 Ninth Street NW., Washington, DC 20001.

This conference is open to everyone, but registration and a fee ($75 until January 31st, and $125 thereafter) are required.

More information on the topics and presenters may be issued in a later notice.

The three sessions will be transcribed. The transcripts will be included as part of the record for the referenced proceedings and will be posted in the Commission's Records and Information Management System (RIMS) within 10 days of the events. More prompt copies of transcripts can be obtained sooner for a fee from the court reporter designated to handle the three sessions.

More information on the first two events, and procedures to register for the entire NARUC winter meetings (including information on registration, fees, and lodging) is at the following Web site: *www.naruc.org/Meetings/winter/2002/naruc__winter.pdf*.

Registration and lodging information on the Demand Response Conference is at the following Web site: *www.ferc.gov/Electric/RTO/Mrkt-Strct-comments/rm01–12-comments.htm*.

Additional questions about the program, not answered by information at these Web sites, should be directed to: Norma McOmber, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–1015, *norma.mcomber@ferc.fed.us*.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1234 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Request for Comments on Potential Changes to the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures

January 11, 2002.

The Office of Energy Projects (OEP) staff is in the process of reviewing the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures referred to at 18 CFR 157.206(b)(3)(iv) of the Commission's regulations to see if there are appropriate modifications to be made at this time. As promised in Order 609, the staff is asking for public input on potential modifications.

This process of obtaining public input began at the Post-Certificate Environmental Compliance Seminar conducted in Houston on December 12 and 13, 2001. Additional input will be

solicited at the subsequent sessions of this training course identified in our November 15, 2001 notice. However, in order to obtain the broadest public participation in this process, we are asking for comment outside of these training sessions as well.

We have posted a table on our Web site showing the changes that were identified for discussion at the December 12th session and we request your comments on whether each of the changes are appropriate, with discussion of your rationale. In addition, please describe any additional changes you believe might be appropriate. The table is at *http://www.ferc.gov/gas/pptable.pdf.*

To provide comments you may log on to the FERC Web site at *www.ferc.gov,* and follow the links to ''Gas Industry Seminars,'' ''Online Registration,'' and ''Participant Recommendations'' or go directly to *www.ferc-envtraining.com* and select ''Participant Recommendations.''

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1235 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–4]

Request for Proposals for an Improved Atmospheric Nitrogen Deposition Data Set for the Chesapeake Bay Program

The Environmental Protection Agency (EPA) is issuing a request for proposals (RFP) for organizations interested in providing the Chesapeake Bay Program (CBP) with improved estimates of daily wet nitrogen deposition loadings to the Chesapeake Bay and its watershed. Proposals must be postmarked no later than March 1, 2002. Funding will be provided to an organization under the authority of the Clean Water Act, Section 117.

The RFP is available at the following Web site: *http://www.gov/r3chespk/*. You may also request a copy by calling Julie Thomas at 410–267–9848 or by e-mail at *thomas.julie@epa.gov*. Proposals must be postmarked no later than March 1, 2002. Any late, incomplete or fax proposals will not be considered.

Diana Esher,

Acting Director, Chesapeake Bay Program Office.

[FR Doc. 02–1242 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–5]

Clear Air Act Advisory Committee Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Wednesday, March 6, 2002, from approximately 8:30 a.m. to 4 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis. Three of the CAAAC's four Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NRS/Toxics Integration Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Tuesday, March 5, 2002 from approximately 10 a.m. to 5 p.m. at the Renaissance Mayflower Hotel, the same location as the full Committee. The Energy, Clean Air and Climate Change Subcommittee will not meet at this time. The Linking Energy, Land Use, and Transportation, and Air Quality Concerns Subcommittee is scheduled to meet from 10 a.m. to 12 noon; the Economic Incentives and Regulatory Innovations Subcommittee is scheduled to meet from 12:30 p.m. to 3 p.m.; and the Permits/NSR/Toxics Subcommittee is scheduled to meet from 3 p.m. to 4 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION Concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; and (2) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *www.epa.gov/oar/caaac/.*

Dated: January 9, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–1241 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–7]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. The PM Centers Interim Review Panel of the Executive Committee (PM Centers Panel)—February 11–12, 2002

The PM Centers Interim Review Panel of the Executive Committee of the US EPA Science Advisory Board (SAB), will meet on Monday and Tuesday, February 11–12, 2002 in the EPA Science Advisory Board Conference Room (room 6013), USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin by 8:30 am on February 11 and adjourn no later than 5 pm on February 12, 2002.

Purpose of the Meeting—In 1995 EPA introduced a research grants program (Science To Achieve Results (STAR)) focused on targeted, investigator-initiated, peer-review-competed grants. Subsequent experience suggested that there could be substantial benefits gained by investing some resources in larger, more coordinated grants to ''research centers'' that would focus the combined efforts of a group of researchers on closely related problems. The Particulate Matter (PM) Centers were funded in 1999 for a five-year period and thus, are in the middle of their grants. Although two and a half years of the PM Centers program is not sufficient time to evaluate fully its merits, the Agency is seeking an interim assessment of the PM centers concept that will help the Agency as it formulates its future research funding plans. It is for this purpose of providing interim advice on the effectiveness of the PM centers concept as a research mechanism that the SAB Panel is being convened.

Charge to the Subcommittee—The Panel has been asked to address the following Charge questions:

Overall Objective

To assess the value-added nature of a PM Centers research program.

Overall Charge Question

Based on progress to date, should a PM Centers research program be undertaken beyond 2004? In which areas, to what extent, and for what reasons is a PM Centers program beneficial? Identify specific areas in which the program could be improved.

Specific Charge Questions

(a) Recognizing the PM Centers program is barely at its halfway point, what important research findings (or promising investigations) have been made that would not have occurred otherwise? What unique aspect(s) of a Centers program enabled such actions to be taken?

(b) To what extent has the direction or focus of research shifted as a result of the multi-disciplinary interactions within the Center (i.e., findings in one department influence researchers in another to change direction or emphasis)? To what extent have changes in research direction or emphasis been influenced by Science Advisory Committee reviews, interactions with other PM Centers, or interactions with the broader PM research community? Which factors have been most influential?

(c) How successful are Centers in communicating their findings to the public and specifically, to those who directly use their research? Is it clear that the work has been supported by the PM Centers program?

(d) How, if at all, does a PM research centers program facilitate agreement or consensus on protocols or procedures to enable more direct comparison of results among research institutions or centers?

(e) How, if at all, does a PM research centers program leverage or maximize use of resources through sharing expensive equipment, samples, data, etc.?

(f) How is the program perceived within and outside the research community? Does a research center have greater visibility, and if so, what is the impact?

Availability of Review Materials: The Agency is coordinating the preparation of background materials that will help to inform the review. To access these materials, please contact Ms. Stacey Katz (Phone: 202–564–8201, or e-mail *katz.stacey@epa.gov*) or Ms. Gail Robarge (Phone: 202–564–8301, or e-mail *robarge.gail@epa.gov)* in the EPA Office of Research and Development (ORD).

For Further Information—Members of the public wishing an Agenda or a roster of the Committee should contact Ms. Diana Pozun, Program Specialist, Research Strategies Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4544; fax at (202) 501–0582; or via e-mail at *pozun.diana@epa.gov.* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Barnes no later than noon Eastern Standard Time on February 4, 2002 [five business days before the meeting].

2. Research Strategies Advisory Committee (RSAC)—February 20–21, 2002

The Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB) will meet on Wednesday, February 20, 2002 and Thursday, February 21, 2002 from 8:30 am to 5:00 pm (Eastern Time). The meeting will be held in the EPA Science Advisory Board Conference Room (room 6013), USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004.

Purpose of the Meeting—In this meeting, the Research Strategies Advisory Committee plans to review the Science and Technology component of the President's Budget Request for the Fiscal Year 2003 EPA budget. The tentative charge questions are:

(a) Does the budget request provide adequate balance and attention to the core and problem driven research needed to provide satisfactory knowledge for current and future decisions EPA will be required to make?

(b) How can EPA better use measures of performance to identify the impact of its research and development program and the funds that Congress provides for that Program? (the intent of this question is to go beyond GPRA requirements and help address issues surrounding using the findings from GPRA evaluations, OIG audits, GAO reports, etc.)

(c) Is the EPA research and development program addressing the important issues needed to adequately protect human health and the environment in the US and globally? What important issues are not receiving adequate attention at the current level of resources provided for the R&D program and the S&T budget?

(d) Does the budget request reflect the priorities identified in the EPA and ORD Strategic Plans?

Availability of Review Materials: Materials that are the subject of this review are available from Mr. Mike Feldman of the Office of the Chief Financial Officer or from Ms. Amy Battaglia Office of Research and Development. Mr. Feldman can be reached on (202) 564–6951 or by e-mail at *feldman.mike@epa.gov* and Ms. Battaglia can be reached on (202) 564–6685 or via e-mail on *battaglia.amy@epa.gov.*

For Further Information—Members of the public wishing an Agenda or a roster of the Committee should contact Ms. Betty Fortune, Office Assistant, Research Strategies Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4534; fax at (202) 501–0323; or via e-mail at *fortune.betty@epa.gov.* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. John ''Jack'' R. Fowle III, Designated Federal Officer,

EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0582; or via e-mail at *fowle.jack@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Fowle no later than noon Eastern Standard Time on February 13, 2002.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in *The FY2000 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 11, 2002.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 02–1245 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–3]

Draft Recommendations for Implementing EPA's Public Involvement Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA seeks public comment on the 12-page document ''Draft Recommendations for Implementing EPA's Public Involvement Policy.'' The document recommends specific EPA actions to enhance adoption of the Agency's Public Involvement Policy by EPA staff and managers. EPA published its Draft 2000 Public Involvement Policy in the **Federal Register** in December, 2000 (65 FR 82335, Dec. 28, 2000) and is currently writing the final policy and response to comments, both of which will be released in the Spring of 2002. The recommended implementation actions include: creating a communication network and mechanisms that allow EPA staff to exchange public involvement information; creating an electronic database that includes public involvement training opportunities, case studies and other helpful resources; providing public involvement training to EPA staff and managers; developing evaluation measures and tools to measure the effectiveness of EPA's public involvement activities; and evaluating the Agency's adoption of the Public Involvement Policy over time. EPA seeks public comment on this document for 60 days following publication on EPA's web page and notice in the **Federal Register**. After reviewing public comments, EPA will begin implementing many of these recommended activities. The revised document will be issued along with the Final Public Involvement Policy in the Spring of 2002. The draft recommendations document and future updates will be posted on the Agency's Web site at *http://www.epa.gov/stakeholders.*

DATES: Comments will be accepted until March 18, 2002.

ADDRESSES: Submit comments to Patricia A. Bonner, United States Environmental Protection Agency, Office of Policy, Economics and Innovation (MC 1807), 1200 Pennsylvania Ave, NW., Washington, DC 20460, by facsimile at 202–260–4903 or by electronic mail to *bonner.patricia@epa.gov* or to *stakeholders@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia Bonner at 202–260–0599. To request a mailed copy, call Loretta Schumacher at 202–260–3096 or e-mail a request to *stakeholders@epa.gov.* The draft recommendations document and the Draft Public Involvement Policy may be viewed or downloaded from [*http://www.epa.gov/stakeholders*].

Thomas J. Gibson,

Associate Administrator, Office of Policy, Economics and Innovation.

[FR Doc. 02–1243 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51981; FRL–6819–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 1, 2001 to December 22, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received

under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51981 and the specific PMN number, must be received on or before February 19, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51981 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51981. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51981 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51981 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish

periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from December 1, 2001 to December 22, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0111	12/04/01	03/04/02	CBI	(G) Open, non-dispersive use	(G) Aromatic acid diesters
P–02–0112	12/04/01	03/04/02	Dow Corning Corporation	(S) Powder coating additive	(G) Amidosiloxane
P–02–0113	12/03/01	03/03/02	CBI	(G) Ingredients for use in consumer products: highly dispersive use	(G) Alkoxy alkyl ester
P–02–0114	12/03/01	03/03/02	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polymer of alkyl substituted propenoic acid and propenamide with alkyl acrylate
P–02–0115	12/04/01	03/04/02	Dow Corning Corporation	(S) Chemical intermediate	(G) N,n′-alkylenebis(alkenamide)
P–02–0116	12/04/01	03/04/02	Dow Corning Corporation	(S) Chemical intermediate	(G) N,n′-alkylenebis(alkenamide)
P–02–0117	12/03/01	03/03/02	CBI	(G) Open, non-dispersive use	(G) Aromatic alkanoate
P–02–0118	12/04/01	03/04/02	CBI	(S) Pressure sensitive adhesive	(G) Acrylic copolymer
P–02–0119	12/04/01	03/04/02	Shin-ETSU Microsi, Inc.	(S) Flame-ratardant for plastics, thermoplastics and resins	(G) Phosphazene
P–02–0120	12/04/01	03/04/02	CBI	(G) Emulsifier	(G) Polyalkyleneamine
P–02–0121	12/04/01	03/04/02	Hanse Chemie USA, Inc.	(S) Flexibilisation of epoxy resins	(S) Siloxanes and silicones, di-me, hydrogen-terminated, reaction products with bisphenol a diglycidyl ether and 10-undecenoic acid
P–02–0122	12/05/01	03/05/02	CBI	(S) Reactive dyestuff for coloring cellulosic fibers	(G) Sodium salt of a disubstituted diazo-amino-hydroxy-naphthalenedisulfonic acid
P–02–0123	12/06/01	03/06/02	CIBA Specialty Chem.Corp., Colors Division	(G) Textile dye	(G) Anthracenesulfonic acid, amino[[[[[[(alkenylsulfonyl)alkyl] substituted phenyl]amino]-substituted 1,3,5-triazin]amino]-alkyl-substituted phenyl]amino]-9,10-dihydro-9,10-dioxo-, disodium salt
P–02–0124	12/05/01	03/05/02	Hercules Incorporated	(G) A performance additive in sizing emulsions (i.e. promoter resins) used in papermaking process	(G) Aminoacrylic polymer
P–02–0125	12/05/01	03/05/02	Hercules Incorporated	(G) Destructive use (chemical intermediate)	(G) Dialkylamine hydrochloride salt
P–02–0126	12/05/01	03/05/02	Gateway Additive Company	(S) Cutting oils; industrial lubricants; metalworking fluids, soluble oil	(G) Polymer ester of mono and dibasic acids
P–02–0127	12/06/01	03/06/02	International Flavors and Fragrances, Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) 3-mercaptohexyl acetate
P–02–0128	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Polyester type polyurethane resin
P–02–0129	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Organopolysiloxane containing carboxylic acid
P–02–0130	12/07/01	03/07/02	CBI	(G) Component in industrial product used in consumer products, dispersive use	(S) 4-formylphenylboronic acid*
P–02–0131	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Methacrylate and maleimide copolymer
P–02–0132	12/07/01	03/07/02	CBI	(G) Chemical intermediate	(G) Benzenediacetic acid derivative
P–02–0133	12/07/01	03/07/02	CBI	(G) Chemical intermediate	(G) Benzofuranone derivative

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0134	12/07/01	03/07/02	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties	(G) Trineoalkoxy amino zirconate
P–02–0135	12/07/01	03/07/02	BASF Corporation	(S) Aprotic solvent	(S) 2(1h)-pyrimidinone, tetrahydro-1,3-dimethyl-
P–02–0136	12/07/01	03/07/02	CBI	(S) Film coating	(G) Polyester polyurethane
P–02–0137	12/10/01	03/10/02	CBI	(G) Open, non-dispersive (plastic)	(G) Modified abs
P–02–0138	12/07/01	03/07/02	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties.	(G) Trineoalkoxy sulfonyl zirconate
P–02–0139	12/10/01	03/10/02	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polymer of substituted propenoic acid, propenamide and propenoic esters
P–02–0140	12/10/01	03/10/02	CBI	(G) Resin coating	(G) Acrylic copolymer polyurethane dispersion
P–02–0141	12/10/01	03/10/02	CBI	(G) Petroleum lubricant additive	(G) Polyalkenylbenzene sulfonate
P–02–0142	12/10/01	03/10/02	CBI	(G) Resin coating	(G) Urethane acrylate
P–02–0143	12/10/01	03/10/02	UBE America Inc.	(S) Raw material of polyurethane	(S) 1,3-dioxolan-2-one, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0144	12/11/01	03/11/02	CBI	(G) Plastics additive	(G) Chromophore substituted polyoxyalkylene
P–02–0145	12/11/01	03/11/02	CBI	(G) Plastics additive	(G) Chromophore substituted polyoxyalkylene
P–02–0146	12/11/01	03/11/02	Arteva Specialties S.A.R.L. d/b/a Kosa	(S) Structural material for production of textile fibers	(G) Modified polyester
P–02–0147	12/11/01	03/11/02	CBI	(G) Open, non-dispersive use.	(G) Acrylic resin
P–02–0148	12/11/01	03/11/02	CBI	(G) Open, non-dispersive use.	(G) Polyester resin
P–02–0149	12/11/01	03/11/02	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(G) Alkyl octanal
P–02–0150	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenoic acid, sodium salt
P–02–0151	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid and 2-propenoic acid, sodium salt
P–02–0152	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenamide and 2-propenoic acid, sodium salt
P–02–0153	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid,2-propenamide and 2-propenoic acid, sodium salt
P–02–0154	12/11/01	03/11/02	Arch Chemicals, Inc.	(S) Component in a photoresist formulation to be used in the manufacture of semiconductor and related devices.	(G) Derivatized ethoxylated polystyrene resin
P–02–0155	12/11/01	03/11/02	CBI	(G) Acrylic polymer for use in a coating application	(G) Copolymer of alkyl acrylates and alkyl methacrylates
P–02–0156	12/12/01	03/12/02	CBI	(G) Additive in composites	(G) Metallic dimethacrylate
P–02–0157	12/13/01	03/13/02	CBI	(G) Machine seals	(G) Polyurethane-poly carbonate polymer
P–02–0158	12/13/01	03/13/02	CBI	(G) Open non-dispersive use	(G) Polyacrylic resin, based on methyl methacrylate
P–02–0159	12/13/01	03/13/02	GE Silicones	(G) Release additive	(G) Silane hydrolyzate
P–02–0160	12/13/01	03/13/02	CBI	(S) Agricultural dispersant	(G) Aklylated naphthalenesulfonate-formaldehyde condensate, sodium salt
P–02–0161	12/14/01	03/14/02	CBI	(G) Flame-retardant	(G) Copolymer

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0162	12/13/01	03/13/02	CBI	(G) Paper sizing agent	(G) Cyclohexene-carboxylic acid, [(di-propenylamino]carbonyl]-, reaction products with pentafluoroiodoethane-tetrafluoro-ethylene telomer
P–02–0163	12/13/01	03/13/02	CMP Coatings, Inc.	(S) Binder polymer in paints	(G) Acrylate copolymer
P–02–0164	12/14/01	03/14/02	Amfine chemical Corporation	(G) Thickening agent	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–02–0165	12/13/01	03/13/02	Image Polymers Company	(S) Toner binder	(G) Urethane-modified polyester resin
P–02–0166	12/14/01	03/14/02	CBI	(G) Open non-dispersive(resin)	(G) Amino polyester
P–02–0167	12/14/01	03/14/02	Valence Technology, Inc.	(G) Electrode material	(G) Lithium metal phosphate
P–02–0168	12/18/01	03/18/02	CBI	(G) Binder resin	(G) Acrylic polyol
P–02–0169	12/17/01	03/17/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–0170	12/17/01	03/17/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–0171	12/18/01	03/18/02	CBI	(S) Flame retardant in polyamides, epoxy, or polyester	(G) Organophosphorous salt
P–02–0172	12/18/01	03/18/02	CBI	(G) Adhesive component	(G) Aromatic polyester polyol
P–02–0173	12/19/01	03/19/02	Quest International Fragrances Co.	(S) Fragrance ingredient	(S) N-ethyl-n-(3-methylphenyl) propionamide*
P–02–0174	12/19/01	03/19/02	CBI	(G) Mold release agent	(G) 1,2,3-propanetriol, homopolymer, derivative
P–02–0175	12/20/01	03/20/02	CBI	(G) Open, non-dispersive (resin)	(G) Amine-accelerated, unsaturated polyester resin
P–02–0176	12/21/01	03/21/02	Lithchem, International	(G) Contained use in sealed battery components	(G) Dialkyl carbonate; carbonate diester
P–02–0177	12/21/01	03/21/02	CIBA Specialty Chemicals Corporation	(G) Textile dye	(G) Naphthalene disulfonicacid,azo substituted phenyl disodium salt, reaction products with halo triazin amino substituted phenyl sulfonyl compound
P–02–0178	12/21/01	03/21/02	Xerox Corporation	(G) Destructive use (site limited intermediate)	(G) Alkyl aryl phthalonitrile ether
P–02–0180	12/21/01	03/21/02	CBI	(S) Surfactant for use in lubricants	(S) Alcohols, $C_{9–11}$, ethers with polyethylene glycol mono-me ether
P–02–0181	12/21/01	03/21/02	CBI	(G) Component of coating with open use	(G) Epoxy functional styrenated methacrylate
P–02–0185	12/21/01	03/21/02	CBI	(G) Ink additive	(G) Aluminum chelate compound
P–02–0186	12/21/01	03/21/02	CBI	(G) Ink additive	(G) Aluminum chelate compound
P–02–0190	12/21/01	03/21/02	Prc-desoto international, a ppg industries Company	(S) Polymer for adhesives and sealants; intermediate for production of blend polymer	(G) Mercaptan terminated polyether polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 3 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0004	12/06/01	01/20/02	CBI	(G) Intermediate	(G) Disubstituted heteropolycyclic carboxylic acid, alkyl ester
T–02–0005	12/06/01	01/20/02	CBI	(G) Intermediate	(G) Halogenated alkanesulfonic acid ester
T–02–0006	12/06/01	01/20/02	CBI	(G) Coating component	(G) Ester of a disubstituted heteropolycyclic carboxylic acid

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 23 NOTICES OF COMMENCEMENT FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0428	12/03/01	10/16/01	(G) Hydrolyzed alkoxysilane
P–01–0069	12/18/01	11/19/01	(G) Substitute naphtalene derivatives
P–01–0160	12/04/01	10/24/01	(G) Polymer dispersion of aromatic isocyanate, aliphatic polyols, and aliphatic amines
P–01–0190	12/11/01	10/19/01	(G) Polyester acrylate
P–01–0339	12/06/01	08/25/01	(S) 1,3-benzenedicarboxylic acid, polymer with 1,3-diisocyanatomethylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid and alpha,alpha'-[(1-methylethylidene)di-4,1-phenylene]bis[omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)]], benzoate
P–01–0425	12/04/01	11/19/01	(G) Substituted zirconate ester
P–01–0460	12/20/01	11/12/01	(G) Chromate, bis[[[substituted [[[hydroxynaphthalenyl)azo]phenyl]sulfonyl] amino]heterocycle]azo]-(hydroxynitrobenzene sulfonato)], - mixed salts
P–01–0537	12/20/01	11/25/01	(G) Epoxy novolac acrylate carboxylate
P–01–0538	12/11/01	10/31/01	(G) Epoxy novolac acrylate
P–01–0539	12/14/01	11/18/01	(G) Epoxy novolac acrylate carboxylate
P–01–0575	12/18/01	12/14/01	(G) Arylazo substituted sulfonated naphthalene compound
P–01–0632	12/10/01	12/04/01	(G) Epoxy isocyanate copolymer
P–01–0650	12/18/01	12/04/01	(G) Epoxy acrylate
P–01–0662	12/05/01	11/05/01	(G) Acrylate polymer
P–01–0684	12/18/01	12/07/01	(G) Phenolic sulfone reaction products
P–01–0716	12/06/01	11/09/01	(G) Polyurea
P–01–0717	12/19/01	11/08/01	(S) Poly(oxy-1,2-ethanediyl), alpha-sulfo-omega-(2-propenyloxy)-, ammonium salt
P–01–0726	12/07/01	10/29/01	(G) Fluoroalkyl substituted siloxanes
P–01–0734	12/06/01	11/15/01	(G) Polyamide
P–01–0775	12/05/01	11/21/01	(G) Organic zirconium compound
P–01–0876	12/17/01	12/07/01	(G) Imidazole phosphate salt
P–01–0886	12/18/01	12/13/01	(G) Polyester acrylate
P–96–0662	12/11/01	10/23/01	(G) Hydroxy acrylic resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 4, 2002.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–1248 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2524]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 9, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 1, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotment (MM Docket No. 00–226).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1214 Filed 1–16–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2525]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 10, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 1, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotment (MM Docket No.00–87).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1215 Filed 1–16–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011785.

Title: COSCON/KL/YMUK Asia/U.S. East and Gulf Coast/Mediterranean Vessel Sharing Agreement.

Parties: COSCO Container Lines Company, Ltd., Yangming (U.K.), Ltd., Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement would authorize the parties to charter

container space to each other and rationalize port calls and sailings in the trade to and from ports in Japan, China, the U.S. East and Gulf Coasts, and Mediterranean ports in the Gibraltar/Port Said range. This agreement combines and replaces two existing vessel sharing agreements among the parties into a single east-west pendulum service.

Agreement No. 011786.

Title: Zim/Great Western Agreement.

Parties: Zim Israel Navigation Co. Ltd, Great Western Agreement.

Synopsis: The proposed agreement authorizes the parties to cross-charter and exchange space on their vessels that operate in the trade between Long Beach, California, on the one hand, and Hong Kong, South Korea, and the People's Republic of China, on the other hand. It also authorizes Zim to time charter one vessel to Great Western. The parties request expedited review.

Agreement No.: 011787.

Title: NSCSA/NYK Middle East Space Charter Agreement.

Parties: National Shipping Company of Saudi Arabia, Nippon Yusen Kaisha.

Synopsis: The proposed agreement would permit the parties to charter space to one another on their respective ro-ro vessels on an ''as needed, as available basis'' in the trade between U.S. Atlantic and Gulf Coasts and ports in the Arabian Gulf, Red Sea, Gulf of Aden, and Gulf of Oman.

Dated: January 11, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1168 Filed 1–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Sea-Bridge International, Inc., 13 John Paul Drive, Hamilton Square, NJ 08690.*Officers:* Donald Michael Guerraggi, President (Qualifying Individual), Shari A. Guerrazzi, Vice President.

Dated: January 11, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1167 Filed 1–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First National Bank of Wynne ESOP, Wynne, Arkansas; to retain voting shares of First National Corporation of Wynne, Wynne, Arkansas, and thereby indirectly retain voting shares of First National Bank of Wynne, Wynne, Arkansas.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Catherine E. and Kim A. Jackson, both of Waverly, Minnesota; to acquire voting shares of Graham Shares of Waverly, Inc., Waverly, Minnesota, and thereby indirectly acquire voting shares of Citizens State Bank of Waverly, Waverly, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1174 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-567) published on pages 1357 and 1358 of the issue for Thursday, January 10, 2002.

Under the Federal Reserve Bank of Chicago heading, the entry for Marshall & Ilsley Corporation, Milwaukee, Wisconsin, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to merge with Century Bancshares, Inc., Eden Prairie, Minnesota, and thereby indirectly acquire 100 percent of the voting shares of Century Bank, National Association, Eden Prairie, Minnesota.

Comments on this application must be received by February 4, 2002.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1172 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Merchants Corporation, Muncie, Indiana; to merge with Lafayette Bancorporation, Lafayette, Indiana, and thereby indirectly acquire voting shares of Lafayette Bank and Trust Company, Lafayette, Indiana.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Riverdale Bancshares, Inc., Riverdale, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Riverdale, Riverdale, Nebraska.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1173 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo- und Vereinsbank AG, Munich, Germany, to directly and indirectly engage through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the ''First Integrion Order'') and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the ''Second Intgrion Order: and together with the First Integrion Order, the ''Integrion Orders''). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–1171 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Proposed Project 1. Evaluation of the Cash and Counseling Demonstration—0990–0223—Extension—Cash and Counseling is a consumer directed care model for individuals in need of personal assistance services. A demonstration project utilizing this model is being undertaken. The Office of the Assistant Secretary for Planning and Evaluation (ASPE), in partnership with the Robert Wood Johnson Foundation, is engaging in information collection for the purpose of evaluating this demonstration project. Controlled experimental design methodology is being used to test the effects of the experimental intervention: cash payments in lieu of arranged services for Medicaid covered beneficiaries: *Respondents:* Individuals or Households.

BURDEN INFORMATION FOR CLIENT INTERVIEWS (0990–0223)

Instrument	Annual number of respondents	Hours per response	Burden hours
Baseline Survey	1,020	.38	388
4/6 Month Survey	1,049	.33	465
9 Month Survey	3,629	.70	2,540
Participation Survey	1,292	.08	103
Total			3,496

OMB Desk Officer: Allision Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

Human Resources and Housing Branch,Office of Management and Budget,New Executive Office Building, Room 10235,725 17th Street NW.,Washington, DC 20503.

Comments may also be sent to Cynthia Agens Baurer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: January 3, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–1266 Filed 1–16–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Applicant Background Survey—0990–0208—This form will be used to ask applicants for employment how they learned about a vacancy to ensure that recruitment sources yield qualified women and minority applicants, as well as applicants with disabilities in compliance with EEOC management directives. *Respondents:* Individuals, *Annual Number of Respondents:* 30,000; *Average Burden per Response:* 2 minutes; *Total Annual Burden:* 1,000 hours; and *OMB Desk Officer:* Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: January 2, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–1267 Filed 1–16–02; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Bioethics

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting location and time change.

SUMMARY: The President's Council on Bioethics will hold its first meeting to discuss its agenda and future activities. This notice is to provide the exact location of the meeting and notice of a time change.

DATES: Meetings will be held on Thursday, January 17, 2002, from 8:30 a.m. to 6 p.m., and Friday, January 18, 2002, from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will take place in Washington, DC at the L'Enfant Plaza Loews Hotel in Ballrooms C & D, 480 L'Enfant Plaza, SW, Washington, DC 20024. The phone number is (202) 484–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McMahon, President's Council on Bioethics, Sixth Floor, 1801 Pennsylvania Avenue, NW., Washington, DC 20036, (202) 296–4694.

SUPPLEMENTARY INFORMATION: The agenda of the meeting will include discussion of the future activities of the President's Council on Bioethics, a Presidential advisory committee established by executive order to, among other things, conduct fundamental inquiry into the moral and human meaning of developments in biomedical science and technology. The meeting will include a period for comments from the public and any required administrative discussions and executive sessions. Due to unforeseen circumstances, this notice is published less than 15 calendar days prior to the Council's meeting date (see 41 CFR 102–3.150).

Dated: January 12, 2002.

Dean Clancy,

Executive Director, President's Council on Bioethics.

[FR Doc. 02–1169 Filed 1–16–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Project

Title: Temporary Assistance for Needy Families (TANF) State Plan Guidance.

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Administrative Officer. Its submittal triggers the State's family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State TANF plan	54	1	30	1,620
Title Amendments	54	1	3	162

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated total annual burden hours				1782

In compliance with the requirements of section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 10, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1237 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Trafficking Victims Certification and Reporting System.

OMB No. New.

Description: HHS has three specific areas of responsibility under the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386) that require new information. These are: (1) Issuing a letter certifying victims as eligible to apply for public benefits, (2) Expanding benefits, and (3) reporting to Congress on the number of people who receive benefits and services. Other requirements may result from the activities of an Interagency Task Force of which HHS is a member.

Information concerning victims of a severe form of trafficking is needed to certify those individuals as eligible to apply for public benefits and to help them secure subsistence while they wait to assist the Attorney General in the prosecution of a case against the trafficker. Updated information on client location is critical to statutory intent to ensure the victim's ability to meet basic needs while in the U.S. to cooperate in the prosecution of a trafficker. Current information on the number of victims receiving benefits is required to be annually reported to the U.S. Congress by the Secretary. Such information is also essential to program management and budget planning.

Respondents: Respondents are primarily state and county public assistance eligibility workers and the DOJ. DOL, DOS, other federal agencies, other law enforcement agencies, victims of trafficking and voluntary agency staff could contribute information as well.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DOJ Request for Victim letter of Certification.	One per request; estimated 200 requests annually.	1	Thirty minutes	100 hours.
Database and telephone script.	52 (+/-) state refugee coordinators or district eligibility workers.	Two for each client. Initial call at intake, plus second call for update on benefits being received	6000 minutes (4 minutes x 750 clients x 2 calls).	100 hours (6000 minutes divided by 60).
Trafficking Certification Statistics.	One ORR staffer compiles.	One for every client	Thirty seconds per client.	6.2 hours.
Estimated total annula burden hours.	.....		.....	206.2

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 7, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1239 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Financial Report for Tribes (ACF–696T).

OMB No.: 0970–0195.

Description: The Child Care and Development Fund (CCDF) annual financial reporting form (ACF–696T) provides a mechanism for Indian Tribes to report expenditures under the CCDF program. The CCDF program provides funds to Tribes, as well as States and Territories, to assist low-income families in obtaining child care so that they can work or attend training/education, and to improve the quality of care. Information collected via the ACF–696T allows the Administration for Children and Families (ACF) to monitor expenditures and to estimate outlays and may be used to prepare ACF budget submissions to Congress. This information collection is a revised version of the currently-used ACF–696T for which Office of Management and Budget (OMB) approval expires on February 28, 2002.

Respondents: Indian Tribes and Tribal Organizations that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T	232	1	8	1856

Estimated Total Annual Burden Hours: 1856.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for ACF.

Dated: January 7, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1238 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Food Labeling and Allergen Declaration; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 21, 2001 (66 FR 65976). The notice announced a public workshop entitled ''FDA Food Labeling and Allergen Declaration; Public Workshop'' intended to provide information about FDA food regulations, food labeling allergen declaration, good manufacturing practices, and other related matters to the regulated industry, particularly small businesses and start-ups. The notice was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: David Arvelo, Food and Drug Administration, 7920 Elmbrook Dr., Suite 102, Dallas, TX 75247, 214–655–8100, ext. 133.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–31572, appearing on pages 65976 at 65977 in the **Federal Register** of Friday, December 21, 2001, the following correction is made:

1. On page 65977, in the first column, the ''Transcripts'' portion of the notice is removed.

Dated: January 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1280 Filed 1–14–02; 3:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material; and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program and Small Grant Program for Cancer, Epidemiology.

Date: February 21–22, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1194 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Human Factors in Breast Cancer Detection and Diagnosis.

Date: January 30, 2002.

Time: 12 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 6116 Executive Blvd., Room 8129, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1195 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Spores in Prostate Cancer.

Date: January 21–23, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Riverwalk, 217 N. St. Mary's, San Antonio, TX 78205.

Contact Person: Brian E. Wojcik, Phd., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

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.

Any interested persons may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 11, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1199 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 11–12, 2002.

Open: February 11, 2002, 8:30 AM to 5:00 PM.

Agenda: Discussion of program policies and issues.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 12, 2002, 9:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexandria Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1188 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 20–21, 2002.

Open: February 20, 2002, 9:00 AM to 4:00 PM.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Closed: February 21, 2002, 9:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD., Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1191 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.

Date: February 25–27, 2002.

Time: 8:30 AM to 1: 00 PM.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton, Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute of Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: February 25–26, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street NW., Washington, DC 20037–1417.

Contact Person: Khursheed Asghar, PHD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institutes on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: February 26–27, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Ave., NW., Washington, DC 20037.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Sciences Research Subcommittee.

Date: February 26–27, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Marina L. Volkov, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on

Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institutes on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 12–14, 2002.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 13, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 13, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Khursheed Asghar, PHD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1192 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 02–34 Review of T32 Grants.

Date: February 20, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, Phd, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1193 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 5–6, 2002.

Time: 9 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, N.W., Washington, DC 20036–3305.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 14, 2002.

Time: 3:30 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, dsommers@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1196 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, RFP 02–01—High Throughput Genotyping for Locating Human Disease Genes.

Date: January 29, 2002.

Time: 12:30 PM to 2 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS—East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

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 Environmental Health Sciences Special Emphasis Panel, RFP 01–14—National Center for Toxicogenomics (NCT) Proteomics Resource.

Date: January 31–February 1, 2002.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: January 11, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1197 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 13–14, 2002.

Open: February 13, 2002, 8:30 AM to 12 PM.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 14, 2002, 9:45 AM to 10:15 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: February 14, 2002, 10:15 AM to 12 PM.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 13–14, 2002.

Open: February 13, 2002, 1:30 PM to 3:15 PM.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 13, 2002, 3:15 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: February 14, 2002, 8 AM to 8:30 AM.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 14, 2002, 8:30 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities,

National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–504–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: February 13–14, 2002.

Open: February 13, 2002, 1:30 PM to adjournment.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

Closed: February 14, 2002, 8 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–504–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases asnd Nutrition Subcommittee.

Date: February 13–14, 2002.

Open: February 13, 2002, 1:30 PM to 2:30 PM.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A51, Bethesda, MD 20892.

Closed: February 13, 2002, 2:30 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A51, Bethesda, MD 20892.

Open: February 14, 2002, 8 AM to 9:30 AM.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A51, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–504–8834, *hammondr@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 11, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1198 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 17, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1340, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 18, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 9, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1200 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 6–7, 2002.

Closed: February 6, 2002, 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: February 7, 2002, 8:30 a.m. to 3:30 p.m.

Agenda: Program documents.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.

Contact Person: Kenneth R. Warren, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, *kwarren@niaaa.nih.gov*.

Information is also available on the Institute's/Center's homepage: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1202 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel (Telephone Conference MMR J S).

Date: January 29, 2002.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine Division of Extramural Programs 6705 Rockledge Drive Suite 301 Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Merlyn M. Rodrigues Medical Officer/SRA.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1203 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 17, 2002.

Time: 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

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: Center for Scientific Review Special Emphasis Panel.

Date: January 18, 2002.

Time: 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93,892, 93.893, National Institutues of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1189 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

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: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

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: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 4:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1190 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*

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: Center for Scientific Review Special Emphasis Panel

Date: January 18, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Daniel McPherson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175 *mcphersod@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 9, 2002.

Anna Snouffer,

Deputy Director, Office of the Federal Advisory Committee Policy.

[FR Doc. 02–1201 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group (CAG), Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior (Secretary), will hold a public meeting. The purpose of the CAG is to provide technical advice and counsel to the Secretary and the State of Washington on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Wednesday, January 23, 2002, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington, 98901; (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review water marketing opportunities in the Yakima River Basin and develop recommendations.

Dated: December 19, 2001.

James A. Esget,

Program Manager.

[FR Doc. 02–485 Filed 1–16–02; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–427 (Preliminary)]

Film and Television Productions From Canada

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in countervailing duty investigation.

SUMMARY: On January 11, 2002, the Department of Commerce and the Commission received a letter from petitioners in the subject investigation (Film and Television Action Committee,

Studio City, CA; the Screen Actors Guild, Los Angeles, CA; Studio Utility Employees Local 724 of the Laborers International Union, Hollywood, CA; Local 355 of the International Brotherhood of Teamsters (Teamsters), Baltimore, MD; Teamsters Local 391, Greensboro, NC; Teamsters Local 399, North Hollywood, CA; Teamsters Local 509, Cayce SC; Teamsters Local 592, Richmond, VA; and the Maryland Production Alliance, Baltimore, MD) withdrawing the petition. Commerce has not initiated an investigation as provided for in section 702(c) of the Tariff Act of 1930 (19 U.S.C. 1671a(c)). Accordingly, the Commission gives notice that its countervailing duty investigation concerning film and television productions from Canada (investigation No. 701–TA–427 (Preliminary)) is discontinued.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: January 11, 2002.
By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1224 Filed 1–16–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–740 (Review)]

Sodium Azide From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in December 2001 to determine whether termination of the suspended antidumping duty investigation on sodium azide from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On January 11, 2002, the Department of Commerce published notice that it was terminating the suspended investigation effective January 7, 2002 ''[b]ecause no domestic interested party responded to the notice of initiation by the applicable deadline'' (67 FR 1438–39). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the subject review is terminated.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: January 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1225 Filed 1–16–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-to-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 28, 2001, a proposed consent decree in *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* Case No. 2:01 CV–1050 ST, was lodged with the United States District Court for the District of Utah.

This consent decree represents a settlement of claims brought against Texaco Exploration and Production Inc. (''Texaco'') and Envirotech Inc. under section 113(b) of the Clean Air Act (''the CAA''), 42 U.S.C. 7413(b), and section 325(b)(3) of the Emergency Planning and Community Right-to-know Act (''EPCRA''), 42 U.S.C. 11045(b)(3), in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that Texaco violated the CAA and the New Source Performance Standards, 40 CFR part 60, subparts A and KKK, at its Aneth gas plant by filing to monitor its equipment for VOC leaks, maintain records, submit reports, test its flare, and use a thermocouple to monitor its flare's pilot flame. The complaint also alleges that Texaco and Envirotech violated the CAA and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M, during the removal and disposal of asbestos-containing material at the Aneth gas plant. Finally, the complaint alleges that Texaco violated section 304 of EPCRA, 42 U.S.C. 11004, by twice failing to report the release of more than 500 pounds of sulfur dioxide from its oil and gas production field in Aneth, Utah.

Under the proposed settlement, Texaco will submit a certification that its affected facility is not in compliance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 60, subpart KKK. In addition, Texaco will pay a civil penalty of $243,725 and provide up to $51,275 in emergency response equipment and hazardous materials training to a local fire department in Montezuma Creek, Utah, as a supplemental environmental project. Envirotech will pay a civil penalty of $10,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* DOJ Ref. 90–5–2–1–06466. A copy of all comments should also be sent to Robert D. Mullaney, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, CA 94105.

The Consent Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California. A copy of the

Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* Case No. 2:01 CV–1050 ST (D. Utah), DOJ Ref. 90–5–2–1–06466, and enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–01176 Filed 1–16–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-To-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 28, 2001, a proposed consent decree in *United States v. Texaco Exploration and Production Inc. and Envirotech Inc.,* Case No. 2:01 CV–1050 ST, was lodged with the United States District Court for the District of Utah.

This consent decree represents a settlement of claims brought against Texaco Exploration and Production Inc. (''Texaco'') and Envirotech Inc. under section 113(b) of the Clean Air Act (''the CAA''), 42 U.S.C. 7413(b), and section 325(b)(3) of the Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11045(b)(3), in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that Texaco violated the CAA and the New Source Performance Standards, 40 CFR part 60, subparts A and KKK, at its Aneth gas plant by failing to monitor its equipment for VOC leaks, maintain records, submit reports, test its flare, and use a thermocouple to monitor its flare's pilot flame. The complaint also alleges that Texaco and Envirotect violated the CAA and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M, during the removal and disposal of asbestos-containing material at the Aneth gas plant. Finally, the complaint alleges that Texaco violated section 304 of EPCRA, 42 U.S.C. 11004, by twice failing to report the release of more than 500 pounds of sulfur dioxide from its oil and gas production field in Aneth, Utah.

Under the proposed settlement, Texaco will submit a certification that its affected facility is now in compliance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 60, subpart KKK. In addition, Texaco will pay a civil penalty of $243,725 and provide up to $51,275 in emergency response equipment and hazardous materials training to a local fire department in Montezuma Creek, Utah, as a supplemental environmental project. Envirotech will pay a civil penalty of $10,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments that are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, and sent: (1) C/o Robert D. Mullaney, U.S. Department of Justice, 301 Howard St., Suite 1050, San Francisco, CA 94105; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* DOJ Ref. 90–5–2–1–06466.

The proposed consent decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury,'' in the amount of $6.75 to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* DOJ Ref. 90–5–2–1–06466.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1177 Filed 1–16–02; 8:45 am]

BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–80 and DPR–82, for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (Diablo Canyon) currently held by Pacific Gas and Electric Company (PG&E), as owner and licensed operator of Diablo Canyon. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer, and amending the antitrust conditions in licenses as discussed below.

According to an application for approval filed by PG&E, the transfer of the licenses would be to a new generating company named Electric Generation LLC (Gen), which would operate the facility, and to a new wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear), which would hold title to Diablo Canyon and lease it to Gen. PG&E is requesting approval of these transfers in connection with a comprehensive Plan of Reorganization (Plan) for PG&E filed under Chapter 11 of the United States Bankruptcy Code.

No physical changes to Diablo Canyon or operational changes are being proposed in the application.

The proposed conforming administrative amendments generally would replace references to PG&E in the licenses with references to Gen and Nuclear, as appropriate, to reflect the proposed transfer. With specific regard to the antitrust conditions in the licenses, the application proposes changes such that Gen will be inserted in the conditions and thus become

subject to complying with them, and E Trans LLC, a new company that will be affiliated with Gen upon implementation of the Plan and that will acquire the electric transmission assets of PG&E but not have any interest in Diablo Canyon, will be also be inserted in the conditions and thus become subject to complying with them. In addition, the application proposes that PG&E will remain designated in the conditions for the limited purpose of compliance with the conditions, notwithstanding the divesting of its interest in Diablo Canyon, while Nuclear will not be named in the conditions.

Notwithstanding the proposed changes to the antitrust conditions proffered as part of the amendments to conform the licenses to reflect their transfer from PG&E to Gen and Nuclear, the Commission is considering specifically whether to approve either all of the proposed changes to the conditions, or only some, but not all, of the proposed changes, as may be appropriate and consistent with the Commission's decision in Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441, 466 (1999). In particular, the Commission is considering approving only those changes that would accurately reflect Gen and Nuclear as the only proposed entities to operate and own Diablo Canyon.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 6, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Richard F. Locke, Esq., Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, California 94105 (e-mail address *rfl6@pge.com*), and to David A. Repka, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005 (e-mail address *drepka@winston.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *ogclt@nrc.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 19, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

Further details with respect to this action, see the application dated November 30, 2001, available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 10th day of January 2002.

For the Nuclear Regulatory Commission.

Girija S. Shukla,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1211 Filed 1–16–02; 8:45 am]

BILLING CODE 7590–01–P

SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed

amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice additionally sets forth a number of issues for comment, including a request for comment set forth in the **SUPPLEMENTARY INFORMATION** portion of this notice regarding retroactive application of proposed amendments.

The proposed amendments and issues for comment contained in this notice are as follows: (1) Proposed amendment and issues for comment in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56, and the Commission's assessment of the guidelines' treatment of offenses involving terrorism; (2) proposed amendments to a number of guidelines covering controlled substances offenses, including enhancements and downward adjustments to account more adequately for aggravating and mitigating conduct sometimes associated with drug trafficking offenses, and issues for comment, including issues pertaining to offenses involving cocaine base (''crack cocaine''); (3) proposed amendment to provide increased sentencing alternatives in Zone B of the Sentencing Table; and (4) proposed amendment that corrects a technical error made in the November 27, 2001, **Federal Register** notice (66 F.R. 59295) pertaining to the proposed amendment to § 3E1.1 (Acceptance of Responsibility). In addition to the issues for comment that are contained within these proposed amendments, this notice sets forth a separate issue for comment regarding whether to expand § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) to include discharged terms of imprisonment.

DATES: *Written Public Comment.*—Written public comment regarding the amendments set forth in this notice, including public comment regarding retroactive application of any of these proposed amendments, should be received by the Commission not later than March 19, 2002. Written public comment regarding retroactivity of proposed amendments set forth in the November 27, 2001, **Federal Register** notice (See 66 F.R. 59295) should be received by the Commission not later than March 4, 2002.

Public Hearings.—The Commission plans to hold three public hearings on its proposed amendments, one on each of the following days: February 25, 2002; February 26, 2002; and March 19, 2002. The tentative times for the hearings are as follows: 3:00 to 5:00 p.m. on February 25, 2002; 9:30 to 11:30 a.m. on February 26, 2002; and 3:00 to 5:00 p.m. on March 19, 2002. Witnesses at the first two hearings will be invited to testify by the Commission on issues specified by the Commission prior to the hearings. A person who wishes to testify at the third hearing, the subject of which may include any of the proposed amendments, should notify Michael Courlander, at (202) 502–4500, not later than March 9, 2002. Written testimony must be received by the Commission not later than March 9, 2002. Timely submission of written testimony is required for testifying at the public hearing. The Commission requests that, to the extent practicable, commentators submit an electronic version of the comment and of the testimony for the relevant public hearing. The Commission also reserves the right to select persons to testify at any of the hearings and to structure the hearings as the Commission considers appropriate and the schedule permits.

Further information regarding the public hearings, including the location, time, and scope of the hearings, will be provided by the Commission on its website at www.ussc.gov.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

The Commission also requests public comment regarding whether any of the proposed amendments contained in this notice, and the **Federal Register** notice of November 27, 2001, (66 FR 59295), that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 3.4, 4.3, 4.4.

Diana E. Murphy,

Chair.

1. Terrorism

Synopsis of Proposed Amendment

Overview: On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56. Among other things, the Act created a number of new terrorism, money laundering, and currency offenses, and increased the statutory maximum penalties for certain pre-existing offenses. In light of this legislation, the Commission is assessing the Guidelines' treatment of terrorism offenses, and certain money laundering and currency offenses as they may be related to terrorism.

This amendment cycle, the Commission is interested in considering amending the guidelines as they pertain to these newly created offenses and those offenses modified by the Act. Additionally, the Commission is requesting comment regarding the efficacy of guideline 3A1.4, the sentencing enhancement for terrorism. The proposed amendment provides a definition for terrorism for certain money laundering and immigration offenses. In addition, the proposed amendment contains a number of modifications to existing guidelines, the statutory index, the terrorism

adjustment, and provides issues for comment.

Synopsis of Proposed Amendment: This is a multi-part amendment proposed in response to the USA PATRIOT Act of 2001 (the Act) and the Commission's assessment of the guidelines' treatment of offenses involving terrorism. Parts (A) through (E) address offenses that involve, or potentially involve, terrorism. Providing guideline treatment for these offenses in Chapter Two (Offense Conduct) is important, in part, to ensure applicability of the Chapter Three adjustment for terrorism, § 3A1.4. Specifically, Parts (A) through (E) of this amendment provide guideline treatment (or issues for comment) for the following: (A) New predicate offenses to federal crimes of terrorism; (B) other predicate offenses to federal crimes of terrorism that are not currently referenced in the Statutory Index; (C) increases in statutory maximum penalties for predicate offenses to federal crimes of terrorism that currently are referenced in the Statutory Index; (D) penalties for terrorism conspiracies; and (E) issues related to the terrorism adjustment in § 3A1.4.

Part (F) of this amendment addresses money laundering provisions of the Act. Part (G) addresses currency and counterfeiting provisions of the Act. Part (H) addresses miscellaneous issues.

Part (A): New Predicate Offenses to Federal Crimes of Terrorism

Synopsis of Proposed Amendment: This amendment amends Chapter Two, Part A, Subpart 5 (Air Piracy) to include offenses against mass transportation systems under 18 U.S.C. 1993 within the scope of that Subpart and provides references in the Statutory Index to a number of guidelines. Section 1993, added by section 801 of the Act, prohibits (1) willfully wrecking, derailing, setting fire to, or disabling a mass transportation system; (2) willfully or recklessly placing any biological agent or toxin for use as a weapon or destructive device on or near a mass transportation system vehicle or ferry; (3) willfully or recklessly setting fire to, or placing any biological agent or toxin for use as a weapon or destructive device in or near a mass transportation system garage, terminal, structure, supply, or facility; (4) willfully removing appurtenances from, damaging, or otherwise impairing the operation of a mass transportation signal system without authorization; (5) willfully or recklessly interfering with, disabling, or incapacitating any dispatcher, driver, captain, or person employed in dispatching, operating, or maintaining a mass transportation system; (6) committing an act, including the use of a dangerous weapon, with intent to cause death or serious bodily injury to an employee or passenger of a mass transportation system; (7) conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt to do any act prohibited by this section; and (8) attempting, threatening, or conspiring to do any of the above acts. The maximum term of imprisonment is 20 years, or life imprisonment if the offense results in death.

The amendment also includes several issues for comment, including an issue regarding how hoaxes should be treated and an issue regarding how the guidelines should treat offenses involving the conveying of false information and threats under 18 U.S.C. 1993(a)(7) and (8) and under 49 U.S.C. 46507. Section 46507 prohibits (i) conveying or causing to be conveyed false information, knowing the information to be false, concerning an air piracy and similar offenses under title 49, United States Code, and (ii) threatening to commit air piracy or similar offenses under title 49, United States Code, having the apparent determination and will to carry out the threat. The maximum term of imprisonment is 5 years. Currently, section 46507 offenses are not listed in the Statutory Index.

This amendment also references the new offense at 49 U.S.C. 46503 to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant). That offense, created by section 114 of the Aviation and Transportation Security Act, prohibits an individual in an area within a commercial service airport in the United States from assaulting a Federal, airport, or air carrier employee who has security duties within the airport, thereby interfering with the performance of the employee's duties or lessening the ability of that employee from performing those duties. The maximum term of imprisonment is 10 years, or, if the individual used a dangerous weapon in committing the assault or interference, any term of years or life.

The amendment expands the guideline covering nuclear, biological, and chemical weapons, § 2M6.1, to cover new offenses created by section 817 of the Act involving possession of biological agents, toxins, and delivery systems. Specifically, section 817 added a new offense at 18 U.S.C. 175(b), which prohibits a person from knowingly possessing any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The maximum term of imprisonment is 10 years. Section 817 also added a new offense at 18 U.S.C. 175b, which prohibits certain classes of individuals from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any biological agent or toxin, or receiving any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in applicable federal regulations. The maximum term of imprisonment is 10 years.

The amendment also proposes to amend the Statutory Index to reference 18 U.S.C. 2339 to §§ 2X2.1 (Aiding and Abetting) and 2X3.1 (Accessory After the Fact). This offense prohibits harboring or concealing any person who the defendant knows, or has reasonable grounds to believe, has committed or is about to commit, one of several enumerated offenses. The maximum statutory term of imprisonment is 10 years.

Proposed Amendment (Part (A)):

The title to Chapter Two, Part A, Subpart 5 is amended by adding '', Offenses Against Mass Transportation Systems'' after ''Air Piracy''.

Section 2A5.2 is amended in the title by adding ''; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or Ferry'' after ''Attendant''.

Section 2A5.2 is amended by striking subsections (a)(1) and (a)(2) and inserting the following:

''(1) 30, if the offense involved intentionally endangering the safety of: (A) An aircraft; (B) a mass transportation vehicle or a ferry; or (C) any person in, upon, or near an aircraft, a mass transportation vehicle, or a ferry, with the intent to endanger the safety of an aircraft, a mass transportation vehicle, or a ferry, during the course of its operation;

(2) 18, if the offense involved recklessly endangering the safety of: (A) an aircraft; (B) a mass transportation vehicle or a ferry; or (C) any person in, upon, or near an aircraft, a mass transportation vehicle, or a ferry, with the intent to endanger the safety of an aircraft, a mass transportation vehicle, or a ferry, during the course of its operation;''.

The Commentary to § 2A5.2 captioned ''Statutory Provisions'' is amended by inserting ''18 U.S.C. 1993(a)(4), (5), (6);''

before ''49 U.S.C. 46308''; and by inserting ''46503,'' before ''46504''.

The Commentary to § 2A5.2 is amended by inserting before ''Background'' the following:

''Application Note

1. Definition.—For purposes of this guideline, 'mass transportation' has the meaning given that term in 49 U.S.C. 5302(a)(7).''.

The Commentary to § 2A5.2 captioned ''Background'' is amended in the first sentence by striking ''the aircraft and passengers'' and inserting ''an aircraft, a mass transportation vehicle, or a ferry, or any person in, upon, or near an aircraft, a mass transportation system, or a ferry''.

Issues for Comment: The Commission requests comment regarding whether § 2A5.2 should be amended to provide an enhancement or a cross-reference to the homicide guidelines if death results, and also whether a specific offense characteristic should be added if the offense endangered or harmed multiple victims. In order to take into account aggravating conduct under 49 U.S.C. 46503, should § 2A5.2 provide an enhancement for assaulting airport security personnel? Alternatively, should there be a more general enhancement in that guideline for jeopardizing the security of an airport facility, mass transportation vehicle, or ferry? Should the Commission limit application of such an enhancement so that it does not apply to assaults that do not jeopardize the overall safety or security of an airplane, mass transportation vehicle, or ferry?

The Commission also requests comment regarding how the guidelines should treat offenses involving the conveying of false information and threats under 18 U.S.C. 1993(a)(7) and (8) and under 49 U.S.C. 46507. Section 1993(a)(7) and (8) prohibit conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt to do any act prohibited by this section, and attempting, threatening, or conspiring to do any of the above acts. Section 46507 prohibits (i) conveying or causing to be conveyed false information, knowing the information to be false, concerning an air piracy and similar offenses under title 49, United States Code, and (ii) threatening to commit air piracy or similar offenses under title 49, United States Code, having the apparent determination and will to carry out the threat. Currently, section 46507 offenses are not listed in the Statutory Index. Should the offense levels for such cases be the same as the offense levels that would pertain if the threatened offense (or the offense about which false information had been conveyed) had actually been committed, or should the guidelines provide a reduction in offense level for such cases?

The Commission also requests comment regarding whether any of the base offense levels in § 2A5.2 should be increased to cover offenses under 18 U.S.C. 1993 and 49 U.S.C. 46503.

The Commission generally requests comment on how the guidelines should treat hoaxes concerning attempts to commit any act of terrorism. Should a hoax be treated the same as the underlying offense which was the object of the hoax?

Subsection 2M6.1(a)(2) is amended by striking ''or''.

Subsection 2M6.1(a)(3) is amended by striking the period at the end and inserting ''; or''.

Subsection 2M6.1(a) is amended by adding at the end the following:

''(4) [14–22], if the defendant (A) was a restricted person at the time the defendant committed the instant offense; or (B) is convicted under 18 U.S.C. 175(b) or 175b.''.

The Commentary to § 2M6.1 captioned ''Statutory Provisions'' is amended by inserting ''175b,'' after ''175,''.

The Commentary to § 2M6.1 captioned ''Application Notes'' is amended in Note 1 by inserting after ''18 U.S.C. 831(f)(1).'' the following:

''Restricted person'' has the meaning given that term in 18 U.S.C. 175b(b)(2).''.

Issue for Comment: The Commission requests comment regarding whether the specific offense characteristics in § 2M6.1(b)(1) and (b)(3) should be applicable to offenses under 18 U.S.C. 175b and 175(b).

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 175'' the following new line:

''18 U.S.C. § 175b 2M6.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. § 1992'' the following new lines:

''18 U.S.C. 1993(a)(1) 2K1.4
18 U.S.C. 1993(a)(2) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(3) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(4) 2A5.2, 2B1.1
18 U.S.C. 1993(a)(5) 2A5.2
18 U.S.C. 1993(a)(6) 2A2.1, 2A2.2, 2A5.2''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 2332a'' the following new line:

''18 U.S.C. 2339 2X2.1, 2X3.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''49 U.S.C. 46502(a), (b)'' the following new line:

''49 U.S.C. 46503 § 2A5.2''.

Part (B): Pre-existing Predicate Offenses to Federal Crimes of Terrorism Not Covered by the Guidelines

Synopsis of Proposed Amendment: A number of offenses that currently are enumerated in 18 U.S.C. 2332b(g)(5) as federal crimes of terrorism are not listed in the Statutory Index (Appendix A). This means that the court needs to look for an analogous Chapter Two guideline for these offenses. The amendment proposes a number of Statutory Index references, as well as modifications to various Chapter Two guidelines, for these offenses.

Specifically, 18 U.S.C. 2332b(a)(1), prohibits, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. The maximum statutory penalty for such offenses is life imprisonment. The amendment proposes to reference these offenses to §§ 2A1.1, 2A1.2, 2A1.3, 2A1.4, and 2A2.2, as § 2332b offenses are by definition offenses against the person and therefore are analogous to offenses currently referenced to those guidelines.

The amendment also provides an issue for comment on how the Commission should treat threat cases under 18 U.S.C. 2332b(a)(2), which prohibits threats to commit an offense under 18 U.S.C. 2332b(a)(1). Those offenses prohibit, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. (The amendment also proposes to reference 18 U.S.C. 2332b(a)(2) to §§ 2A1.5 and 2A2.1, to the extent attempt or conspiracy to commit murder is involved.). The maximum term of imprisonment for threats to commit an offense under 18 U.S.C. 2332b(a)(1) is ten years.

This amendment also creates a new guideline, at 2M6.3 (Providing Material Support to Terrorists and Foreign Terrorist Organizations), for the following two offenses:

(1) 18 U.S.C. 2339A, which prohibits the provision of material support or resources to terrorists, knowing or intending that they will be used in the preparation for, or in carrying out, specified crimes (i.e., those designated as predicate offenses for ''federal crimes

of terrorism'') or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation. The maximum term of imprisonment is 15 years.

(2) 18 U.S.C. 2339B, which prohibits the provision of material support or resources to a foreign terrorist organization. The maximum term of imprisonment is 15 years.

An issue for comment is included on how the new guideline proposed to be added at § 2M6.3 should cover the wide variety of conduct encompassed by the offenses at 18 U.S.C. 2339A and 2339B, and whether there exists sufficiently analogous guidelines for these offenses. Further, the Commission requests comment on whether 18 U.S.C. 2339A and 2339B offenses should be referenced to the same or different guidelines. For example, should § 2339A be referenced to § 2X2.1 (Aiding and Abetting) in a case in which the offense occurred prior to the underlying terrorism offense, and be referenced to § 2X3.1 (Accessory After the Fact) in a case in which the offense occurred after the underlying terrorism offense. Should § 2339B be referenced to § 2M5.1?

The amendment also proposes to reference torture offenses under 18 U.S.C. 2340A to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A2.2 (Aggravated Assault), and 2A4.1 (Kidnapping, Abduction, Unlawful Restraint). The statutory maximum penalty for this offense is 20 years imprisonment, or life imprisonment if death results. ''Torture'' is defined in 18 U.S.C. 2340(1) as ''an act committed by a person under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control''. Although this offense has not been listed in the Statutory Index for some time, reference in the Statutory Index is recommended at this time because the offense is now a predicate offense that may qualify as a ''federal crime of terrorism''.

The amendment also proposes to reference 49 U.S.C. 60123(b) (damaging or destroying an interstate gas or hazardous liquid pipeline facility) to §§ 2B1.1 (Theft, Property Destruction, and Fraud), 2K1.4 (Arson; Property Damage by Use of Explosives), 2M2.1 Destruction of, or Production of Defective, War Material, Premises, or Utilities), and 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities). The maximum penalty is 20 years, or life imprisonment if the offense resulted in the death of any person. Although this offense has not been listed in the Statutory Index for some time, reference in the Statutory Index is recommended at this time because the offense is now a predicate offense that may qualify as a ''federal crime of terrorism''. An issue for comment is included regarding which, if any, of the guidelines listed above are appropriate for these offenses.

Proposed Amendment (Part B):

Chapter Two, Part M, Subpart 6 is amended in the heading by adding at the end ''; Providing Material Support to Terrorists''.

Chapter Two, Part M, Subpart 6, is amended by adding at the end the following:

''§ 2M6.3. Providing Material Support or Resources to Terrorists or Designated Foreign Terrorist Organizations

(a) Base Offense Level: [26][32]

Commentary

Statutory Provisions: 18 U.S.C. 2339A, 2339B.

Application Note:

1. Application of Terrorism Adjustment.—An offense covered by this guideline is not precluded from (A) application of the adjustment in § 3A1.4 (Terrorism), or (B) if the adjustment does not apply, an upward departure under Application Note 3 of § 3A1.4.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 2332a'' the following new lines:

''18 U.S.C. 2332b(a)(1) 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.2

18 U.S.C. 2332b(a)(2) 2A1.5, 2A2.1, 2M6.3

18 U.S.C. 2339A 2M6.3

18 U.S.C. 2339B 2M6.3

18 U.S.C. 2340A 2A1.1, 2A1.2, 2A2.2, 2A4.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''49 U.S.C. 46506'' the following new line:

''49 U.S.C. 60123(b) 2B1.1, 2K1.4, 2M2.1, 2M2.3''.

Issues for Comment: The Commission requests comment on the appropriate treatment in the guidelines for threat cases under 18 U.S.C. 2332b(a)(2), which prohibits threats to commit an offense under 18 U.S.C. 2332b(a)(1). Those offenses prohibit, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. (The amendment also proposes to reference 18 U.S.C. 2332b(a)(2) to §§ 2A1.5 and 2A2.1, to the extent attempt or conspiracy to commit murder is involved.) The maximum term of imprisonment for threats to commit an offense under 18 U.S.C. 2332b(a)(1) is ten years. Should the offense levels for such threat cases be the same as the offense levels that would pertain if the threatened offense had actually been committed, or should the guidelines provide a reduction in offense levels for such cases? Would a reference to § 2A6.1 (Threatening or Harassing Communications) be appropriate? If so, how should that guideline be amended in order to account for the seriousness of threats under 18 U.S.C. 2332b (e.g., should the base offense level be increased for such offenses)?

The maximum term of imprisonment for providing material support to terrorists under 18 U.S.C. 2339A(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate. Should there be alternative base offense levels and/or specific offense characteristics in the new guideline to provide enhanced punishment for the most serious cases covered by the guideline (e.g., should there be a cross reference to Chapter Two, Part A guidelines if death resulted)? What are the most serious cases? For example, should there be an enhancement for providing material support to a designated foreign terrorist organization? Is, for example, providing lodging to a defendant after the commission of a terrorist offense in order to allow that defendant to escape prosecution less serious than providing weapons to a defendant to enable the defendant to carry out a terrorist offense, or should those two cases be treated the same under the guidelines?

Part (C): Increases to Statutory Maximum Penalties For Predicate Offenses Covered by the Guidelines

Synopsis of Proposed Amendment: Section 810 of the Act increased statutory maximum terms of imprisonment for several offenses. An issue for comment follows regarding whether guideline penalties should be increased in response.

Issue for Comment: The Commission requests comment regarding whether guideline penalties should be increased for any of the following offenses for which statutory maximum terms of

imprisonment were increased by section 810 of the Act. Specifically:

(1) The maximum statutory term of imprisonment for arson of a dwelling under 18 U.S.C. 81 was increased from 20 years to any term of years or life. That offense is covered by § 2K1.4 (Arson; Property Damage by Use of Explosives).

(2) The maximum statutory term of imprisonment for destruction of an energy facility under 18 U.S.C. 1366 was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2B1.1 (Theft, Property Destruction, and Fraud).

(3) The maximum term of imprisonment for providing material support to terrorists under 18 U.S.C. 2339A(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate.

(4) The maximum term of imprisonment for providing material support to designated foreign terrorist organizations under 18 U.S.C. 2339B(a)(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate.

(5) The maximum statutory term of imprisonment for destruction of national defense materials under 18 U.S.C. 2155(a) was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities).

(6) The maximum statutory term of imprisonment for sabotage of nuclear facilities or fuel under 42 U.S.C. 2284 was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by §§ 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities) and 2M2.3.

(7) The maximum statutory term of imprisonment for willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505 was increased from 15 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2K1.5 (Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft).

(8) The maximum statutory term of imprisonment for damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123 was increased from 15 years to 20 years, or for any term of years or life if the offense resulted in the death of any person.

Part (D): Penalties for Terrorist Conspiracies

Synopsis of Proposed Amendment: Section 811 of the Act amended the following offenses to provide that a conspiracy to commit any of those offenses shall subject the offender to the same penalties prescribed for the offense, commission of which was the object of the conspiracy: (1) Arson under 18 U.S.C. 81; (2) killings in federal facilities under 18 U.S.C. 930(c); (3) willful or malicious injury to or destruction of communications lines, stations, or systems under 18 U.S.C. 1362; (4) destruction of buildings or property within the maritime of territorial jurisdiction of the United States under 18 U.S.C. 1363; (5) wrecking trains under 18 U.S.C. 1992; (6) providing material support to terrorists under 18 U.S.C. 2339A; (7) torture under 18 U.S.C. 2340A; (8) sabotage of nuclear facilities or fuel under 42 U.S.C. 2284; (9) interference with flight crew members and attendants under 49 U.S.C. 46504; (10) willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505; and (11) damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123(b).

An issue for comment follows regarding whether the Commission should amend § 2X1.1 (Attempt, Solicitation, or Conspiracy) to provide that conspiracies to commit any of these offenses are expressly covered by the applicable Chapter Two offense guidelines.

Issue for Comment: The Commission requests comment regarding the appropriate treatment under the guidelines for conspiracies to commit certain terrorist offenses. Specifically, section 811 of the Act amended the following offenses to provide that a conspiracy to commit any of those offenses shall subject the offender to the same penalties prescribed for the offense, commission of which was the object of the conspiracy: (1) arson under 18 U.S.C. 81; (2) killings in federal facilities under 18 U.S.C. 930(c); (3) willful or malicious injury to or destruction of communications lines, stations, or systems under 18 U.S.C. 1362; (4) destruction of buildings or property within the maritime of territorial jurisdiction of the United States under 18 U.S.C. 1363; (5) wrecking trains under 18 U.S.C. 1992; (6) providing material support to terrorists under 18 U.S.C. 2339A; (7) torture under 18 U.S.C. 2340A; (8) sabotage of nuclear facilities or fuel under 42 U.S.C. 2284; (9) interference with flight crew members and attendants under 49 U.S.C. 46504; (10) willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505; and (11) damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123(b).

Should the Commission amend § 2X1.1 (Attempt, Solicitation, or Conspiracy) and the heading of each applicable Chapter Two Offense guideline to provide that conspiracies to commit any of these offenses are expressly covered by the applicable Chapter Two offense guideline? Should there be a special instruction in § 2X1.1 (Attempt, Solicitation, or Conspiracy) to treat these offenses the same as the substantive offense which was the object of the conspiracy if the offense involved terrorism?

Part (E): Terrorism Adjustment in § 3A1.4

Synopsis of Proposed Amendment: This amendment adds an invited structured upward departure in § 3A1.4 (Terrorism) for offenses that involve domestic terrorism or international terrorism but do not otherwise qualify as offenses that involved or were intended promote ''federal crimes of terrorism'' for purposes of the terrorism adjustment in § 3A1.4. An issue for comment also follows regarding whether terrorist offenses should be sentenced at or near the statutory maximum for the offense of conviction.

Proposed Amendment (Part (E):

The Commentary to § 3A1.4 is amended by striking Application Note 1 in its entirety and inserting the following:

''1. Federal Crime of Terrorism Defined—For purposes of this guideline, 'federal crime of terrorism' has the meaning given that term in 18 U.S.C. 2332b(g)(5). Accordingly, in order for the adjustment under this guideline to apply, the offense (A) must be a felony that involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B);

and (B) pursuant to 18 U.S.C. 2332b(g)(5)(A), must have been calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.''.

The Commentary to § 3A1.4 is amended in Note 2 by inserting ''Computation of Criminal History Category.—'' before ''Under''.

The Commentary to § 3A1.4 is amended by adding at the end the following:

''3. Upward Departure Provision.—By the terms of the directive to the Commission in section 730 of Pub. L. 104–132, the adjustment provided by this guideline applies only to Federal crimes of terrorism. However, there may be cases that involve international terrorism (as defined in 18 U.S.C. 2331(1)) or domestic terrorism (as defined in 18 U.S.C. 2331(5)) but to which the adjustment under this guideline technically does not apply. For example, there may be cases in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B) but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. In such cases an upward departure would be warranted, except that the resulting sentence may not exceed the top of the guideline range that would result if the adjustment under this guideline had been applied.''.

Issues for Comment: The Commission generally requests comment on whether the current terrorism enhancement at § 3A1.4 addresses the sentencing of terrorists appropriately. Should the Commission amend § 3A1.4 to clarify that the adjustment may apply in the case of offenses that occurred after the commission of the federal crime of terrorism, e.g., a case in which the defendant, in violation of 18 U.S.C. 2339A, concealed an individual who had committed a federal crime of terrorism.

As an alternative to the upward departure provision in proposed Application Note 3 of § 3A1.4, should the Commission provide an additional enhancement for terrorism offenses to which the current adjustment does not apply? If so, should this additional enhancement be the same as, or less severe than the current adjustment at § 3A1.4?

Part (F): Money Laundering Offenses

Synopsis of Proposed Amendment: This amendment amends § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports) to incorporate the following new money laundering provisions created by the Act. The amendment proposes to reference these provisions to the structuring guideline and proposes a number of changes to that guideline in order to more fully incorporate the new offenses. Specifically:

(1) 31 U.S.C. 5318A(b), created by section 311 of the Act, authorizes the Secretary of the Treasury to (i) require domestic financial institutions to maintain records, file reports, or both, concerning transactions with financial institutions or jurisdictions outside the United States if the Secretary finds that such transactions are of ''primary money laundering concern''; (ii) require domestic financial institutions to provide identifying information about payable-through accounts on such transactions that are of ''primary money laundering concern''; and (iii) prohibit domestic financial institutions from opening or maintaining a payable-through account on behalf of a foreign banking institution, if any such transactions could be conducted. The applicable penalty provision, 31 U.S.C. 5322, provides for a maximum term of imprisonment of 5 years, or ten years if the defendant engaged in a pattern of unlawful activity.

(2) 31 U.S.C. 5318(i), added by section 312 of the Act, requires financial institutions that established or maintains a private banking account or correspondent account in the United States for a non-United States person, to establish due diligence policies, procedures, and controls that are reasonably designed to detect and report money laundering through those accounts, and a new subsection (h), which prohibits financial institutions from establishing or maintaining a correspondent account for a foreign bank that does not have a physical presence in any country. The applicable penalty provision, 31 U.S.C. 5322, provides for a maximum term of imprisonment of 5 years, or ten years if the defendant engaged in a pattern of unlawful activity.

The amendment revises the definition of ''value of the funds'' for purposes of calculating the base offense level in § 2S1.3(a) in order to incorporate these offenses into the guideline.

The amendment also adds an enhancement if the defendant committed the offense as part of a pattern of unlawful activity. This enhancement takes into account the enhanced penalty provisions (imprisonment of not more than ten years) under 31 U.S.C. 5322(b) for such conduct if the pattern of unlawful activity involved more than $100,000 in a 12-month period.

An issue for comment follows regarding how the Commission should treat these offenses.

(3) 31 U.S.C. 5331, added by section 365 of the Act, which requires nonfinancial trades or businesses to report the receipt of more than $10,000 in coins and currency in one transaction or two or more related transactions. The maximum term of imprisonment is five years, or ten years if the defendant engaged in a pattern of unlawful activity.

(4) 31 U.S.C. 5332, added by section 371 of the Act, prohibits concealing on one's person or any conveyance more than $10,000 in currency or other monetary instruments in order to evade currency reporting requirements (i.e., bulk cash smuggling). The maximum term of imprisonment is not more than five years. An issue for comment follows regarding whether an enhancement for bulk cash smuggling should be added to the guidelines.

In addition, section 315 of the Act expanded the predicate offenses under 18 U.S.C. 1956 to include public corruption. An issue for comment follows regarding whether the money laundering guideline, § 2S1.1, should be amended to add public corruption offenses to the list of offenses that qualify for the 6-level enhancement in subsection (b)(1) because of the seriousness of these offenses.

The amendment also proposes to add a definition of ''terrorism'' for purposes of the 6-level enhancement in § 2S1.1(b)(1). The definition of terrorism is added for consistency of application within the guidelines.

Proposed Amendment (Part (F))

The Commentary to § 2S1.1 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following new paragraph:

'''Terrorism'' means domestic terrorism (as defined in 18 U.S.C. 2331(5)), a federal crime of terrorism (as defined in 18 U.S.C. 2332b(g)(5)), or

international terrorism (as defined in 18 U.S.C. 2331(1)).''.

Section 2S1.3 is amended in the title by adding at the end ''; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts''.

Section 2S1.3(b) is amended by redesignating subdivision (2) as subdivision (3); and by inserting after subdivision (1) the following:

''(2) If the defendant committed the offense as part of a pattern of unlawful activity [involving more than $100,000 in a 12-month period], increase by 2 levels.''.

The Commentary to § 2S1.3 captioned ''Statutory Provisions'' is amended by inserting ''5318, 5318A(b),'' after ''5316,''; and by inserting '', 5331, 5332'' after ''5326''.

The Commentary to § 2S1.3 captioned ''Application Note'' is amended by striking the text of Note 1 and inserting the following:

''Definition of 'Value of the Funds'.—

(A) In General.—Except as provided in subdivision (B), the 'value of the funds' for purposes of subsection (a) means the amount of the funds involved in the structuring or reporting conduct.

(B) Exceptions.—If the offense involved a correspondent account or payable-through account prohibited or restricted under 31 U.S.C. 5318A(b)(5), the 'value of the funds' means the total amount of funds routed through that account on behalf of a foreign jurisdiction, foreign financial institution, or class of transaction that the Secretary of the Treasury found to be of primary money laundering concern.

If the offense involved a correspondent account for or on behalf of a foreign bank that does not have a physical presence in any country, in violation of 31 U.S.C. 5318, the 'value of the funds' means the total amount of funds routed through that account on behalf of that foreign bank.

The terms ''correspondent account'' and ''payable-through account'' have the meaning given those terms in 31 U.S.C. 5318A(e)(1).''.

The Commentary to § 2S1.3 captioned ''Application Note'' is amended in the heading by striking ''Note'' and inserting ''Notes''; and by adding at the end the following new note:

''2. Enhancement for Pattern of Unlawful Activity.—For purposes of subsection (b)(2), a pattern of unlawful activity means [at least two separate and unrelated occasions of unlawful activity] [unlawful activity involving a total amount of more than $100,000 in a 12-month period], without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion.''.

The Commentary to § 2S1.3 captioned ''Background'' is amended in the first sentence by striking ''The'' and inserting ''Some of the'' and by adding at the end the following new paragraph:

''Other offenses covered by this guideline, under 31 U.S.C. 5318 and 5318A, relate to records, reporting and identification requirements, and prohibited accounts involving certain foreign jurisdictions, foreign institutions, foreign banks, and other account holders.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''31 U.S.C. 5316'' the following new lines:

''31 U.S.C. 5318 2S1.3
31 U.S.C. 5318A(b) 2S1.3''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''31 U.S.C. 5326'' the following new lines:

''31 U.S.C. 5331 2S1.3
31 U.S.C. 5332 2S1.3''.

Issues for Comment: Offenses under 31 U.S.C. 5318A(b)(5) prohibit domestic financial institutions from opening or maintaining a payable-through account on or behalf of a foreign banking institution, if any such transactions could be conducted. Offenses under 31 U.S.C. 5318(j) prohibit financial institutions from establishing or maintaining a correspondent account for a foreign bank that does not have a physical presence in any country. How should the guidelines treat such offenses? Specifically, should such offenses be referenced to § 2S1.3? If so, does § 2S1.3 adequately account for all the conduct prohibited by these offenses? For example, for purposes of computing the base offense level under subsection (a), should the definition of the ''value of the funds'' be revised to include the total amount of the funds maintained in a payable-through account or in a prohibited correspondent account for a foreign bank, or would such a calculation overestimate the seriousness of the offense? Is there a more appropriate method to determine the value of the funds in such cases?

Offenses under 31 U.S.C. 5332, added by section 371 of the Act, prohibit concealing on one's person or any conveyance more than $10,000 in currency or other monetary instruments in order to evade currency reporting requirements (i.e., bulk cash smuggling). Congress has indicated that these offenses are more serious than failing to file a customs report, even though the statutory maximum terms of imprisonment are the same for both of these offenses. See H. Rept. 107–250. The Commission requests comment on whether an enhancement should be added to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements) if the offense involved bulk cash smuggling.

In addition, section 315 of the Act expanded the predicate offenses under 18 U.S.C. 1956 to include foreign public corruption. The Commission requests comment regarding whether the money laundering guideline, § 2S1.1, should be amended to add all forms of public corruption offenses to the list of offenses that qualify for the 6-level enhancement in subsection (b)(1) because of the seriousness of these offenses.

Part (G): Currency and Counterfeiting Offenses

Synopsis of Proposed Amendment: Sections 374 and 375 of the Act increase the statutory maximum terms of imprisonment for a number of offenses involving counterfeiting domestic and foreign currency and obligations. The Act increased the statutory maximum terms of imprisonment to 20 years or 25 years for all counterfeiting offenses that had a statutory maximum term of imprisonment of 10 years or 15 years. Penalties for counterfeiting foreign bearer obligations that had a maximum term of imprisonment of one, three, and five years were increased to ten years or, in some cases, 20 or 25 years. In response, an issue for comment is provided regarding whether guideline penalties should be increased in light of the increased statutory maximum penalties.

Issue for Comment: Section 374 of the Act changed or otherwise increased the statutory maximum penalties for counterfeiting domestic currency obligations as follows: the statutory maximum penalty for violations of 18 U.S.C. 470 (counterfeit acts committed outside the United States) was changed from 20 years to the punishment ''provided for the like offense within the United States;'' the statutory maximum penalty for violations of 18 U.S.C. 471 (obligations or securities of the United States) was increased from 15 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 472 (uttering counterfeit obligations or securities) was increased from 15 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 473 (dealing in counterfeit obligations or securities) was increased from 10 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 476 (taking impressions of tools used for obligations or securities) was increased

from 10 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 477 (possessing or selling impressions of tools used for obligations or securities) was increased from 10 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 484 (connecting different parts of different notes) was increased from 5 years to 10 years; and the statutory maximum penalty for violations of 18 U.S.C. 493 (bonds and obligations of certain lending agencies) was increased from 5 years to 10 years. The Commission requests comment regarding whether the guideline penalties for these offenses should be increased in light of the increased statutory maximum penalties.

Section 375 of the Act increased the statutory maximum penalties for counterfeiting foreign currency obligations as follows: the statutory maximum penalty for violations of 18 U.S.C. 478 (foreign obligations or securities) was increased from 5 years to 10 years; the statutory maximum penalty for violations of 18 U.S.C. 479 (uttering foreign obligations) was increased from 3 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 480 (possessing foreign counterfeit obligations) was increased from 1 year to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 481 (plates, stones, or analog, digital, or electronic images for counterfeiting foreign obligations or securities) was increased from 5 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 482 (foreign bank notes) was increased from 2 years to 20 years; and finally, the statutory maximum penalty for violations of 18 U.S.C. 483 (uttering foreign counterfeit bank notes) was increased from 1 year to 20 years. The Commission requests comment regarding whether the guideline penalties for these offenses should be increased in light of the increased statutory maximum penalties.

Currently, offenses under 18 U.S.C. 478, 479, 480, 481, 482, and 483 are referenced to § 2B1.1. Should these offenses also be referenced to § 2B5.1, and should that guideline be reworked in order to cover the counterfeiting of foreign obligations?

Additionally, the guidelines provide in §§ 2B1.1(b)(8)(B) a two-level enhancement, with a minimum offense level of level 12, if a substantial portion of a fraudulent scheme was committed from outside the United States. Should this enhancement be amended to provide an alternative prong if the offense was intended to promote terrorism?

Finally, the guidelines provide in § 2B5.1(b)(5) a two-level enhancement if any part of the offense was committed outside the United States. Should this enhancement be amended to provide an alternative prong if the offense was intended to promote terrorism? Should an additional enhancement be provided if the offense was intended to promote terrorism, and if so, what should be the extent of the enhancement?

Part (H): Miscellaneous Amendments

Synopsis of Proposed Amendment: This part of the amendment proposes to address eight miscellaneous issues related to terrorism:

(1) It provides a definition of terrorism for purposes of the prior conviction enhancement in the illegal reentry guideline, § 2L1.2. For consistency, the definition is the same definition proposed to be added to the money laundering guideline and to the Chapter Three terrorism adjustment.

(2) It provides two options for amending the obstruction of justice guideline, § 3C1.1, in response to section 319(d) of the Act. Section 319(d) amends the Controlled Substances Act at 21 U.S.C. 853(e) to require a defendant to repatriate any property that may be seized and forfeited and to deposit that property in the registry of the Court or with the U.S. Marshal. That section also states that the failure to comply with a protective order and an order to repatriate property ''may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.''

(3) It amends the guideline on terms of supervised release, § 5D1.2, in response to section 812 of the Act, which authorizes a term of supervised release of any term of years or life for a defendant convicted of a federal crime of terrorism the commission of which resulted in, or created a substantial risk of, death or serious bodily injury to another person.

(4) It amends the theft, property destruction and fraud guideline, § 2B1.1, to delete the special instruction pertaining to the imposition of not less than six months imprisonment for a defendant convicted under section 1030 of title 18, United States Code. Section 814(f) of the Act directed the Commission to amend the guidelines ''to ensure that any individual convicted of a violation of section 1030 of title 18, United States Code, can be subjected to appropriate penalties, without regard to any mandatory minimum term of imprisonment.''

(5) It adds a reference in the Statutory Index to the bribery guideline, § 2C1.1, for the new offense created by section 329 of the Act. Section 329 prohibits a Federal official or employee, in connection with administration of the money laundering provisions of the Act, to corruptly demand, seek, receive, accept, or agree to receive or accept anything of value in return for being influenced in the performance of an official act, being influenced to commit or aid in committing any fraud on the United States, or being induced to do or omit to do any act in violation of official duties. The term of imprisonment is not more than 15 years.

(6) It amends § 2M5.1 (Evasion of Export Controls) to incorporate 18 U.S.C. 2332d, which prohibits a person, knowing or having reasonable cause to know that a country is designated under the Export Administration Act as a country supporting international terrorism, to engage in a financial transaction with the government of that country. The amendment also proposes to provide for application of the base offense level of level 26, for 18 U.S.C. 2332d offenses.

(7) It proposes an issue for comment regarding how the Commission should treat an offense under 18 U.S.C. 1036. That offense, added by section 2 of the Enhanced Federal Security Act of 2000, Pub. L. 106–547, prohibits, by fraud or pretense, the entering or attempting to enter any real property, vessel, or aircraft of the United States, or secure area of an airport. The maximum penalty is five years imprisonment.

(8) It provides an issue for comment on how the guidelines should treat offenses involving fraudulent statements under 18 U.S.C. 1001, particularly such offenses committed in connection with acts of terrorism.

Proposed Amendment (Part (H)):

Section 2B1.1 is amended by striking subsection (d) in its entirety.

The Commentary to 2B1.1 captioned ''Background'' is amended by striking the last paragraph in its entirety.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 1, paragraph (B), by adding at the end the following new paragraph:

''(vi) 'Terrorism offense' means any offense involving domestic terrorism (as defined in 18 U.S.C. 2331(5)), a federal crime of terrorism (as defined in 18 U.S.C. 2332b(g)(5)), or international terrorism (as defined in 18 U.S.C. 2331(1)).''.

Section 2M5.1 is amended in the title by adding at the end ''; Financial Transactions with Countries Supporting International Terrorism''.

Section 2M5.1(a)(1) is amended by inserting ''(A)'' after ''if'' and by

inserting '', or (B) the offense involved a financial transaction with a country supporting international terrorism;'' after ''evaded''.

The Commentary to § 2M5.1 captioned ''Statutory Provisions'' is amended by inserting ''18 U.S.C. 2332d;'' before ''50 U.S.C. App. secs. 2401–2420''.

The Commentary to § 2M5.1 captioned ''Application Notes'' is amended by adding at the end the following:

''4. For purposes of subsection (a)(1)(B), ''a country supporting international terrorism'' means a country designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405).''.

[Option 1

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 4 by striking the period at the end of paragraph (i) and inserting a semicolon; and by inserting after paragraph (i) the following:

''(j) failing to comply with a restraining order or injunction issued pursuant to 21 U.S.C. 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. 853(p).''.]

[Option 2

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 4 by adding at the end the following new paragraph:

''This adjustment may also apply if the defendant failed to comply with a restraining order or injunction issued pursuant to 21 U.S.C. 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. 853(p).''.]

Section 5D1.2(a) is amended by adding at the end the following new paragraph:

''Notwithstanding subdivisions (1) through (3), the length of the term of supervised release shall be [not less than three years][life] for any offense listed in 18 U.S.C. 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 2332a'' the following new line:

''18 U.S.C. 2332d 2M5.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''50 U.S.C. App. § 2410'' the following new line:

''Section 329 of the USA 2C1.1''.
Patriot Act of 2001,
Pub. L. 107–56.''.

Issues for Comment: The Commission requests comment regarding how the Commission should treat an offense under 18 U.S.C. 1036. That offense, added by section 2 of the Enhanced Federal Security Act of 2000, Pub. L. 106–547, prohibits, by fraud or pretense, the entering or attempting to enter any real property, vessel, or aircraft of the United States, or secure area of an airport. The maximum penalty is five years imprisonment. Should such offenses be referenced to § 2B2.3 (Trespass)? If so, how should that guideline be amended to take into account the seriousness of these offenses (e.g., should the enhancement at § 2B2.3(b)(1) be amended to cover trespasses occurring with respect to a vessel or aircraft of the United States, a secure area of an airport, and/or a secure area of a mass transportation system)?

The Commission also requests comment on how the guidelines might more appropriately treat offenses under 18 U.S.C. 1001, particularly such offenses that are committed in connection with acts of terrorism. Currently, offenses under 18 U.S.C. 1001 (making false statements) are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud), and a cross reference at § 2B1.1(c)(3) calls for application of another Chapter Two guideline if the conduct set forth in the count of conviction under section 1001 establishes an offense specifically covered by that other Chapter Two guideline.

2. Drugs

Synopsis of Proposed Amendment

In General

The Commission has begun a long term assessment of the guidelines pertaining to drug offenses and is studying how it might amend the guidelines to (A) decrease somewhat the contribution of drug quantity on penalty levels for drug trafficking offenses generally; (B) more adequately account for aggravating and mitigating conduct that may be unrelated to drug quantity; (C) address various circuit conflicts that pertain to the drug guidelines; and (D) improve generally the overall operation of the drug guidelines.

This amendment cycle, the Commission is particularly interested in considering amending the guidelines as they pertain to offenses involving cocaine base (''crack cocaine''). In deciding how best to address various concerns that have been expressed regarding the penalties for crack cocaine offenses, the Commission is considering adding a number of enhancements to the primary drug trafficking guideline, § 2D1.1, to account more adequately for aggravating conduct sometimes associated not only with crack cocaine offenses, but also with drug trafficking offenses generally. The Commission is paying particular attention to the considerations stated in Pub. L. 104–38, the legislation enacted in 1995 disapproving the prior Commission's amendment which, among other things, would have equalized the penalties based on drug quantity for crack cocaine and powder cocaine. The proposed amendment contains a number of enhancements that directly address many of those considerations, especially those that focus on violence, and apply across drug type.

As part of its assessment, and in light of the proposed enhancements which, if adopted, would apply across drug type, the Commission also is exploring how it might amend the guidelines to decrease penalties in appropriate cases in which the current penalty structure may overstate the culpability of the defendant. Accordingly, the Commission is studying a number of options, including a maximum base offense level for offenders who qualify for a mitigating role adjustment and a two level reduction for offenders who meet the ''safety valve'' criteria set forth in § 5C1.2 and have no prior convictions.

Base Offense Level

Mitigating Role Adjustment

The proposed amendment provides a maximum base offense level of [24–32] if the defendant qualifies for an adjustment under § 3B1.2 (Mitigating Role). This base offense level cap is designed to limit somewhat the exposure of low level drug offenders to increased penalties based on drug quantity alone. The impact of the proposed base offense level cap will vary depending on the level at which the cap is set. If level 32 is adopted as the maximum base offense level for these defendants, 805 cases would be affected, and their average sentence would decrease from 82 months to 60 months. If the Commission adopted level 26, 2,062 cases would be affected, and their average sentence would decrease from 60 months to 37 months.

Two issues for comment pertaining to mitigating role follow the proposed amendment. The first issue invites comment regarding whether application of the maximum base offense level should be limited in some manner, for example to defendants who receive a minimal role adjustment under § 3B1.2 or who do not receive enhancements for aggravating conduct such as weapon involvement or bodily injury. The second issue invites comment regarding

whether the Commission also should address three circuit conflicts that remain pertaining to mitigating role, and if so, how should those conflicts be resolved. The issue then requests comment regarding whether the Commission should provide guidance on whether particular drug offenders who perform certain drug trafficking functions (e.g., courier or mule) should or should not receive a mitigating role adjustment.

Enhancements

Violence

The proposed amendment also contains a number of enhancements. First, the proposed amendment contains a number of modifications to § 2D1.1 to more adequately account for violence sometimes associated with drug trafficking offenses. Subsection (b)(1) currently provides a two level enhancement for offenses involving possession of a dangerous weapon, but it does not differentiate penalties to account for the defendant's weapon use, the seriousness of the weapon use, or the type and number of firearms involved.

Accordingly, the proposed amendment modifies subsection (b)(1) to provide a graduated enhancement of [2] to [6] levels for weapon involvement to account more adequately for these factors. Specifically, proposed subsection (b)(1)(A) provides a [6] level enhancement if the defendant discharged a firearm. Proposed subsection (b)(1)(B) provides a [4] level enhancement if the defendant (i) brandished or otherwise used a dangerous weapon (including a firearm); or (ii) possessed a firearm described in 18 U.S.C. 921(a)(30) or 26 U.S.C. 5845(a). Proposed subsection (b)(1)(C) provides (i) a [2] level enhancement if a dangerous weapon (including a firearm) was possessed; or (ii) a [4] level enhancement if eight or more firearms were possessed. An option for an upward departure provision if the number of firearms involved in the offense substantially exceeded eight firearms is provided in proposed Application Note 3.

The enhanced penalties provided by this part of the amendment are likely to apply in a minority of cases. In fiscal year 2000, 21.3 percent of crack cocaine cases received either the enhancement for possession of a dangerous weapon in § 2D1.1(b)(1) or a penalty for a violation of 18 U.S.C. 924(c), 18.7 percent of methamphetamine cases, 10.6 percent of powder cocaine cases, 6.6 percent of heroin cases, and 5.9 percent of marijuana cases. The proposed heightened penalties in subsection (b)(1) would apply in a subset of those cases.

Proposed subsection (b)(2) provides a graduated enhancement of [2] to [8] levels for [death] or bodily injury, depending on the degree of injury. The enhancement does not apply to injury resulting from the use of the controlled substance because subsection (a) already provides heightened base offense levels that account for death or serious bodily injury resulting from such use. Proposed subsection (b)(2) provides an option for an eight level enhancement for death. The option is provided because the cross reference to § 2A1.1 (First Degree Murder) provided by subsection (d) does not apply if a victim was killed under circumstances that would not constitute murder under 18 U.S.C. 1111 (e.g., manslaughter). Proposed subsection (b)(2) also provides a bracketed option that limits the cumulative adjustments from subsections (b)(1) and (b)(2) to [10][12] levels because weapon use and bodily injury are so interrelated.

Two issues for comment follow the proposed amendment pertaining to these proposed enhancements. The first issue invites comment regarding whether subsections (b)(1) and (b)(2) also should provide minimum offense levels, particularly in light of the minimum offense level currently provided in subsection (b)(5) for methamphetamine and amphetamine manufacturing offenses that create a substantial risk of harm to human life. The second issue invites comment regarding whether the Commission also should provide an enhancement that would apply if the offense involved an express or implied threat of death or bodily injury, and if so, what would be an appropriate increase and should the enhancement be applied cumulatively to the proposed enhancements in subsections (b)(1) and (b)(2).

Protected Locations, Underage or Pregnant Individuals

The primary drug trafficking guideline, § 2D1.1, currently does not provide an enhancement for drug distribution near protected locations or distribution involving underage or pregnant individuals. Section § 3B1.4 (Using a Minor to Commit a Crime) provides a two level enhancement if the defendant used or attempted to use a person less than eighteen years of age to commit the offense. Enhanced penalties also are provided in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals), but a conviction for a statutory violation of drug trafficking in a protected location (21 U.S.C. 860) or to underage or pregnant individuals (21 U.S.C. 859 and 861) is necessary in order for § 2D1.2 to be applied.

The proposed amendment consolidates § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) into § 2D1.1, and makes conforming changes to the Statutory Index for offenses currently referenced to § 2D1.2 (21 U.S.C. 849, 859, 860, 861, and 963). Proposed subsection (b)(3) provides a two level enhancement if the defendant (A) was convicted of an offense under 21 U.S.C. 849[, 859] 860[, or 861]; (B) distributed to a pregnant individual [knowing, or having a reasonable cause to believe, that the individual was pregnant at that time]; (C) distributed to a minor individual [knowing, or having a reasonable cause to believe, that the individual was a minor at that time]; or (D) used a minor individual to commit the offense or to assist in avoiding detection or apprehension for the offense. The requirement that the defendant be convicted of a statutory violation of drug trafficking in a protected location is retained because otherwise the enhancement could apply in an overly broad manner, particularly for trafficking offenses occurring in dense urban areas.

A minimum offense level of [26] is provided if subdivision (C) or (D) applies. This minimum offense level is required by the directive to the Commission contained in section 6454 of the Anti-Drug Abuse Act of 1988. An issue for comment follows the proposed amendment that invites comment regarding whether the minimum offense level should be extended to apply to any of the other subdivisions of proposed subsection (b)(3).

The impact of this enhancement should be limited but it will allow increased sentences in appropriate cases. Compared to the 22,639 defendants sentenced under § 2D1.1 in fiscal year 2000, only 196 were convicted under any of the statutes referenced to § 2D1.2. The majority of those cases (89.3%) were for violations of 21 U.S.C. 860 for trafficking in a protected location. There likely would be no net penalty increase from this part of the proposed amendment because the proposed amendment still would require a conviction under that statute. Also, in fiscal year 2000, only 131 defendants received the adjustment in § 3B1.4 (Use of a Minor) and, for those cases, no net increase results from this part of the proposed amendment because proposed Application Note 22 expressly provides that if proposed

subsection (b)(3)(D) applies, § 3B1.4 does not apply. This proposed application note corresponds to Application Note 2 in § 3B1.4, which instructs that if the Chapter Two offense guideline incorporates use of a minor to commit a crime, § 3B1.4 should not be applied.

Prior Criminal Conduct

Proposed subsection (b)(8) provides a [2][4] level increase if the defendant committed any part of the instant offense after sustaining one felony conviction of [either a crime of violence or] a controlled substance offense. Chapter Four operates generally to provide increased punishment for past criminal conduct and includes a number of particular provisions often applicable in drug trafficking cases, such as the career offender provision. The proposed enhancement, however, may more adequately account for certain prior criminal conduct, particularly drug trafficking offenses. Proposed subsection (b)(8) also presents an option that extends application of the enhancement to convictions for prior crimes of violence.

Proposed Application Note 23 defines ''controlled substance offense'' and ''crime of violence'' as those terms are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1) and defines ''felony conviction'' as a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. (The definitions also are consistent with the approach taken in § 2K2.1.) Proposed Application Note 23 also presents an option that limits application of proposed subsection (b)(8) to felony convictions that receive criminal history points under § 4A1.1(a), (b), or (c). Additionally, proposed Application Note 23 expressly provides that prior felony convictions that trigger application of proposed subsection (b)(8) also are counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

An issue for comment follows the proposed amendment that invites comment regarding whether a minimum offense level should be provided in proposed subsection (b)(8), similar to the minimum offense level provided in § 2K2.1(a)(4).

Reduction for No Prior Convictions

The proposed amendment provides, in proposed subsection (b)(9)(B), an additional reduction of two levels for defendants who previously have not been convicted of any offense and who currently qualify for a two level reduction for meeting the criteria set forth in subdivisions (1) through (5) of § 5C1.2(a). This additional reduction is available only to defendants who meet that criteria and who previously have not been convicted of any offense. For purposes of applying the reduction, ''convicted'' means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere, without regard to the applicable time periods set forth in § 4A1.2(e). [The definition also includes juvenile adjudications.] Although tribal, foreign, and military convictions are excluded for criminal history purposes under Chapter Four, such convictions are considered ''convictions'' for purposes of applying the proposed reduction, and any such conviction would disqualify the defendant from receiving the additional two level reduction. Expunged convictions and convictions for certain petty offenses set forth in § 4A1.2(c)(2) are specifically excluded from the definition. By permitting the court to consider tribal, foreign, and military convictions, as well as permitting the court to consider convictions outside of the applicable time periods from Chapter Four, the proposed amendment differentiates penalties for defendants with zero or one criminal history point and defendants who do not have any prior convictions.

This portion of the proposed amendment also clarifies the application of the current two level reduction in § 2D1.1(b)(6) (redesignated as subsection (b)(9) by this proposed amendment) by stating more clearly that the reduction applies regardless of whether the defendant was subject to a mandatory minimum term of imprisonment. Additionally, the proposed amendment makes clear that § 5C1.2(b), which provides a minimum offense level of 17 for certain defendants, is not pertinent to the application of the current two level reduction.

Maintaining Drug-Involved Premises and Ecstasy Offenses

Concerns have been raised that § 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy) does not adequately punish certain defendants convicted under 21 U.S.C. 856 (Establishment of manufacturing operations). That statute originally was enacted to target so-called ''crack houses'' and more recently has been applied to defendants who promote drug use at commercial dance parties frequently called ''raves.''

Currently, § 2D1.8 provides two alternative base offense level computations. For defendants who participate in the underlying controlled substance offense, the offense level from § 2D1.1 applies pursuant to § 2D1.8(a)(1). For defendants who had no participation in the underlying controlled substance offense other than allowing use of the premises, subsection (a)(2) provides a four level reduction from the offense level from § 2D1.1 and a maximum offense level of 16. Because many club owners and rave promoters who do not participate in the underlying offense nonetheless facilitate, promote and profit, at least indirectly, from the use of illegal drugs (primarily 3,4-methylenedioxymethamphetamine, more commonly known as MDMA or ecstasy), the maximum offense level of 16 may not adequately account for the seriousness of these offenses.

The proposed amendment addresses this concern by consolidating § 2D1.8 into § 2D1.1 and making a conforming change to the Statutory Index. The proposed consolidation will have no impact on the offense level for cases in which § 2D1.8(a)(1) previously applied. Proposed Application Note 24 effectively retains the four level reduction currently provided in § 2D1.8(a)(2) by providing that a minimal role adjustment under § 3B1.2 shall apply if the defendant (a) was convicted under 21 U.S.C. 856; and (b) had no participation in the underlying controlled substance offense other than allowing use of the premises.

The maximum offense level for those defendants for which § 2D1.8(a)(2) applied, however, will be increased because the level 16 base offense level cap currently provided in § 2D1.8(a)(2) effectively will be increased to [24–32], the proposed maximum base offense level for defendants who qualify for a mitigating role adjustment. In addition, under the proposed consolidation, the enhancements contained in § 2D1.1 can apply to those defendants. Although the overall impact of the proposed consolidation on drug trafficking sentences will be minimal (only 69 defendants were sentenced under § 2D1.8 in fiscal year 2000), 95.6 percent of defendants sentenced under § 2D1.8 received a base offense level of 16 and likely will be affected by the proposed consolidation.

The proposed amendment also amends the Typical Weight Per Unit (Dose, Pill, or Capsule) Table in Application Note 11 of § 2D1.1 to more accurately reflect the type and quantity

of ecstasy typically trafficked and consumed. Specifically, the proposed amendment adds a reference in the Typical Weight Per Unit Table for MDMA and sets the typical weight at 250 milligrams per pill. Ecstasy usually is trafficked and used as MDMA, not MDA, the drug currently listed in the table. In addition, the proposed amendment revises upward the typical weight for MDA from 100 milligrams to 250 milligrams and deletes the asterisk that previously indicated that the weight per unit shown is the weight of the actual controlled substance, and not the weight of the mixture or substance containing the controlled substance. The absence of MDMA from the table and the use of an estimate of the actual weight of the controlled substance (MDA) rather than an estimate of the weight of the mixture or substance containing the controlled substance may create an incentive to improperly apply the MDA estimate in cases in which the drug involved is MDMA, resulting in underpunishment in some cases, and generally resulting in unwarranted disparity.

Simple Possession of Crack Cocaine

Defendants convicted of possession of five or more grams of a mixture or substance containing cocaine base receive a mandatory minimum sentence of five years under 21 U.S.C. 844(a). The mandatory minimum for simple possession is unique to crack cocaine. The guidelines incorporate the mandatory minimum in § 2D2.1 (Unlawful Possession; Attempt or Conspiracy) by providing a cross reference at subsection (b)(1) to § 2D1.1 if the defendant is convicted of possession of more than five grams of crack. The proposed amendment deletes the cross reference to the drug trafficking guideline, but retains the heightened base offense level of 8.

The cross reference to the drug trafficking guideline is deleted to more adequately differentiate between the seriousness of an offense involving the distribution of crack cocaine and an offense merely involving simple possession of crack cocaine, with no intent to distribute. The impact of the proposed deletion of the cross reference will have minimal impact on drug penalties overall because a total of only 67 defendants have been cross referenced from § 2D2.1 to § 2D1.1 in the past three fiscal years.

Proposed Amendment

Section 2D1.1 is amended in the title by inserting ''Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Renting or Managing a Drug Establishment;'' after ''Offenses);''.

Subsection 2D1.1(a)(3) is amended by striking ''below'' and inserting '', except that if the defendant qualifies for an adjustment under § 3B1.2 (Mitigating Role), the base offense level under this subsection shall not exceed level [24–32]''.

Subsection 2D1.1(b)(1) is amended to read as follows:

''(1) (Apply the greatest):

(A) If the defendant discharged a firearm, increase by [6] levels.

(B) If the defendant (i) brandished or otherwise used a dangerous weapon (including a firearm); or (ii) possessed a firearm described in 18 U.S.C. 921(a)(30) or 26 U.S.C. § 5845(a), increase by [4] levels.

(C) If (i) a dangerous weapon (including a firearm) was possessed, increase by [2] levels; or (ii) eight or more firearms were possessed, increase by [4] levels.''.

Subsection 2D1.1(b)(5) is amended by striking ''greater'' and inserting ''greatest''.

Subsection 2D1.1(b) is amended by redesignating subdivision (6) as subdivision (9); by redesignating subdivisions (2) through (5) as subdivisions (4) through (7), respectively; by inserting the following after subsection (b)(1):

''(2) If the offense involved [death or] bodily injury other than [death or] bodily injury that resulted from the use of the controlled substance, increase the offense level according to the seriousness of the injury:

Degree of injury	Increase in level
(A) Bodily Injury	add [2] levels.
(B) Serious Bodily Injury.	add [4] levels.
(C) Permanent or Life-Threatening Bodily Injury.	add [6] levels.
[(D) Death	add [8] levels.].

[The cumulative adjustments from subsections (b)(1) and (b)(2) shall not exceed [10][12] levels.]

(3) If the defendant (A) was convicted of an offense under 21 U.S.C. 849, [859,] 860 [, or 861]; (B) distributed a controlled substance to a pregnant individual [knowing, or having a reasonable cause to believe, that the individual was pregnant at that time]; (C) distributed a controlled substance to a minor individual [knowing, or having a reasonable cause to believe, that the individual was a minor at that time]; or (D) used a minor individual to commit the offense or to assist in avoiding detection or apprehension for the offense, increase by [2] levels. If subdivision (C) or (D) applies and the offense level is less than [26], increase to level [26].'';

and by inserting after redesignated subdivision (7) (formerly subdivision (5)) the following:

''(8) If the defendant committed any part of the instant offense after sustaining one felony conviction of [either a crime of violence or] a controlled substance offense, increase by [2][4] levels.''.

Subsection 2D1.1(b)(9) (formally subdivision (6)) is amended by inserting ''(A)'' before ''If the'' and by adding at the end the following:

''(B) If (i) subsection (A) applies; and (ii) the defendant previously has not been convicted of any offense, decrease by 2 levels.''.

The Commentary to § 2D1.1 captioned ''Statutory Provisions'' is amended by inserting ''849, 856, 859, 860, 861,'' before ''960(a)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by striking Note 3 in its entirety and inserting the following:

''3. Application of Subsection (b)(1).—

(A) Definitions.—For purposes of this subsection:

'Brandished', 'dangerous weapon', 'firearm', and 'otherwise used' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

'A firearm described in 18 U.S.C. 921(a)(30)' does not include a weapon described in 18 U.S.C. 922(v)(3).

(B) Possession of Dangerous Weapon or Firearm.—Subsections (b)(1)(B)(ii) and (b)(1)(C) apply if a dangerous weapon or firearm was present, unless it is clearly improbable that the dangerous weapon or firearm was connected with the offense. For example, the enhancement would not apply if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet.

[(C) Upward Departure Based on Number of Firearms.—If the number of firearms involved in the offense substantially exceeded eight firearms, an upward departure may be warranted.]''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in the second paragraph of Note 8 by striking ''(b)(2)(B)'' and inserting ''(b)(4)(B)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 11 in the table captioned ''Typical Weight Per Unit (Dose, Pill, or Capsule) Table'' in the line referenced to ''MDA'' by striking the asterisk after ''MDA''; and by striking ''100 mg'' and inserting ''250 mg''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 11 in the table captioned ''Typical Weight Per Unit (Dose, Pill, or Capsule) Table'' by inserting after the line referenced to ''MDA'' the following:

''MDMA 250 mg''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 19 by striking ''(b)(5)(A)'' both places it appears and inserting ''(b)(7)(A)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 20 by striking ''(b)(5)(B)'' and inserting ''(b)(7)(B)''; and by striking ''subsection (b)(5)(C)'' and inserting ''subsection (b)(7)(C)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''21. Subsection (b)(2) Definitions.''For purposes of subsection (b)(2), ''bodily injury'', ''permanent or life-threatening bodily injury'', and ''serious bodily injury'' have the meaning given those terms in Application Note 1 of § 1B1.1 (Application Instructions).

22. Non-applicability of § 3B1.4.—If subsection (b)(3)(D) applies, do not apply § 3B1.4 (Using a Minor to Commit a Crime).

23. Application of Subsection (b)(8).—

(A) Definitions.—For purposes of this subsection:

'Controlled substance offense' has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

['Crime of violence' has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.]

'Felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

(B) [Qualifying Prior Felony Conviction and] Computation of Criminal History Points.—[For purposes of applying subsection (b)(8), use only a prior felony conviction that receives criminal history points under § 4A1.1(a), (b), or (c).] A prior felony conviction that results in application of subsection (b)(8) also is counted for purposes of determining criminal history points under Chapter 4, Part A (Criminal History).

24. Application of § 3B1.2 for Defendant Convicted Under 21 U.S.C. 856.—If the defendant (A) was convicted under 21 U.S.C. 856; and (B) had no participation in the underlying controlled substance offense other than allowing use of the premises, an adjustment under § 3B1.2(a) for minimal role in the offense shall apply.

25. Application of Subsection (b)(9).—

(A) In General.—Subsection (b)(9)(A) applies regardless of whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the application of subsection (b)(9)(A).

(B) Subsection (b)(9)(B).—For purposes of this subdivision, 'convicted'—

(i) means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere, without regard to the applicable time periods set forth in § 4A1.2(e);

[(ii)includes a juvenile adjudication other than an adjudication for a juvenile status offense or truancy;] and

(iii)does not include an expunged conviction or a conviction for any offense set forth in § 4A1.2(c)(2).''.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the fifth paragraph by striking ''Specific Offense Characteristic (b)(2)'' and inserting ''Subsection (b)(4)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the ninth paragraph by striking ''(b)(5)(A)'' and inserting ''(b)(7)(A)''.

The Commentary captioned ''Background'' is amended in the tenth paragraph by striking ''(b)(5)(B)'' and inserting ''(b)(7)(B)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended by inserting after the fourth paragraph the following:

''The minimum offense level applicable to subsection (b)(3)(C) and (D) implements the direction to the Commission in Section 6454 of the Anti-Drug Abuse Act of 1988.''.

Chapter Two, Part D, is amended by striking § 2D1.2 and its accompanying commentary in its entirety.

Chapter Two, Part D, is amended by striking § 2D1.8 and its accompanying commentary in its entirety.

Section 2D2.1 is amended by striking subsection (b)(1) in its entirety and by redesignating subsection (b)(2) as subsection (b)(1).

The Commentary to § 2D2.1 captioned ''Background'' is amended by striking the second paragraph in its entirety.

Appendix A (Statutory Index) is amended by striking the following:

''21 U.S.C. 845 2D1.2
21 U.S.C. 845a 2D1.2
21 U.S.C. 845b 2D1.2''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 846'' by striking ''2D1.2,''; and by striking ''2D1.8,''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 849'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 856'' by striking ''2D1.8''; and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 859'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 860'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 861'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 963'' by striking ''2D1.2,''; and by striking ''2D1.8,''.

Issues for Comment

(1) The Commission requests comment concerning the sentencing of defendants convicted of cocaine base (''crack cocaine'') offenses under the sentencing guidelines. Currently, five grams of crack cocaine triggers a five year mandatory minimum sentence and is assigned a base offense level of 26 under the guidelines, and 50 grams of crack cocaine triggers a ten year mandatory minimum sentence and is assigned a base offense level of 32. This penalty structure has raised several concerns. First, concern has been expressed that the penalty structure does not adequately differentiate between crack cocaine offenders who engage in aggravating conduct and those crack cocaine offenders who do not. This lack of differentiation is caused by the fact that, for crack cocaine offenses, the Drug Quantity Table accounts for aggravating conduct that is sometimes

associated with crack cocaine (e.g., violence). Building these aggravating factors into the Drug Quantity Table essentially penalizes all crack cocaine offenders to some degree for aggravating conduct, even though a minority of crack cocaine offenses may involve such aggravating conduct. As a result, the penalty structure does not provide adequate differentiation in penalties among crack cocaine offenders and often results in penalties too severe for those offenders who do not engage in aggravating conduct. It has been suggested by some that proportionality could be better served (i) by providing sentencing enhancements that target offenders who engage in aggravating conduct such as violence or distribution in protected locations or to minors or pregnant individuals; and (ii) by reducing the penalties based solely on the quantity of crack cocaine to the extent that the Drug Quantity Table takes into account aggravating conduct. Such an approach may better provide proportionate sentencing because it will enable the court to punish more severely the defendant who actually engages in aggravating conduct.

Second, concerns have been expressed that the current penalty structure for crack cocaine offenses overstates the drug trafficking function of crack cocaine offenders. In general, the statutory penalty structure for most, but not all, drug offenses was designed to provide a five year sentence for a serious drug trafficker (often a manager and supervisor of retail level trafficking) and a ten year sentence for a major drug trafficker (often the head of the organization that is responsible for creating and delivering very large quantities). The guidelines have incorporated this structure in § 2D1.1 by linking the Drug Quantity Table to statutory mandatory minimums. The drug quantities that trigger the five year and ten year penalties for crack cocaine offenses, however, are thought by many to be too small to be associated with a serious or major trafficker, respectively. As a result, many low level retail crack traffickers are subject to penalties that may be more appropriate for higher level traffickers.

Third, concerns have been expressed that these problems may result in an unwarranted disparate impact on minority populations, particularly African-Americans, as they comprise the majority of offenders sentenced for crack cocaine offenses.

The Commission requests comment regarding whether the current penalty structure for crack cocaine offenses is appropriate, or whether some other penalty structure is more appropriate for guideline purposes. In deciding how these various concerns might be addressed, the Commission is reviewing Pub. L. 104–38, the legislation enacted in 1995 disapproving the prior Commission's submitted amendment, which among other things equalized the penalties based on drug quantity for crack cocaine and powder cocaine. Any proposed change might contain enhancements that address a number of the considerations contained in that legislation, especially violence associated with drug trafficking. Other considerations set forth in Pub. L. 104–38 already may be adequately accounted for in the guidelines (e.g., obstruction of justice).

The Commission also requests comment regarding the 100:1 drug quantity ratio for crack cocaine and powder cocaine offenses. Under the current penalty structure of the sentencing guidelines and 21 U.S.C. 841, 100 times as much powder cocaine as crack cocaine is required to trigger the same five and ten year penalties based on drug quantity. The Commission requests comment regarding whether the 100:1 drug quantity ratio is appropriate, or whether some alternative ratio is more appropriate for guideline purposes. If so, how should the alternative ratio be achieved (i.e., by decreasing the penalties for crack cocaine, increasing the penalties for powder cocaine, or a combination of both) and why? How would any such change to the penalty structure for crack cocaine effect crime rates and deterrence? How would such change impact minority populations? Additionally, the Commission requests comment regarding whether the penalties for crack cocaine offenses should be more severe, less severe, or equal to the penalties for heroin or methamphetamine offenses. In particular, how do the addictiveness of crack cocaine, short term and long term physiological and psychological effects on the user, the violence associated with its use or distribution, its distribution trafficking pattern, and any secondary health consequences of its use (e.g., its effect on an infant who has been exposed prenatally to crack cocaine) compare to those associated with heroin or methamphetamine?

(2) The proposed amendment provides enhancements that address harms caused by violence often associated with drug trafficking offenses. Specifically, the proposed weapon enhancement in subsection (b)(1) provides graduated penalties for weapon involvement, depending on the use, type, and number of weapons involved. Similarly, the proposed bodily injury enhancement in subsection (b)(2) provides graduated penalties depending on the degree of injury involved in the offense. The Commission requests comment regarding whether either or both of these two enhancements also should provide minimum offense levels. If so, what is the appropriate minimum offense level for the conduct described in each subdivision? For example, should the Commission provide a minimum offense level of 27 in the case of a defendant who discharges a firearm (subdivision (b)(1)(A)), on the basis that the discharge of a firearm creates a risk of harm similar to that which is accounted for by the minimum offense level currently provided in subsection (b)(5)? Should the Commission provide a minimum offense level of 27 for offenses involving permanent or life threatening injury for similar reasons?

The Commission also requests comment regarding whether, in addition to the proposed enhancements pertaining to violence, it also should provide an enhancement that would apply if the offense involved an express or implied threat of death or bodily injury. (Note that 18 U.S.C. 3553 and § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases) preclude a ''safety valve'' reduction for any defendant who uses violence or credible threats of violence in connection with the offense.) If so, what would be an appropriate increase and should the enhancement be applied cumulatively to the proposed enhancements in subsections (b)(1) and (b)(2)?

(3) The proposed amendment consolidates §§ 2D1.2 (Drug Offense Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) and 2D1.1 and also provides a new enhancement in § 2D1.1(b)(3) to cover the conduct previously covered by § 2D1.2. That enhancement provides a minimum offense level of 26 for offenses in which the defendant distributed a controlled substance to a minor or used a minor to commit the offense or to assist in avoiding detection or apprehension for the offense. This minimum offense level complies with the directive to the Commission in section 6454 of the Anti-Drug Abuse Act of 1988 and maintains the penalties that currently exist for such offenses under § 2D1.2. The Commission requests comment regarding whether it should extend this minimum offense level to the other conduct contained in proposed § 2D1.1(b)(3).

(4) Subsection (b)(8) of the proposed amendment provides a [two][four] level enhancement if the defendant

committed any part of the instant offense after sustaining one felony conviction for either a crime of violence or a controlled substance offense. The Commission requests comment regarding whether proposed subsection (b)(8) also should provide a minimum offense level. If so, what offense level would be appropriate?

(5) Subsection (a)(3) of the proposed amendment provides a maximum base offense level of [24–32] for a defendant who qualifies for an adjustment under § 3B1.2 (Mitigating Role). The Commission requests comment regarding whether application of this maximum base offense level should be limited to only defendants who receive an adjustment for minimal role in the offense (as opposed to an adjustment for either minimal role or minor role in the offense). Additionally, should application of the maximum base offense level be predicated on the absence of certain aggravating factors, such as bodily injury or dangerous weapon possession? Should any other limitation apply?

(6) The Commission recently amended § 3B1.2 (Mitigating Role) to resolve a circuit conflict regarding whether a defendant who is accountable under § 1B1.3 (Relevant Conduct) only for conduct in which the defendant was personally involved, and who performs a limited function in concerted criminal activity, is precluded from consideration of a mitigating role adjustment under § 3B1.2. See USSG Appendix C (Amendment 635, effective November 1, 2001). Under the approach adopted by the Commission, even in a case in which a defendant is liable under § 1B1.3 only for conduct in which the defendant was personally involved (e.g., drug quantities personally handled by the defendant), the court can apply the traditional § 3B1.2 analysis to determine whether the defendant should receive a reduction for mitigating role.

The amendment, however, did not address three additional circuit conflicts pertaining to mitigating role:

(A) Whether, in determining if the defendant is substantially less culpable than the ''average participant'', the court should assess the defendant's conduct in relation not only to the conduct of co-conspirators, but also to the conduct of a hypothetical defendant who performs similar functions in similar offenses involving multiple participants. *Compare United States* v. *Ajmal*, 67 F.3d 12, 18 (2d Cir. 1995) (holding that defendant only played a minor role in the offense if he was less culpable than his co-conspirators as well as the average participant in such a crime); *United States* v. *Thomas*, 932 F.2d 1085, 1092 (5th Cir. 1991) (holding that defendant was not entitled to minor role adjustment because his role ''as greater than the minimal participation exercised by the defendant to whom we have previously allowed a downward adjustment''); *United States* v. *Caruth*, 930 F.2d 811, 815 (10th Cir. 1991) (''The Guidelines permit courts not only to compare a defendant's conduct with that of others in the same enterprise, but also with the conduct of an average participant in that type of crime.''); *United States* v. *Daughtrey*, 874 F.2d 213, 216 (4th Cir. 1989) (holding that the court should measure both the relative culpability of each participant in relation to the relevant conduct and the defendant's acts and relative culpability against an objective standard): *United States* v. *Rotolo*, 950 F.2d 70, 71 (1st Cir. 1991) (distinguishing between aggravating and mitigating roles and suggesting that ''substantially less culpable than the average participant'' means an objective comparison between the defendant and average person engaged in such conduct); *United States* v. *Owusu*, 199 F.3d 329, 337 (6th Cir. 2000) (to qualify for a minor role reduction, ''a defendant must be less culpable than most other participants and substantially less culpable than the average participant''); *United States* v. *Westerman*, 973 F.2d 1422 (8th Cir. 1992) (whether role in the offense adjustments are warranted is to be determined not only by comparing the acts of each participant in relation to the relevant conduct for which the participant is held accountable, § 1B1.3, but also by measuring each participant's individual acts and relative culpability against the elements of the offense of conviction) *with United States* v. *Rojas-Millan*, 234 F.3d 464, 473 (9th Cir. 2000) (rejected the consideration of comparisons against the hypothetical ''average participant'' in the type of crime involved); *United States* v. *Scroggins*, 939 F.2d 416 (7th Cir. 1991) (ruled that a mitigating role assessment must include a comparison of the acts of each participant in relation to the relevant conduct for which the participant is held accountable under § 1B1.3); *United States* v. *Valencia*, 907 F.2d 671 (7th Cir. 1990) (the § 3B1.2 adjustment requires us to focus on the defendant's ''role in the offense,'' rather than unspecified criminal conduct that is not part of the offense).

(B) Whether, in determining if a mitigating role adjustment is warranted, the court may consider only the relevant conduct for which the defendant is held accountable at sentencing, or whether it may also consider ''expanded'' relevant conduct (additional conduct that would appear to be properly includable under § 1B1.3 but was not considered in determining the defendant's offense level). *Compare United States* v. *James*, 157 F.3d 1218, 1220 (10th Cir. 1998) (holding that defendant's role in the offense is determined on the basis of the relevant conduct attributed to him in calculating his base offense level); *United States* v. *Burnett*, 66 F.3d 137, 140 (7th Cir. 1995) (same); *United States* v. *Atanda*, 60 F.3d 196, 199 (5th Cir. 1995) (per curiam) (same); *United States* v. *Lampkins*, 47 F.3d 175, 180 (7th Cir. 1995) (same); *United States* v. *Gomez*, 31 F.3d 28, 31 (2d Cir. 1994) (per curiam) (same); *United States* v. *Lucht*, 18 F.3d 541, 555–56 (8th Cir. 1994) (same); *United States* v. *Olibrices*, 979 F.2d 1557, 1560 (D.C. Cir. 1992) (''To take the larger conspiracy into account only for purposes of making a downward adjustment in the base level would produce the absurd result that a defendant involved both as a minor participant in a larger distribution scheme for which she was not convicted, and as a major participant in a smaller scheme for which she was convicted, would receive a shorter sentence than a defendant involved solely in the smaller scheme.'') with *United States* v. *Assisi-Zapata*, 148 F.3d 236, 240–41 (3d Cir. 1998) (relying on this Court's panel opinion in *De Varan* and holding that a court must examine all relevant conduct even if defendant is sentenced only for own acts); *United States* v. *Rails*, 106 F.3d 1416, 1419 (9th Cir.) (recognizing that ''[the defendant's role in relevant conduct may provide a basis for an adjustment even if that conduct is not used to calculate the defendant's base offense level'' but holding that defendant was ''not entitled to a reduction in his sentence simply because he was tied to a larger drug trafficking scheme''), *cert. denied*, 520 U.S. 1282 (1997); *United States* v. *Demers*, 13 F.3d 1381, 1383 (9th Cir. 1994) (declining ''to restrict the scope of relevant conduct on which a downward adjustment may be based to the relevant conduct that is included in the defendant's base offense level.'').

(C) Whether the court may depart downward from the applicable guideline offense level for defendants who, but for the law enforcement status of other participants, would have received a mitigating role adjustment under § 3B1.2. *Compare United States* v. *Speenburgh*, 990 F.2d 72, 75 (2d Cir. 1993) (if a district court would have decreased the defendant's offense level under section 3B1.2 had the other

person involved in the offense been criminally responsible, it should likewise have the discretion to depart downward between two and four levels, based on the defendant's culpability relative to that of the Government agent); *United States* v. *Bierley*, 922 F.2d 1061 (3d Cir. 1990) (''when an adjustment for Role in the Offense is not available by strict application of the Guideline language, the court has power to use analogic reasoning to depart from the guidelines when the basis for departure is conduct similar to that encompassed in the Role in the Offense Guideline.''); *United States* v. *Valdez-Gonzalez*, 957 F.2d 643, 648 (9th Cir. 1992), (''[I]n view of the limited application of § 3B1.2 minimal participant adjustment, the Sentencing Commission had failed to consider adequately the role of the defendants in conduct surrounding the offense of conviction'') *with United States* v. *Costales*, 5 F.3d 480 (11th Cir. 1993) (held that a defendant was not entitled to an adjustment or ''analogous'' downward departure from the applicable guideline range where the defendant was the only ''criminally responsible'' participant in a crime).

The proposed amendment's inclusion of a maximum base offense level in § 2D1.1 for a defendant who qualifies for an adjustment under § 3B1.2 raises the issue of whether the Commission also should address some or all of these remaining circuit conflicts. The Commission therefore requests comment regarding whether, in conjunction with the proposed maximum base offense level for mitigating role defendants, it should resolve any of these circuit conflicts and, if so, how should the Commission resolve them. If the Commission does address these issues of circuit conflict, should the Commission also amend § 3B1.2 to provide guidance on whether particular drug offenders who perform certain drug trafficking functions (e.g., courier or mule) should or should not receive a mitigating role adjustment?

3. Alternatives to Imprisonment

Synopsis of Amendment: This amendment provides three options to increase sentencing alternatives in Zone C of the Sentencing Table (Chapter Five, Part A).

Currently, under §§ 5B1.1 and 5C1.1, the court has three options when sentencing a defendant whose offense level is in Zone B. The court may impose (A) a sentence of imprisonment; (B) a sentence of probation with a condition of confinement sufficient to satisfy the minimum of the applicable guideline range; or (C) a ''split-sentence'' in which the defendant must serve at least one month of imprisonment followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range.

When the defendant's offense level is in Zone C, the court may impose either (A) a sentence of imprisonment; or (B) a ''split-sentence'' in which the defendant must serve at least one-half of the minimum of the applicable guideline range followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range.

Option One amends the Sentencing Table by combining Zones B and C, thereby providing offenders at offense levels 11 and 12 with the sentencing options currently available in Zone B: (A) a probation sentence with a condition of confinement sufficient to satisfy the minimum of the applicable guideline range; and (B) one month imprisonment followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range (a ''split-sentence''). This option reduces the amount of imprisonment required for the ''split-sentence'' from four or five (at offense levels 11 and 12, respectively) months to one month.

Option Two also increases sentencing alternatives in Zone C of the Sentencing Table by combining Zones B and C, thereby providing offenders at offense levels 11 and 12 with additional sentencing options similar to Option One. This option differs from Option One in that it limits the use of home detention for defendants in which the minimum of the guideline range is at least eight months (i.e., current Zone C). In such cases, the defendant must satisfy the minimum of the applicable guideline range by some form of confinement, but, unlike Option I, the defendant must serve at least half of that minimum in a form of confinement other than home detention. This ensures that these more serious offenders will serve at least eight or ten (at offense levels 11 and 12, respectively) months in some form of confinement, of which at least four or five (at offense levels 11 and 12, respectively) months shall be served in some form of confinement other than home detention.

Option Three also increases sentencing alternatives in Zone C of the Sentencing Table. However, it differs from Option One and Option Two in that it limits the expansion of the sentencing options available in Zone B to offenders in criminal history Category I of Zone C of the Sentencing Table. This option provides these less serious offenders with the same sentencing options available to offenders in Zone B. Under this option, offenders in Categories II through VI will not benefit from additional sentencing alternatives.

Proposed Amendment

Option 1

The Sentencing Table in Chapter Five, Part A, is amended by striking the lines between Zones B and C; by redesignating Zones B and C as Zone B; and by redesignating Zone D as Zone C.

The Commentary to § 5B1.1 is amended in subdivision (a) of Note 1 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5B1.1 is amended in subdivision (b) of Note 1 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; and by striking ''where'' and inserting ''in a case in which''.

The Commentary to § 5B1.1 is amended in Note 1 by redesignating subdivisions (a) and (b) as subdivisions (A) and (B), respectively.

The Commentary to § 5B1.1 is amended in Note 2 by striking ''Where'' and inserting ''In a case in which''; by striking ''or D''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)''.

Section 5C1.1(c)(1) is amended by striking ''or''.

Section 5C1.1(f) is amended by striking ''Zone D'' and inserting ''Zone C''.

Section 5C1.1 is amended by striking subsection (d) in its entirety; and by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in the first paragraph of Note 2 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''; and by striking ''Where'' and inserting ''In a case in which''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 3 by striking ''where'' each place it appears and inserting ''in a case in which''; in the first paragraph by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; in paragraph (C) by striking ''must'' and

inserting ''shall''; and in the last paragraph by inserting ''of '' after ''two months''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking Note 4 in its entirety; and by redesignating Notes 5 through 8 as Notes 4 through 7, respectively.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 4 (formerly Note 5) by striking ''(e)'' and inserting ''(d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 6 (formerly Note 7) by striking ''subsections (c) and (d)'' and inserting ''subsection (d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 7 (formerly Note 8) by striking ''(f)'' and inserting ''(e)''; by striking ''where'' and inserting ''in a case in which''; by striking ''Zone D'' and inserting ''Zone C''; by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is twelve months or more)''; and by striking ''subsection (e)'' and inserting ''subsection (d)''.

Option Two

The Sentencing Table in Chapter Five, Part A, is amendment by striking the lines between Zones B and C; by redesignating Zones B and C as Zone B; and by redesignating Zone D as Zone C.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (a) of Note 1 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (b) of Note 1 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; by striking ''In such cases'' and inserting ''(i) Except as provided in subdivision (ii)''; by striking ''where'' and inserting ''in a case in which''; and by inserting after ''at least two months.'' the following:

''The court, of course, may impose a sentence at a point within that 2–7 month range that is higher than the minimum sentence. For example, a sentence of probation with a condition requiring six months of community confinement or home detention (under subsection (c)(3)) would be sufficient to satisfy the requirements of this subdivision.

(ii) The court may impose probation in a case in which the minimum term of the applicable guideline range is at least eight months, but only if the court imposes a condition (I) that the defendant shall serve a period of confinement sufficient to satisfy the minimum term of imprisonment specified in the applicable guideline range; except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the offense level is 11 and the criminal history category is I, the guideline range from the Sentencing Table is 8–14 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least eight months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement or intermittent confinement (or a combination of community confinement and intermittent confinement totaling at least four months)). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court may impose a sentence of probation with any combination of community confinement, intermittent confinement, or home detention, as long as at least four of those months are served in a form of confinement other than home detention.''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 1 by redesignating subdivisions (a) and (b) as subdivisions (A) and (B), respectively.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''Where'' and inserting ''In a case in which''; by striking ''or D''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)''.

Section 5C1.1(c)(1) is amended by striking ''or''.

Section § 5C1.1(c) is amended by striking subsection (2) in its entirety and by inserting the following:

''(2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (d), except that (A) at least one month shall be satisfied by actual imprisonment; and (B) the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention, except that if the minimum term of the applicable guideline range is at least eight months, at least one-half of that minimum term shall be served in a form of confinement other than home detention; or''.

Section § 5C1.1(c)(3) is amended by striking ''(e)'' and inserting ''(d) sufficient to satisfy the minimum term of imprisonment specified in the guideline range, except that if the minimum term of the applicable guideline range is at least eight months, at least one-half of that minimum term shall be served in a form of confinement other than home detention.''.

Section § 5C1.1 is amended by striking subsection (d) in its entirety; and by redesignating subsections (e) and (f) and subsections (d) and (e), respectively.

Redesignated section § 5C1.1(e) (formerly § 5C1.1(f)) is amended by striking ''Zone D'' and inserting ''Zone C''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''; and by striking ''Where'' and inserting ''In a case in which''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking Note 3 in its entirety; and by inserting the following:

''3. Subsection (c) provides that in a case in which the applicable guideline range is in Zone B of the Sentencing Table , the court has three options:

(A) It may impose a sentence of imprisonment.

(B) (i) Except as provided in subdivision (ii), the court may impose probation only if it imposes a condition or combination of conditions requiring a period of community confinement, home detention, or intermittent confinement sufficient to satisfy the minimum term of imprisonment specified in the guideline range. For example, in a case in which the offense level is 7 and the criminal history category is II, the guideline range from the Sentencing Table is 2–8 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least two months of community confinement, home detention, or intermittent confinement, or a combination of community confinement, home detention, and intermittent confinement totaling at least two months. The court, of course, may impose a sentence at a point within that 2–7 month range that is higher than the minimum sentence. For example, a sentence of probation with a condition

requiring six months of community confinement or home detention (under subsection (c)(3)) would be sufficient to satisfy the requirements of this subdivision.

(ii) The court may impose probation in a case in which the minimum term of the applicable guideline range is at least eight months, but only if the court imposes a condition (I) that the defendant shall serve a period of confinement sufficient to satisfy the minimum term of imprisonment specified in the applicable guideline range; except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the offense level is 11 and the criminal history category is I, the guideline range from the Sentencing Table is 8–14 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least eight months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement or intermittent confinement (or a combination of community confinement and intermittent confinement totaling at least four months)). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court may impose a sentence of probation with any combination of community confinement, intermittent confinement, or home detention, as long as at least four of those months are served in a form of confinement other than home detention.

(C) (i) Except as provided in subdivision (ii), it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least one month shall be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, in a case in which the guideline range is 4–10 months, a sentence of imprisonment of one month followed by a term of supervised release with a condition requiring three months of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range. The court, of course, may impose a sentence at a point within that 4–10 month range that is higher than the minimum sentence. For example, a sentence of two months of imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (under subsection (c)(2)) would be within the guideline range.

(ii) If the minimum term of the applicable guideline range is at least eight months, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, (I) at least one month shall be satisfied by actual imprisonment, (II) the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention, except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the applicable guideline range is 8–14 months, the court must impose a sentence of actual imprisonment of one month followed by a term of supervised release requiring a condition or conditions of at least seven months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court must impose a sentence of actual imprisonment of at least one month followed by a term of supervised release requiring a condition or conditions of at least thirteen months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement).''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking Note 4 in its entirety.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by redesignating Notes 5 through 8 as Notes 4 through 7, respectively.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 4 (formerly Note 5) by striking ''(e)'' and inserting ''(d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 6 (formerly Note 7) by striking ''subsections (c) and (d)'' and inserting ''subsection (d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 7 (formerly Note 8) by striking ''(f)'' and inserting ''(e)''; by striking ''where'' and inserting ''in a case in which''; by striking ''Zone D'' and inserting ''Zone C''; and by striking ''subsection (e)'' and inserting ''subsection (d)''.

Option Three

Section § 5B1.1(a)(2) is amended by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (a) of Note 1 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (b) of Note 1 by striking ''Where'' and inserting ''In a case in which''; by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; and by striking ''where'' and inserting ''in a case in which''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 1 by redesignating paragraphs (a) and (b) as paragraphs (A) and (B), respectively.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''Where'' and by inserting ''In a case in which''; by striking ''Zone C or'' and inserting ''criminal history Category II, III, IV, V, or VI of Zone C, or any criminal history category of Zone''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)''.

Section § 5C1.1(c) is amended by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''; and in subdivision (c)(1) by striking ''or''.

Section § 5C1.1(d) is amended by inserting ''criminal history Category II, III, IV, V, or VI of'' after ''is in''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking ''where'' each place it appears and inserting ''in a case in which''.

The Commentary to § 5C1.1 is amended in Note 2 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5C1.1 is amended in Note 3 by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline

range is at least one but not more than six months)''.

The Commentary to § 5C1.1 is amended in Note 4 by inserting ''criminal history Category II, III, IV, V, or VI of'' after ''is in''; and by striking ''(i.e., the minimum term specified in the applicable guideline range is eight, nine, or ten months)''.

The Commentary to § 5C1.1 is amended in Note 8 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is twelve months or more)''.

4. Discharged Term of Imprisonment

Issue for Comment: The Commission requests comment regarding whether subsections (b) and (c) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) should be expanded to apply to discharged terms of imprisonment. If so, how should this be accomplished? Alternatively, should the Commission provide a structured downward departure in cases in which the discharged term of imprisonment resulted from offense conduct that has been taken into account in the determination of the offense level for the instant offense of conviction? If so, how should such a departure be structured? For example, should the extent of the departure be linked to the length of the discharged term of imprisonment?

The Commission further requests comment regarding any other issue that should be resolved pertaining to the overall application of § 5G1.3

5. Acceptance of Responsibility

Synopsis of Amendment: This proposed amendment corrects a technical error made in the Commission's notice of proposed amendments to sentencing guidelines, policy statements, and commentary in the **Federal Register**, November 27, 2001(66 FR. 59330–59340). Specifically, proposed amendment 5, regarding § 3E1.1 (Acceptance of Responsibility), inadvertently deletes ''timely'' from subsection (b)(2) of § 3E1.1. The following proposed amendment corrects that inadvertent deletion.

Section 3E1.1(b) is amended by striking ''has assisted authorities'' and all that follows through ''notifying'' and inserting ''timely notified''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''Appropriate Considerations in Determining Applicability of Acceptance of Responsibility.''—before ''In determining''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''Convictions by Trial.—'' before ''This adjustment''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 3 by inserting ''Application of Subsection (a).—''before ''Entry of a plea''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended by striking the text of Note 4 in its entirety and inserting the following:

''Inapplicability of Adjustment.—A defendant who (A) receives an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice); or (B) commits another offense while pending trial or sentencing on the instant offense, ordinarily is not entitled to a reduction under this guideline. [There may, however, be extraordinary cases in which an adjustment under this guideline is warranted even though the defendant received an enhancement under § 3C1.1, or committed another such offense, or both.]''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 5 by inserting ''Deference on Review.—'' before ''The sentencing judge''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended by striking the first sentence of Note 6 and inserting ''Application of Subsection (b).—''; and by striking ''has assisted authorities in the investigation or prosecution of his own misconduct by taking one or both of the steps set forth in subsection (b)'' and inserting ''timely notified authorities of the defendant's intention to enter a guilty plea''.

The Commentary to § 3E1.1 captioned ''Background'' is amended in the second sentence of the first paragraph by striking ''by taking, in a timely fashion, one or more of the actions listed above (or some equivalent action)''; and in the second paragraph by striking ''has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the steps specified in subsection (b)'' and inserting ''timely notified authorities of the defendant's intention to enter a guilty plea''.

[FR Doc. 02–1264 Filed 1–16–02; 8:45 am]
BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Sale of Business and Disaster Assistance Loans

AGENCY: Small Business Administration.

ACTION: Notice of sale of business and disaster assistance loans—Loan Sale #5.

SUMMARY: This notice announces the Small Business Administration's (''SBA'') intention to sell approximately 30,000 secured and unsecured business and disaster assistance loans, (collectively referred to as the ''Loans''). The total unpaid principal balance of the Loans is approximately $620 million. This is the fifth sale of loans originated under the SBA's Business Loan Programs and the fourth sale of Disaster Assistance Loans (both business and consumer loans). SBA previously guaranteed some of the Loans under various sections of the Small Business Investment Act, as amended, 15 U.S.C. 695 et seq. Any SBA guarantees that might have existed at one time have been paid and no SBA guaranty is available to the successful bidders in this sale. The majority of the loans were originated by and are serviced by SBA. The collateral for the secured Loans includes commercial and residential real estate and other business and personal property located nationwide. This notice also summarizes the bidding process for the Loans.

DATES: The Bidder Information Package became available to qualified bidders on October 25, 2001. The Bid Date is scheduled for January 15, 2002, and closings are scheduled to occur between January 22, 2002 and February 15, 2002. These dates are subject to change at SBA's discretion.

ADDRESSES: Bidder Information Packages will be available from the SBA's Transaction Financial Advisor, KPMG Consulting, Inc. (''KPMG'') and its subcontractor, Hanover Capital Partners, Ltd. (''Hanover''). Bidder Information Packages will only be made available to parties that have submitted a completed Confidentiality Agreement and Bidder Qualification Statement and have demonstrated that they are qualified bidders. The Confidentiality Agreement and Bidders Qualification Statement are available on the SBA Web site at *http://www.sba.gov/assets/current__sale/sale5.html* or by calling the SBA Loan Sale #5 Center toll-free at Hanover at (888) 737–3840. The completed Confidentiality and Bidder Qualification Statement can be sent to the attention of Kathryn Merk, SBA Loan Sale #5, by either fax, at (732) 572–5959 or by mail, to Hanover Capital Partners, Ltd., 100 Metroplex Drive, Suite 301, Edison, NJ 08817.

The Due Diligence Facility opened October 29, 2001 and will close January 14, 2002. These dates are subject to change at SBA's discretion.

FOR FURTHER INFORMATION CONTACT: Margaret L. Hawley, Program Manager,

Small Business Administration, 409 Third Street, SW., Washington, DC 20416: 202–401–8234. This is not a toll free number. Hearing or speech-impaired individuals may access this number via TDD/TTY by calling the Federal Information Relay Service's toll-free number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: SBA intends to sell approximately 30,000 secured and unsecured business and disaster assistance loans, collectively referred to as the ''Loans''. The Loans include performing, sub-performing and non-performing loans. The Loans will be offered to qualified bidders in pools that will be based on such factors as performance status, collateral status, collateral type and geographic location of the collateral. A list of the Loans, loan pools and pool descriptions is contained in the Bidder Information Package. SBA will offer interested persons an opportunity to bid competitively on loan pools, subject to conditions set forth in the Bidder Information Package. SBA shall use its sole discretion to evaluate and determine winning bids. No loans will be sold individually. The Loans to be sold are located throughout the United States as well as Puerto Rico, U.S. Virgin Islands, Guam and other Pacific Islands.

The Bidding Process: To ensure a uniform and fair competitive bidding process, the terms of sale are not subject to negotiation. SBA will describe in detail the procedure for bidding on the Loans in the Bidder Information Package, which will include bid forms, a non-negotiable loan sale agreement prepared by SBA (''Loan Sale Agreement''), specific bid instructions, as well as pertinent loan information such as total outstanding unpaid principal balance, interest rate, maturity term, aggregate payment history and collateral information including geographic location and type. The Bidder Information Package also includes CD–ROMs that contain information pertaining to the Loans.

The Bidder Information Package became available approximately 10 weeks prior to the Bid Date. It contains procedures for obtaining supplemental information about the Loans. Any interested party may request a copy of the Bidder Information Package by sending a written request together with a duly executed copy of the Confidentiality Agreement and a Bidder Qualification Statement to the address specified in the **ADDRESSES** section of this notice.

Prior to the Bid Date, a Bidder Information Package Supplement will be mailed to all recipients of the original Bidder Information Package. It will contain the final list of loans included in Sale #5 and any final instructions for the sale.

Deposit and Liquidated Damages: Each Bidder must include with its bid a deposit equal to 10 percent of the amount of the bidder's highest bid. If a successful bidder fails to abide by the terms of the Loan Sale Agreement, including paying SBA any remaining sums due pursuant to the Loan Sale Agreement and closing within the time period specified in the Loan Sale Agreement, SBA shall retain the deposit as liquidated damages.

Due Diligence Facility: The bidder due diligence period began October 29, 2001. During the bidder due diligence period, qualified bidders may, for a non-refundable assessment of $500 US dollars, review all asset file documents that have been imaged onto a database by visiting the due diligence facility located at 1050 Connecticut Avenue, NW., 8th Floor, Washington, DC 20036 and/or via remote access. Bidders that have paid the due diligence assessment of $500 US dollars may also request CD–ROMs that contain substantial due diligence materials such as loan payment history and updated third party reports.

Specific instructions for ordering information in electronic format or making an appointment to visit the due diligence facility are included in the SBA Loan Sale5 Web site (*http://www.sba.gov/assets/current__sale/sale5.html*) and the Bidder Information Package.

SBA Reservation of Rights: SBA reserves the right to remove loans from the sale at any time prior to the Closing Date, and add loans prior to the Cut-Off Date for any reason and without prejudice to its right to include any loans in a later sale. After the Cut-Off Date, SBA will retain any loan that meets the following criteria: (1) The obligor makes a payment that fully satisfies his/her obligation; (2) Seller cannot provide any Evidence of Indebtedness; (3) Seller does not own, control or have the right to transfer the Loan; (4) A pending or threatened suit, action, arbitration, investigation or proceeding which could affect the Seller in an unacceptable manner; and (5) Loan is inextricably related to another asset, claim, right of action that is retained by the Seller.

SBA also reserves the right to terminate this sale at any time prior to the Bid Date.

SBA reserves the right to use its sole discretion to evaluate and determine winning bids. SBA also reserves the right in its sole discretion and for any reason whatsoever to reject any and all bids.

SBA reserves the right to conduct a ''best and final'' round of bidding wherein bidders will be given the opportunity to increase their bids. A best and final round shall not be construed as a rejection of any bid or preclude SBA from accepting any bid made by a bidder.

SBA reserves the right to sell less than 100 percent of the Loans offered for sale and ''re-offer'' the remaining loans subsequent to the initial bid.

Ineligible Bidders: The following individuals and entities (either alone or in combination with others) are ineligible to bid on the Loans included in the sale:

(1) Any employee of SBA, any member of any such employee's household and any entity controlled by a SBA employee or by a member of such employee's household.

(2) Any individual or entity that is debarred or suspended from doing business with SBA or any other agency of the United States Government.

(3) Any contractor, subcontractor, consultant, and/or advisor (including any agent, employee, partner, director, principal, or affiliate of any of the foregoing) who will perform or has performed services for, or on-behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(4) Any individual that was an employee, partner, director, agent or principal of any entity, or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(5) Any individual or entity that has used or will use the services, directly or indirectly, of any person or entity ineligible under any of paragraphs (1) through (4) above to assist in the preparation of any bid in connection with this sale.

Loan Sale Procedure: SBA plans to use a competitive online closed bid auction process as the method to sell the majority of the Loans. SBA also plans to offer eight designated pools of loans in an open E-cry on line auction format. SBA believes an auction sale optimizes the return on the sale of Loans and attracts the largest field of interested parties. A competitive bid auction also provides the quickest and most efficient vehicle for the SBA to dispose of the Loans.

Post Sale Servicing Requirements: The Loans will be sold servicing released. Purchasers of the Loans and their

successors and assigns will be required to service the Loans in accordance with the applicable provisions of the Loan Sale Agreement for the life of the Loans. In addition, the Loan Sale Agreement establishes certain requirements that a servicer must satisfy in order to service the Loans.

Scope of Notice: This notice applies to Loan Sale Number #5 and does not establish agency procedures and policies for other loan sales. If there are any conflicts between this Notice and the Bidder Information Package, the Bidder Information Package shall prevail.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 02–1265 Filed 1–16–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Maximum Dollar Limit in the Fee Agreement Process

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Social Security Administration (SSA) is announcing that the maximum dollar limit for fee agreements approved under sections 206(a)(2)(A) and 1631(d)(2)(A) of the Social Security Act will be increased to $5,300 effective February 1, 2002. On or after February 1, 2002, decision-makers may approve fee agreements up to the new limit provided that the fee agreement otherwise meets the statutory conditions and is not excepted from the fee agreement process.

FOR FURTHER INFORMATION CONTACT: John B. Watson, Office of the General Counsel, phone (410) 965–3137, e-mail: john.watson@ssa.gov.

SUPPLEMENTARY INFORMATION: Section 5106 of Public Law No. 101–508, the Omnibus Budget Reconciliation Act of 1990, amended sections 206(a)(2)(A) and 1631(d)(2)(A) of the Social Security Act to provide for a streamlined process for obtaining approval of the fee a representative wishes to charge for representing a claimant before the Social Security Administration. To use that process, the representative and the claimant must agree, in writing, to a fee that does not exceed the lesser of 25% of past due benefits or a prescribed dollar amount. Public Law 101–508 established the initial amount at $4,000 and gave the Commissioner of Social Security the authority to increase it, from time to time, provided that the cumulative rate of increase does not at any time exceed the rate of increase in primary insurance amounts since January 1, 1991. The law further provided that notice of any increased amount shall be published in the **Federal Register**.

By this notice, we announce that the maximum dollar amount for fee agreements will increase to $5,300; fee agreements with the increased amount may be approved by a decision-maker on or after February 1, 2002. The limit of $5,300 was determined by applying the guideline described above: a hypothetical primary insurance amount of $4,000 on January 1, 1991 would increase by calendar year 2002 to $5,350. We rounded this amount down to the nearest $100 to simplify the figure for use by claimants, representatives, and SSA.

Dated: January 8, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 02–1223 Filed 1–16–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3876]

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

AGENCY: State Department.

ACTION: Notice.

SUMMARY: At its Twentieth Meeting in Hobart, Tasmania, October 22 to November 2, 2001, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twentieth meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR web site at *www.ccamlr.org.* This notice, therefore, together with the U.S. regulations referenced under the Supplementary Information provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments within 30 days of this announcement.

FOR FURTHER INFORMATION CONTACT: Roberta L. Chew, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, DC 20520; tel: 202–647–3947; fax: 202–647–9099; *e-mail: chewrl@state.gov.*

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G— Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Convention area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on; Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery; Exploratory fisheries; Reporting and recordkeeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Conservation Measures Remaining in Force: The Commission agreed that the Conservation Measures 2/III, 3/IV, 4/V, 5/V, 6/V, 7/V, 18/XIX, 19/IX, 29/XIX, 31/X, 32/XIX, 40/X, 51/XIX, 61/XII, 62/XIX, 63/XV, 64/XIX, 65/XII, 72/XVII, 73/XVII, 82/XIX, 95/XIV, 106/XIX, 121/XIX, 122/XIX, 129/XVI, 146/XVII, 147/XIX, 160/XVII, 171/XVIII, 173/XVIII, and 180/XVIII, and Resolutions 7/IX, 10/XII, 13/XIX, 14/XIX, 15/XIX, and 16/XIX remain in force. For the text of CCAMLR Conservation Measures remaining in force, see 61 FR 66723, dated December 18, 1996; 63 FR 5587, dated February 3, 1998; 63 FR 300 dated December 22, 1998; 64 FR 71165, dated December 20, 1999; and 66 FR 7527, dated January 23, 2001.

New and Revised Conservation Measures: At its Twentieth Meeting in Hobart, Tasmania, October 22 to November 2, 2001, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) revised the following Conservation Measures 45/XIV, 118/XVII, 119/XVII, 148/XVII and 170/XIX. In addition, 23 new measures and one new resolution were adopted. The conservation measures and resolution adopted at the Twentieth Meeting follow:

Conservation Measure 45/XX

Precautionary Catch Limitation on Euphausia superba in Statistical Division 58.4.2

Catch Limit 1.

The total catch of Euphausia superba in Statistical Division 58.4.2 shall be limited to 450,000 tonnes in any fishing season. This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season 2.

A fishing season begins on 1 December and finishes on 30 November of the following year.

Data 3.

For the purposes of implementing this conservation measure, the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 118/XX

Scheme To Promote Compliance by Non-Contracting Party Vessels With CCAMLR **Conservation Measures**

The Commission,

Requesting non-Contracting Parties to cooperate fully with the Commission with a view to ensuring that the effectiveness of CCAMLR conservation measures is not undermined, hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area or has been denied landing or transhipment in accordance with Conservation Measure 147/XIX is presumed to be undermining the effectiveness of CCAMLR conservation measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR conservation measures applies to any other non-Contracting Party vessel which has engaged in such activities with that vessel.

2. Information regarding such sightings or denial of landings or transhipments shall be transmitted immediately to the Commission in accordance with Article XXII of the Convention. The Secretariat shall transmit this information to all Contracting Parties, within one business day of receiving this information, and to the Flag State of the sighted vessel as soon as possible.

3. The Contracting Party which sights the non-Contracting Party vessel or denies it landing or transhipment under paragraph 1 shall attempt to inform the vessel it is presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties and to the Secretariat, and to the Flag State of the vessel.

4. When the non-Contracting Party vessel referred to in paragraph 1 enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials in accordance with Conservation Measure 147/XIX and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, logbooks, fishing gear, catch on board and any other matter, which may include information from a VMS, relating to the vessel's activities in the Convention Area.

5. Landing and transhipments of all fish from a non-Contracting Party vessel which has been inspected pursuant to paragraph 4, shall be prohibited in all Contracting Party ports if such inspection reveals that the vessel has on board species subject to CCAMLR conservation measures, unless the vessel establishes that the fish were caught outside the Convention Area, or in compliance with all relevant CCAMLR conservation measures and requirements under the Convention.

6. Contracting Parties shall ensure that their vessels do not receive transhipments of fish from a non-Contracting Party vessel which has been sighted and reported as having engaged in fishing activities in the Convention Area and therefore presumed as having undermined the effectiveness of CCAMLR conservation measures.

7. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and on any subsequent action, shall be transmitted immediately to the Commission. The Secretariat shall transmit this information immediately to all Contracting Parties, and to the relevant Flag State(s).

8. At each annual meeting the Commission will identify those non-Contracting Parties whose vessels have been sighted engaging in fishing activities in the Convention Area or have been denied landing or transhipment under paragraph 1, or who are otherwise engaged in activities that threaten to undermine the effectiveness of CCAMLR conservation measures.

9. The Secretariat, in consultation with the Chair of the Commission shall request those non-Contracting Parties identified pursuant to paragraph 8, to immediately take steps to desist from activities undermining the effectiveness of CCAMLR conservation measures, and advise the Secretariat of the actions taken in this regard.

10. Contracting Parties shall jointly and/or individually request non-Contracting Parties identified pursuant to paragraph 8, to cooperate fully with the Commission in order to avoid undermining the effectiveness of conservation measures adopted by the Commission.

11. The Commission shall review, at subsequent annual meetings as appropriate, actions taken by those non-Contracting Parties identified pursuant to paragraph 8 to which requests have been made pursuant to paragraphs 9 and 10.

12. The Commission shall annually review information accrued under paragraphs 8 to 11 to decide the appropriate measures to be taken so as to address these issues with those identified non-Contracting Party States. Such measures could include, but are not limited to, those measures set out in paragraph 68[1] of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

Conservation Measure 119/XX[1], [2]

Licensing and Inspection Obligations of Contracting Parties With Regard to Their Flag Vessels Operating in the Convention Area

1. Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a licence[3] that the Contracting Party has issued setting forth the specific areas, species and time periods for which such

[1] '***multilateral trade-related measures envisaged in regional fisheries management organizations may be used to support cooperative efforts to ensure that trade in specific fish and fish products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of conservation and management measures which are consistent with the 1982 UN Convention.'

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjcent to the Prince Edward Islands.

[3] Includes permit.

fishing is authorised and all other specific conditions to which the fishing is subject to give effect to CCAMLR conservation measures and requirements under the Convention.

2. A Contracting Party may only issue such a licence to fish in the Convention Area to vessels flying its flag, if it is satisfied of its ability to exercise its responsibilities under the Convention and its conservation measures, by requiring from each vessel, *inter alia,* the following:

(i) Timely notification by the vessel to its Flag State of exit from and entry into any port;

(ii) Notification by the vessel to its Flag State of entry into the Convention Area and movement between areas, subareas/divisions;

(iii) Reporting by the vessel of catch data in accordance with CCAMLR requirements; and

(iv) Operation of a VMS system on board the vessel in accordance with Conservation Measure 148/XX.

3. Each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

- Name of the vessel;
- Time periods authorised for fishing (start and end dates);
- Area(s) of fishing;
- Species targeted; and
- Gear used.

4. The licence or an authorised copy of the licence must be carried by the fishing vessel and must be available for inspection at any time by a designated CCAMLR inspector in the Convention Area.

5. Each Contracting Party shall verify, through inspections of all of its fishing vessels at the Party's departure and arrival ports, and where appropriate, in its ExclusiveEconomic Zone, their compliance with the conditions of the licence as described in paragraph 1 and with the CCAMLR conservation measures. In the event that there is evidence that the vessel has not fished in accordance with the conditions of its licence, the Contracting Party shall investigate the infringement and, if necessary, apply appropriate sanctions in accordance with its national legislation.

6. Each Contracting Party shall include in its annual report pursuant to paragraph 12 of the CCAMLR System of Inspection, steps it has taken to implement and apply this conservation measure; and may include additional measures it may have taken in relation to its flag vessels to promote the effectiveness of CCAMLR conservation measures.

Conservation Measure 148/XX

Automated Satellite-Linked Vessel Monitoring Systems (VMS)

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall, no later than March 1, 1999, establish an automated VesselMonitoring System (VMS) to monitor the position of its fishing vessels, which are licensed [1] in accordance with Conservation Measure 119/XX, to harvest marine living resources in the Convention Area, and for which catch limits, fishing seasons or area restrictions have been set by conservation measures adopted by the Commission.

2. Any Contracting Party unable to establish VMS in accordance with paragraph 1 shall inform the CCAMLR Secretariat within 90 days following the notification of this conservation measure, and communicate its intended timetable for implementation of VMS. However, the Contracting Party shall establish VMS at the earliest possible date, and in any event, no later than December 31, 2000.

3. The implementation of VMS on vessels while participating only in a krill fishery is not currently required.

4. Each Contracting Party, within two working days of receiving the required VMS information, shall provide to the Secretariat dates and the statistical area, subarea or division for each of the following movements of its flag fishing vessels:

(i) Entering and leaving the Convention Area; and

(ii) Crossing boundaries between CCAMLR statistical areas, subareas and divisions.

5. For the purpose of this measure, VMS means a system where, *inter alia:*

(i) Through the installation of satellite-tracking devices on board its fishing vessels, the Flag State receives automatic transmission of certain information. This information includes the fishing vessel identification, location, date and time, and is collected by the Flag State at least every four hours to enable it to monitor effectively its flag vessels;

(ii) Performance standards provide, as a minimum, that the VMS:

(a) Is tamper proof;

(b) Is fully automatic and operational at all times regardless of environmental conditions;

(c) Provides real time data;

(d) Provides the geographical position of the vessel, with a position error of less than 500 m with a confidence interval of 99%, the format being determined by the Flag State; and

(e) In addition to regular messages, provides special messages when the vessel enters or leaves the Convention Area and when it moves between oneCCAMLR area, subarea or division within the Convention Area.

6. In the event of technical failure or other non-function of the VMS, the master or the owner of the fishing vessel, as a minimum:

(i) Shall communicate at least once every 24 hours, starting from the time that this event was detected, the data referred in paragraph 4(i) by telex, by fax, by telephone message or by radio to the Flag State; and

(ii) Shall take immediate steps to have the device repaired or replaced as soon as possible, and, in any event, within two months. If during that period the vessel returns to port it shall not be allowed to commence a further fishing trip without having the defective device repaired or replaced.

7. In the event that the VMS ceases to operate, the Contracting Party as soon as possible shall advise the Executive Secretary of the name of the vessel, the date, time and the location of the vessel when the VMS failed. The Party shall also inform the ExecutiveSecretary when the VMS becomes operational again. The Executive Secretary shall make such information available to Contracting Parties upon request.

8. Contracting Parties shall report to the Secretariat before the start of the annual meeting of the Commission in 1999, on the VMS which has been introduced in accordance with paragraphs 1 and 2, including its technical details, and each year thereafter, on:

(i) Any change in the VMS; and

(ii) In accordance with paragraph XI of the CCAMLR System of Inspection, all cases where they have determined, with the assistance of the VMS that vessels of their flag had fished in the Convention Area in possible contravention of CCAMLR conservation measures.

Conservation Measure 170/XX

Catch Documentation Scheme for Dissostichus spp.

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

[1] Includes permit.

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus spp.*, hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorised representative of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it lands or transhipsDissostichus spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorisation to do so. EachContracting Party shall provide *Dissostichus* catch document forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue *Dissostichus* catch document forms, in accordance with the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) The name, address, telephone and fax numbers of the issuing authority;

(ii) The name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) The reference number of the licence or permit, whichever is applicable, that is issued to the vessel;

(iv) The weight of each *Dissostichus* species landed or transhipped by product type, and

(a) By CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) By FAO statistical area, subarea or division if caught outside the ConventionArea;

(v) The dates within which the catch was taken;

(vi) The date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) The name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 170/A to this measure. The standard catch document is available at the CCAMLR website, *www.ccamlr.org*, or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone DeanSwanson: 301–713–2276).

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

(i) Includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 170/A to this measure; and

(ii) Includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the information contained in a *Dissostichus* catch document or a re-export document the exporting State whose national authority validated the document(s) and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and

validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the Catch Documentation Scheme, may require additional verification of catch documents by Flag States by using, *inter alia*, VMS, in respect of catches [1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

16. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

Annex 170/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) A four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued; and

(ii) A three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the licence or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) The master shall ensure that the information specified in paragraph 6 of this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) If a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) If a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division; and

(iv) The master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches [1] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraphs 5 and 6 of Conservation Measure 148/XX), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorisation to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) In the case of a transhipment, the master shall confirm the transhipment by obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is transferred;

(ii) In the case of a landing, the master or authorised representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(iii) In the case of a landing, the master or authorised representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone; and

(iv) In the event that the catch is divided upon landing, the master or authorised representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorised representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorised representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) The master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(ii) The master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

individual that receives the catch at the port of landing or free trade zone; and

(iii) In the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorised representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) The exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) The exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document; and

(iv) The exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document by a responsible official of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) The re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) The re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s); and

(iv) The responsible official of the exporting state shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

The standard form for re-export is available at the CCAMLR website, *www.ccamlr.org*, or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone Dean Swanson: 301–713–2276).

Annex 170/B

The Use of the CDS Fund

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat, although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for routine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemised statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to make recommendations to the Commission on whether to fund special projects or special needs. The Review Panel will operate by email intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

Conservation Measure 216/XX

Experimental Line-Weighting Trials

In respect of fisheries in Statistical Subareas 48.6 south of 60°S, 88.1 and 88.2, paragraph 3 of Conservation Measure 29/XIX shall not apply only where a vessel can demonstrate prior to licensing for this fishery its ability to fully comply with either of the following experimental protocols.

Protocol A:

A1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines with a minimum of four Time Depth Recorders (TDR) on each line;

(ii) Randomise TDR placement on the longline within and between sets;

(iii) Calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) The sink rate shall be measured as an average of the time taken to sink from the surface (0 m) to 15 m; and

(b) This sink rate shall be at a minimum rate of 0.3 m/s;

(iv) If the minimum sink rate is not achieved at all 20 sample points, repeat the test until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(v) All equipment and fishing gear used in the tests is to be the same as that to be used in the Convention Area.

A2. During fishing, for a vessel to maintain the exemption to night-time setting requirements, continuous line sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to place a TDR on every longline set during the observer's shift;

(ii) Every seven days place all available TDRs on a single longline to determine any sink rate variation along the line;

(iii) Randomise TDR placement on the longline within and between sets;

(iv) Calculate an individual rate for each TDR when returned to the vessel; and

(v) Measure the sink rate as an average of the time taken to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) Ensure the average sink rate is at a minimum of 0.3 m/s;

(ii) Report daily to the fishery manager; and

(iii) Ensure that data collected from line sink trials is recorded in the approved format and submitted to the fishery manager at the conclusion of the season.

Protocol B:

B1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines of the maximum length to be used in the Convention Area with a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of the longline;

(ii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iii) Calculate an individual sink rate for each bottle test, where the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 15 m;

(iv) This sink rate shall be at a minimum rate of 0.3 m/s;

(v) If the minimum sink rate is not achieved at all 20 sample points (four tests on five lines), continue testing until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(vi) All equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to maintain the exemption to paragraph 3 of ConservationMeasure 29/XIX, regular line sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to conduct a bottle test on every longline set during the observer's shift, noting that the test should be undertaken on the middle one-third of the line;

(ii) Every seven days place at least four bottle tests on a single longline to determine any sink rate variation along the line;

(iii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iv) Calculate an individual sink rate for each bottle test; and

(v) Measure the line sink rate as the time taken for the line to sink from the surface (0 m) to 15 m.

B3. The vessel shall whilst operating under this exemption:

(i) Ensure that all longlines are weighted to achieve a minimum line sink rate of 0.3 m/s at all times;

(ii) Report daily to its national agency on the achievement of this target; and

(iii) Ensure that data collected from line sink rate monitoring are recorded in the approved format and submitted to the relevant national agency at the conclusion of the season.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 15 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 750 ml plastic bottle [1] (buoyancy about 0.7 kg) with a longline clip attached to the other end. The length measurement is taken from the attachment point(terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed at night. A piece of waterproof paper with a unique identifying number large enough to be read from a few metres away should be placed inside the bottle.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline [2], midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t_2 in seconds[3]. The result of the test is calculated as follows:

Line sink rate = 15 / (t_2—t_1)

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

Conservation Measure 217/XX

Fishing Seasons

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

The fishing season for all Convention Area species is 1 December to 30 November of the following year, unless otherwise set in specific conservation measures.

[1] A plastic water bottle that has a hard plastic screw-on 'stopper' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.

[2] On autolines attach to the backbone; on the Spanish longline system attach to the hookline.

[3] Binoculars will make this process easier to view, especially in foul weather.

Conservation Measure 218/XX [1]

Prohibition of Directed Fishing for Dissostichus spp. Except in Accordance With Specific Conservation Measures in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subareas 48.5, 88.2 north of 65°S and 88.3, and Divisions 58.4.1 and 58.5.1 is prohibited from 1 December 2001 to 30 November 2002.

Conservation Measure 219/XX

Limits on the Fishery for Champsocephalus gunnari in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period March 1 to May 31, 2002 (spawning period).

Catch Limit

3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2001/02 season shall be limited to 5 557 tonnes. The total catch of *Champsocephalus gunnari* taken in the period March 1 to May 31, 2002. shall be limited to 1 389 tonnes.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days[2]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

5. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 95/XIV. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes, then the fishing vessel shall move to another location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 95/XIV exceeded 5% for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of the fishery.

8. When any vessel has caught a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2001/02 season.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari.*

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

13. Each vessel operating in this fishery during the period March 1 to May 31, 2002 shall conduct twenty (20) research trawls in the manner described in Annex 219/A.

Annex 219/A

Research Trawls During Spawning Season

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between March 1 and May 31, 2002 shall be required to conduct a minimum of 20 research hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area: Four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari.*

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

[1] Except for waters adjacent to the Kerguelen Islands.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

Conservation Measure 220/XX

Limits on the Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 2001/02 Season

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari,* the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) Starting at the point where the meridian of longitude 72°15′E intersects the Australia-France Maritime Delimitation AgreementBoundary then south along the meridian to its intersection with the parallel of latitude 53°25′S;

(ii) Then east along that parallel to its intersection with the meridian of longitude 74°E;

(iii) Then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′S and the meridian of longitude 76°E;

(iv) Then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) Then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30′E; and

(vi) Then southwesterly along the geodesic to the point of commencement.

3. Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari.*

Catch Limit

4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2001/02 season shall be limited to 885 tonnes.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days.[2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-catch

7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 224/XX.

Mitigation

8. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

11. For the purpose of Annex 220B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari.*

Data: Biological

12. Fine-scale biological data, as required under Annex 220/B, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Annex 220/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: Day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version.

These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 221/XX

Limits on the Fishery for Dissostichus eleginoides in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2001/02 season shall be limited to 5 820 tonnes.

Season

3. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from 1 May to 31 August 2002, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from 1 December 2001 to 30 November 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch of crab shall be counted against the catch limit in the crab fishery in Subarea 48.3.

5. The by-catch of finfish in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2001/02 season shall not exceed 291 tonnes for skates and rays and 291 tonnes for *Macrourus* spp. For the purpose of these by-catch limits, skates and rays shall be counted as a single species.

6. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n-miles [1] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides.*

11. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Conservation Measure 222/XX

Limits on the Fishery for Dissostichus eleginoides in Statistical Division 58.5.2 in the 2001/02 Season

Access

1. The fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2001/02 season shall be limited to 2 815 tonnes.

Season

3. For the purpose of the trawl fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2001/02 season is defined as the period from 1 December 2001 to 30 November 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 224/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Annex 222/A; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 222/A. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 222/A, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides.*

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

9. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

10. Fine-scale biological data, as required under Annex 222/A, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Annex 222/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 223/XX

Precautionary Catch Limit for Electrona carlsbergi in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

1. For the purposes of this conservation measure the fishing season for *Electrona carlsbergi* is defined as the period from December 1, 2001 to November 30, 2002.

2. The total catch of *Electrona carlsbergi* in the 2001/02 season shall be limited to 109,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 2001/02 season shall be limited to 14,500 tonnes in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20,000 tonnes in the 2001/02 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the meeting of the Working Group on Fish Stock Assessment in 2002.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109,000 tonnes, whichever is sooner.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14,500 tonnes, whichever is sooner.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch in any one haul of any species other than the target species—

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes,

then the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species, other than the target species, exceeded 5%, for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. For the purpose of implementing this conservation measure:

(i) The Catch Reporting System set out in Conservation Measure 40/X shall apply in the 2001/02 season;

(ii) The Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 122/XIX shall also apply in the 2001/02 season. For the purposes of Conservation Measure 122/XIX, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*; and

(iii) The Monthly Fine-scale Biological Data Reporting System set out in Conservation Measure 121/XIX shall also apply in the 2001/02 season. For the purposes of Conservation Measure

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

121/XIX, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*. For the purposes of paragraph 3(ii) of Conservation Measure 121/XIX a representative sample shall be a minimum of 500 fish.

Conservation Measure 224/XX

Limitation of By-Catch in Statistical Division 58.5.2 in the 2001/02 Season

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2001/02 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2001/02 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, and the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2. For the purposes of this measure, '*Macrourus spp.*' and 'skates and rays' should each be counted as a single species.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus* or *Lepidonotothen squamifrons* is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days.[2] The location where the by-catch exceeded 2 tonnes is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 1 tonne, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Conservation Measure 225/XX

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

Catch Limit

4. The total catch of crab in Statistical Subarea 48.3 in the 2001/02 season shall not exceed a precautionary catch limit of 1.600 tonnes.

5. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa,* males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

6. Crab processed at sea shall be frozen as crab sections (size of crabs can be determined using crab sections).

Season

7. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

8. The by-catch of *Dissostichus eleginoides* shall be counted against the catch limit in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 61/XII and 122/XIX the target species is crab and by-catch species are defined as any species other than crab.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data requirements described in Annex 225/A and the experimental harvest regime described in Conservation Measure 226/XX. Data collected for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2002. Such data collected after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 225/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data:
Cruise Descriptions
Cruise code, vessel code, permit number, year.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Pot Descriptions
Diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.
Effort Descriptions
Date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.
Catch Descriptions
Retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data Requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other species	Estimated total weight.

Biological Data:
For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.
Cruise Descriptions
Cruise code, vessel code, permit number.
Sample Descriptions
Date, position at start of the set, compass bearing of the set, line number.
Data
Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 226/XX

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2001/02 Season

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2001/02 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2001/02 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) Every vessel when undertaking an experimental harvesting regime shall expend its first 200,000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 226/A, the blocks are illustrated(Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) Vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) Vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) If a vessel returns to port before it has expended 200,000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime; and

(v) After completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to June 30, 2002 shall be submitted to CCAMLR by August 31, 2002.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 225/XX.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 225/XX.

6. Fishing vessels shall participate in the experimental harvest regime independently(i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

Conservation Measure 227/XX[1,2]

General Measures for Exploratory Fisheries for Dissostichus spp. in the Convention Area in the 2001/02 Season

The Commission,

Noting the need for the distribution of fishing effort and catch in fine-scale rectangles [3] in these exploratory fisheries,

hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reaches 100 tonnes and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

3. In order to give effect to paragraph 2 above:

(i) The precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul;

(ii) The precise geographic position of a haul in longline fisheries will be determined by the centre-point of the line or lines deployed;

(iii) Catch and effort information for each species by fine-scale rectangle

[3] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the statistical subarea or division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

shall be reported to the Executive Secretary every five days using the Five-Day Catch andEffort Reporting System set out in Conservation Measure 51/XIX; and

(iv) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any fine-scale rectangle is likely to reach 100 tonnes, and fishing in that fine-scale rectangle shall be closed when that limit is reached.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 228/XX.

5. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2001/02 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 227/A) and Research Plan (Annex 227/B) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2002. Such data taken after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

Annex 227/A

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 51/XIX) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 121/XIX and 122/XIX).

2. All data required by the CCAMLR *Scientific Observers Manual* for finfish fisheries will be collected. These include:

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by-haul catch and catch per effort by species;

(iii) Haul-by-haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) Number and mass by species of by-catch of fish and other organisms; and

(viii) Observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) Position and sea depth at each end of every line in a haul;

(ii) Setting, soak, and hauling times;

(iii) Number and species of fish lost at surface;

(iv) Number of hooks set;

(v) Bait type;

(vi) Baiting success (%);

(vii) Hook type; and

(viii) Sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 227/B

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 andFigure 1.

3. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into a SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, should be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tonnes of catch for longlining, whichever trigger level is achieved first, or 10 tonnes of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in a SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

(v) When either the catch limit or the end of the fishing season is reached, all fishing within the designated area should cease.

4. To be designated as a research haul:

(i) Each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) Each haul shall comprise: for longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI,Annex 5, Appendix H, Attachment E, paragraph 4); and

(iii) Each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. All data specified in the Data Collection Plan (Annex 227/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies(paragraphs 2(iv) to 2(vi) of Annex 227/A). Where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

TABLE 1.—THE COORDINATES OF THE SMALL-SCALE RESEARCH UNITS (SSRUS)

[Figure 1]

Subarea/division	SSRU	Grid coordinates			
		Top left latutude	Top left longitude	Bottom right latitude	Bottom right longitude
58.4.1	A	55 S	80 E	64 S	89 E
58.4.3	A	55 S	60 E	62 S	73.5 E
58.4.3	B	55 S	73.5 E	62 S	80 E
58.4.4	A	51 S	40 E	54 S	42 E
58.4.4	B	51 S	42 E	54 S	46 E
58.4.4	C	51 S	46 E	54 S	50 E
58.4.4	D	Areas outside SSRUs A, B, C			
58.7	A	45 S	37 E	48 S	40 E
58.6	A	45 S	40 E	48 S	44 E
58.6	B	45 S	44 E	48 S	48 E
58.6	C	45 S	48 E	48 S	51 E
58.6	D	45 S	51 E	48 S	54 E
88.1	A	60 S	150 E	65 S	170 W
88.1	B	65 S	150 E	72 S	180
88.1	C	65 S	180	72 S	170 W
88.1	D	72 S	160 E	84 S	180
88.1	E	72 S	180	84.5 S	170 W

Note.—Subarea 88.2 is divided into six 10° longitudinal sections and one 5° longitudinal section; designated A–G from west to east. Subarea 48.6 is divided into one section north of 60° (A) and five 10° longitudinal sections south of 60°; designated B–F from west to east.

Conservation Measure 228/XX[1]

Limitation of By-Catch in New and Exploratory Fisheries in the 2001/02 Season

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2001/02 season except where specific by-catch conservation measures apply.

2. The by-catch of any species other than Macrourus spp. shall be limited to the following:

• In each SSRU in Statistical Subarea 48.6, Statistical Division 58.4.2 and Statistical Subarea 88.1 south of 65°S, and in Statistical Division 58.4.3b, the by-catch of any species shall be limited to 50 tonnes; and

• In other SSRUs, the by-catch of any species shall be limited to 20 tonnes.

3. The by-catch of Macrourus spp. shall be limited to the following:

• In each SSRU in Statistical Subarea 48.6, Statistical Division 58.4.2 and Statistical Subarea 88.1 south of 65°S, and in Statistical Division 58.4.3b, the by-catch of Macrourus spp. shall be limited to 100 tonnes; and

• In other SSRUs, the by-catch of Macrourus spp. shall be limited to 40 tonnes.

4. For the purposes of this measure, ''Macrourus spp.'' and ''skates and rays'' should each be counted as a single species.

5. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n mile[2] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days[3]. The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Conservation Measure 229/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 48.6 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Japan, New Zealand, South Africa and Uruguay. The fishery shall be conducted by Japanese, New Zealand, South African and Uruguayan-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2001/02 season shall not exceed a precautionary catch limit of 455 tonnes north of 60°S and 455 tonnes south of 60°S.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2001/02 season is defined as the period from March 1 to August 31, 2002 north of 60°S and the period from February 15 to October 15 2002 south of 60°S. In the event that either limit is reached, the relevant fishery shall be closed.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply south of 60°S. South of 60°S, prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX and such data shall be reported to the Secretariat immediately.

6. South of 60°S, longlines may be set during daylight hours only if the vessels are demonstrating a consistent

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[3] The specified period is adopted in accordance with the reporting period specified in ConservationMeasure 51/XIX, pending the adoption of a more appropriate period by the Commission.

minimum line sink rate of 0.3 m/s. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with ConservationMeasure 29/XIX.

7. There shall be no offal discharge in this fishery.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 230/XX

Limits on the Demersal Trawl Fisheries in Statistical Division 58.4.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure for the exploratory fishery for *Dissostichus* spp. in accordance with Conservation Measure 65/XII and the new fishery for *Macrourus* spp. in accordance with Conservation Measure 31/X:

Access

1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Australia. Fishing for *Macrourus* spp. in Statistical Division 58.4.2 shall be limited to the new trawl fishery by Australia. The fisheries shall be conducted by Australian-flagged vessels using trawls only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2 in the 2001/02 season shall not exceed a precautionary catch limit of 500 tonnes, of which no more than 200 tonnes shall be taken in any one of the three zones bounded by longitudes 40°E to 50°E, 50°E to 57°E and 57°E to 70°E.

3. The total catch of *Macrourus* spp. in Statistical Division 58.4.2 in the 2001/02 season shall not exceed a precautionary catch limit of 150 tonnes, of which no more than 100 tonnes shall be taken in any one of the three zones bounded by longitudes 40°E to 50°E, 50°E to 57°E and 57°E to 70°E.

Season

4. For the purpose of the exploratory trawl fishery for *Dissostichus* spp. and the new fishery for *Macrourus* spp. in Statistical Division 58.4.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit of either species is reached, whichever is sooner.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX. The provisions governing by-catch of *Macrourus* spp. contained in Conservation Measure 228/XX do not apply to this fishery.

Mitigation

6. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

7. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

8. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

9. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

10. The total number and weight of *Dissostichus* spp. discarded, including those with the ''jellymeat'' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 121/XIX shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data collection and research plans described in Annex 230/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 230/A

Data Collection and Research Plans

1. Demersal trawling for *Dissostichus* spp. and *Macrourus* spp. in water shallower than 550 m shall be prohibited except for the research activities described below:

(i) Demersal trawling shall be allowed only in designated ''open'' areas on the upper and mid-slope in depths greater than 550 m;

(ii) The manner in which areas are designated ''open'' and ''closed'' for demersal trawling will be determined according to the following procedure:

(a) Open and closed areas will consist of a series of north-south strips extending from the coast to beyond the foot of the continental slope. Each strip will be one degree of longitude wide;

(b) In the first instance, when the vessel has found an appropriate area for prospecting or fishing, it will designate the strip as open, with the area to be fished to be approximately centred in that strip;

(c) A single prospecting haul will be permitted in that strip before it is designated as open or closed, to establish if an aggregation of interest is present. There must be a minimum of 30 minutes of longitude between prospecting hauls where no strip is designated open;

(d) Whenever a strip is designated open, at least one strip adjacent to that

strip must be designated as closed. Any remnant strips less than one degree wide resulting from the previous selection of open and closed strips, will be designated as closed;

(e) Once a strip is designated closed it cannot be subsequently fished in that season by any method that allows fishing gear to contact the bottom;

(f) Prior to commercial fishing in an open strip, the vessel must undertake the survey trawls in the open strip as described below. The survey trawls in the adjacent closed strip must be undertaken prior to the vessel fishing a new strip. If the adjacent closed strip has already been surveyed, a new survey is not necessary; and

(g) When the vessel wishes to fish in a new strip, it must not choose a strip already closed. Once a new strip is designated, conditions as described in paragraphs (b) to (f) will apply to that strip.

2. Survey trawls in each open strip and its adjacent closed strip will be conducted according to the following scheme:

(i) Each pair of strips will be divided between the shelf area above 550 m and the slope area below 550 m. In each open and closed strip the following research shall be undertaken:

(a) In the section deeper than 550 m, two stations (whose locations have been randomly pre-selected according to depth and longitude) shall be sampled. At each of these stations a beam trawl sample of benthos and a bottom-trawl sample of finfish using a commercial trawl with a small mesh liner shall be taken;

(b) In the section shallower than 550 m, two stations shall be sampled at randomly pre-selected sites according to depth and longitude for benthos using a beam trawl once at each station only; and

(c) This will be undertaken in each pair of the open and closed strips using the process described above.

3. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR *Scientific Observers Manual:*

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by haul catch and catch per effort by species;

(iii) Haul-by haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) By-catch of fish and other organisms; and

(viii) Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 231/XX

Limits on the Exploratory Fishery for Dissostichus spp. on Elan Bank (Statistical Division 58.4.3a) Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France and Japan. The fishery shall be conducted by French and Japanese-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 250 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 232/XX

Limits on the Exploratory Fishery for Dissostichus spp. on BANZARE Bank (Statistical Division 58.4.3b) Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical

Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France and Japan. The fishery shall be conducted by French and Japanese-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on BANZARE Bank(Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 300 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on

BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 233/XX

Limits on the Exploratory Fishery for Dissostichus eleginoides in Statistical Division 58.4.4 Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France, Japan, South Africa and Uruguay. The fishery shall be conducted by French, Japanese, South African andUruguayan-flagged vessels using longlines only. No more than one vessel shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 103 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research

10. Every haul in this exploratory fishery shall meet the requirements of research hauls in Conservation Measure 227/XX Annex B, paragraph 4.

11. This fishery is exempted from paragraph 7 of Conservation Measure 227/XX except:

(i) On entry into an SSRU as described in Conservation Measure 227/XX, Annex B, Table 1, each vessel shall undertake 10 hauls prior to moving to another SSRU provided that the fishery has not been closed;

(ii) Provisions for data collection in Conservation Measure 227/XX, Annex B, paragraph 5 shall apply;

(iii) The Data Collection Plan in Conservation Measure 227/XX, Annex A will apply; and

(iv) Data collected pursuant to the Data Collection and Research Plans for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2002. Such data taken after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

Conservation Measure 234/XX

Limits on the Exploratory Fishery for Dissostichus eleginoides in Statistical Subarea 58.6 Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas

of national jurisdiction shall be limited to the exploratory longline fishery by Chile, France, Japan and South Africa. The fishery shall be conducted by Chilean, French, Japanese and South African-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 450 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas of national jurisdiction, the 2001/02 season is defined as the period from 1 May to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 235/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Japan, New Zealand, Russia and South Africa. The fishery shall be conducted by a maximum in the season of one (1) Japanese, four (4) New Zealand, three (3) Russian and two (2) South African-flagged vessels[1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2001/02 season shall not exceed a precautionary catch limit of 171 tonnes north of 65°S and 2 337 tonnes south of 65°S.

3. In order to ensure an adequate spread of fishing effort south of 65°S, the total catch of *Dissostichus* spp. shall not exceed a precautionary catch limit of 584 tonnes in each of the four small-scale research units (SSRUs) identified for Statistical Subarea 88.1 south of 65°S, as defined in Conservation Measure 227/XX, Annex B.

Season

4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1, the 2001/02 season is defined as the period from December 1, 2001 to August 31, 2002.

Fishing Operations

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 227/XX, except paragraph 6.

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

7. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX and such data shall be reported to the Secretariat immediately.

8. In Statistical Subarea 88.1, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 216/XX. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 29/XIX.

9. There shall be no offal discharge in this fishery.

Observers

10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

11. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XX.

CDS

12. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 170/XX.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Data: Catch/Effort

14. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

[1] As notified to the Secretariat in accordance with Conservation Measure 65/XII paragraph 2(iv).

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

15. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

16. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

17. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

18. No live poultry or other living birds shall be brought into Statistical Subarea 88.1 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.1.

19. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

Conservation Measure 236/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Japan, New Zealand, Russia and South Africa. The fishery shall be conducted by a maximum in the season of one (1) Japanese, three (3) New Zealand, one (1) Russian and two (2) South African-flagged vessels [1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2001/02 season shall not exceed a precautionary catch limit of 250 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2001/02 season is defined as the period from December 1, 2001 to August 31, 2002.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 227/XX, except paragraph 6.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX, and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.2, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 216/XX. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 29/XIX.

8. There shall be no offal discharge in this fishery.

Observers

9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XX.

CDS

11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 170/XX.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Data: Catch/Effort

13. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

15. Fine-scale biological data, as required under Conservation Measures 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.2 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.2.

[1] As notified to the Secretariat in accordance with Conservation Measure 65/XII paragraph 2(iv).

Conservation Measure 237/XX

Limits on the Exploratory Fishery for Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus and Pleuragramma antarcticum in Statistical Division 58.4.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Australia. The fishery shall be conducted by Australian-flagged vessels using trawls only.

Catch Limit

2. The total catch of all species in the 2001/02 season shall not exceed a precautionary catch limit of 1 500 tonnes.

3. The catch of *Chaenodraco wilsoni* in the 2001/02 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 237/A of this conservation measure, and shall not exceed 500 tonnes.

4. The catches of Lepidonotothen kempi, *Trematomus eulepidotus* and Pleuragramma antarcticum in the 2001/02 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 237/A of this conservation measure, and shall not exceed 300 tonnes for any one species.

5. Any *Dissostichus spp.* or *Macrourus spp.* caught during the directed fishery for the above species shall be deducted from the catches of these species authorised in Conservation Measure 230/XX.

Season

6. For the purpose of the exploratory trawl fishery for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

8. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species are *Chaenodraco wilsoni, Lepidonotothen kempi,Trematomus eulepidotus* and *Pleuragramma antarcticum* and by-catch species are defined as any species other than these species.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research and DataCollection Plans described in Annex 237/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 237/A

Research and Data Collection Plans

1. There shall be three small-scale research units (SSRUs), bounded by the longitudes 40°E to 50°E, 50°E to 57°E, and 57°E to 70°E.

2. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities once 10 tonnes of any one species have been caught, irrespective of the number of hauls required:

(i) A minimum of 20 hauls must be made within the SSRU and must collectively satisfy the criteria specified in subparagraphs (ii) to (iv);

(ii) Each haul must be separated by not less than 5 n miles from any other haul, distance to be measured from the geographical mid-point of each haul;

(iii) Each haul shall comprise at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E, paragraph 4); and

(iv) All data specified in the paragraph 5 of this annex shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and biological characteristics obtained from 30 fish, where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

3. The requirement to undertake the above research activities applies irrespective of the period over which the trigger levels of 10 tonnes of catch in any SSRU are achieved during the 2001/02 fishing season. The research activities must commence immediately the trigger levels have been reached and must be completed before the vessel leaves the SSRU.

4. In the SSRU between 40°E and 50°E and in locations where the bottom depth is 280 m or less:

(i) A maximum total of 10 commercial bottom trawls may be conducted in no more than seven locations, but with no more than two bottom trawls in any one location;

(ii) Each location must be at least 5 n miles distant from any other location;

(iii) At each location trawled, three separate samples will be taken with a beam trawl in the vicinity of the commercial trawl track to assess the benthos present and compare with the benthos brought up in the commercial trawl; and

(iv) Catches from this program will not count towards the value that triggers the 20 research shots in an SSRU as defined in paragraph 2 above.

5. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR *Scientific Observers Manual:*

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by haul catch and catch per effort by species;

(iii) Haul-by haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) By-catch of fish and other organisms; and

(viii) Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 238/XX

Limits on the Exploratory Fishery for Martialia hyadesi in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 7/V and 65/XII:

Access

1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.]

Catch Limit

2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2001/02 season shall not exceed a precautionary catch limit of 2 500 tonnes.

Season

3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

Observers

4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

5. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 61/XII and 122/XIX, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi.*

Data: Biological

7. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 238/A. Data collected pursuant to the plan for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2002.

Annex 238/A

Data Collection Plan for Exploratory Squid (Martialia hyadesi) Fisheries in Statistical Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 61/XII; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR *Scientific Observers Manual* for squid fisheries will be collected. These include:

(i) Vessel and observer program details (Form S1);

(ii) Catch information (Form S2); and

(v) Biological data (Form S3).

Resolution 17/XX

Use of VMS and Other Measures for the Verification of CDS Catch Data for Areas Outside the Convention Area, in Particular, in FAO Statistical Area 51

The Commission,

Recognising the need to continue to take action, using a precautionary approach, based on the best scientific information available, in order to ensure the long term sustainability of *Dissostichus* spp. stocks in the Convention Area,

Concerned that the Catch Documentation Scheme for *Dissostichus* spp. (CDS) could be used to disguise illegal, unregulated and unreported (IUU) catches of Dissostichus spp. in order to gain legal access to markets,

Concerned that any misreporting and misuse of the CDS seriously undermines the effectiveness of CCAMLR conservation measures,

1. Urges States participating in the CDS to ensure that *Dissostichus* Catch Documents (DCDs) relating to landings or imports of *Dissostichus* spp., when necessary, are checked by contact with Flag States to verify that the information in the DCD is consistent with the data reports derived from an automated satellite-linked VesselMonitoring System (VMS)[1].

2. Urges States participating in the CDS, if necessary to that end, to consider reviewing their domestic laws and regulations, with a view to prohibiting, in a manner consistent with international law, landings/transhipments/imports of *Dissostichus* spp. declared in a DCD as having been caught in FAO Statistical Area 51 if the Flag State fails to demonstrate that it verified the DCD using automated satellite-linked VMS derived data reports.

3. Requests the Scientific Committee to review the data concerning the areas where *Dissostichus* spp. occur outside the Convention Area and the potential biomass of *Dissostichus* spp. in such areas, in order to assist the Commission in the conservation and management of *Dissostichus* stocks and in defining the areas and potential biomasses of *Dissostichus* spp. which could be landed/imported/exported under the CDS.

See the CCAMLR website, *www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2000/2001), or contact CCAMLR at: CCAMLR Secretariat P.O. Box 213, North Hobart, Tasmania 7002, Tel: [61] 3 6231 0366, Fax: [61] 3 6234 9965.

Dated: January 8, 2002.

Margaret F. Hayes

Director, Office of Oceans Affairs, Bureau of Oceans, International Environmental & Scientific Affairs, U.S. Department of State.

[FR Doc. 02–1127 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 3878]

Culturally Significant Objects Imported for Exhibition, Determinations: ''After the Scream: The Late Paintings of Edvard Munch''

AGENCY: United States Department of State.

[1] In this regard, verification of the information in the relevant DCD shall not be requested for the trawlers as described in Conservation Measure 170/XX, paragraph 14.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition: ''After the Scream: The Late Paintings of Edvard Munch,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA from on or about February 9, 2002 to on or about May 5, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–1262 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3877]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Secondary School Partnership Program in Armenia, Azerbaijan and Belarus

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Secondary School Partnership Program in Armenia, Azerbaijan and Belarus. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Armenia, Azerbaijan or Belarus. All proposals must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component.

Program Information

The Secondary School Partnership Program is funded under the FREEDOM Support Act to assist young people in building an open society and developing democratic processes and institutions in Armenia, Azerbaijan, and Belarus. This program provides grants to link schools in the three countries noted above with schools in the United States. The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a U.S. network of a minimum of two secondary schools; strengthening an existing working relationship with an organization or agency of government in Armenia, Azerbaijan, or Belarus responsible for a network of at least two schools there; and linking the two networks in one-to-one school partnerships through thematic projects and substantive exchange activities.

Overview

The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and Armenian, Azerbaijani, and Belarussian schools featuring collaborative substantive projects and reciprocal student and educator exchanges with strong academic content. The long-term goals are to: (1) Develop lasting, sustainable institutional ties between U.S. and Armenian, Azerbaijani and Belarussian schools and communities; (2) support democracy and educational reform in the above countries; (3) advance mutual understanding between youth and teachers; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools.

The program has several defining features to help the participating schools develop their partnership:

—Each partnership has a project theme and the students and teachers in the paired schools work on a joint project throughout the school year related to this theme;

—The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges from three weeks to ten months in duration. Exchanges take place while the host school is in session.

—The student and teacher exchanges must be reciprocal.

—The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

—During the exchange, participants attend class, are involved in school-based activities, work on their joint project, perform community service, visit educational and cultural sites, and reside with host families.

Dates: Grants may begin on or about July 2002 and cover the 2002–2003 academic year. The exact starting date of the grant will be dependent on availability of funds.

Guidelines

A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for the linkage apart from the availability of grant funds.

Organizers and school networks in the U.S. and Armenia, Azerbaijan and Belarus should collaborate in planning and preparation. Applicants must have an organizational partner that has its base of operation in the partner country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project, such as the development of educational materials. The proposal should specify measurable goals and objectives of the program.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed. For example, what will the participants be doing and how is it relevant to the thematic focus of the program? Applicants should present a program that involves the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and

communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include civic education, such as citizen activism, volunteerism or community service, youth leadership training, multicultural education, rule of law, and free and independent media.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, shadowing of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools, teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive.

Competitive proposals will demonstrate a solid and comprehensive follow-on plan to sustain the partnerships after the grant has expired.

Responsibilities

The U.S. organization receiving the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep the Bureau informed of its progress; (4) manage all travel arrangements, logistics, travel documents, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of a grant are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants in the exchange components of the program must be open, competitive, and merit-based; the proposal should describe the mechanisms used for participant selection. All participants from the U.S. and Armenia, Azerbaijan, and Belarus should represent the full diversity of their communities (racial, ethnic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Preference will be given to proposals that include schools that have not already received funding under the NIS Secondary School Initiative for a total of three years or more.

Significant cost-sharing is mandatory in all proposals, and those that show more generous and creative cost-sharing will be more favorably viewed. The Bureau encourages proposals that include non-Bureau funded components such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, or capital city civics programs. However, participants from Armenia,Azerbaijan and Belarus may not be charged to participate in the program, aside from paying for home country costs, (such as transportation to the point of departure the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Please be sure to refer to the Project Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information. Also consult the Proposal Submission Instructions (PSI) for information on budget presentation and required forms.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. Only partnerships between secondary schools in the United States and these three countries are eligible for this competition. Organizations may apply to work in more than one country. Funding for each country is expected to be as follows: Armenia, $100,000, Azerbaijan; $150,000; and Belarus,$50,000. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S., Armenian, Azerbaijani, or Belarussian participants. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–02–50.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–4788; fax (202) 619–5311; E-mail: *lbeach@pd.state.gov* to request a Solicitation Package. TheSolicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau ProgramOfficer Randall Biggers on all other inquiries and correspondence, email: *rbiggers@pd.state.gov*, tel: (202) 401–7356.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs *by 5 p.m.* Washington, DC time on *Friday, March 1, 2002.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and six copies including tabs A–E and appendices should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–02–50, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. Applicants are also encouraged to submit proposals as Microsoft Word or Excel documents as well. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 02–1261 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3875]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Development of a Professional Journal and Research Service for Overseas U.S. Educational Advising Centers

SUMMARY: The Educational Information and Resources Branch,Office of Global Educational Programs, Bureau of Educational and Cultural Affairs (the Bureau) announces an open competition for a professional journal and research service for overseas educational advising centers. Public or private non-profit organizations meeting the provisions described in IRS regulation 26 USC 501(c)(3) are invited to submit proposals to produce a professional journal to provide timely and in-depth information on trends and developments in U.S. higher education and other issues and topics relevant to the Department of State-affiliated overseas educational advising and information centers. The selected organization will also answer reference inquiries from Department of State-designated educational advising offices overseas. The Bureau anticipates awarding up to $97,000 to one organization for these activities.

Program Information

Overview

This grant funds a professional journal for overseas advisers to assist them in providing comprehensive information about the strengths and diversity of the U.S. higher educational system to foreign audiences. Proposals should illustrate how the organization will produce a professional journal, including an internet web site and publication, to provide timely and in-depth information for the staff of Department of State-affiliated overseas educational advising and information centers that advise foreign nationals about educational opportunities in the United States. The information provided to advisers should focus on the field of U.S. education and offer skill-building content for practitioners of advising(for example, the resource could train advisers in the ethics of the profession and teach them how to enhance their communication and listening skills). The information should also feature current information on university programs, new advising resources, short-term training programs, current testing announcements, news briefs, reference questions of world-wide interest, and scholarship and financial information useful to overseas educational advisers in the conduct of their duties. E-mail updates on timely topics relating to U.S. education must be distributed regularly to advisers between issues of the electronic and print journals.

Guidelines

The organization should produce four issues of the publication (Summer 2002, Fall 2002, Winter 2002 and Spring 2003), and describe what publishing capacity will be used to assure that each issue of the publication is produced quickly and efficiently. Five hundred copies of the publication must be shipped to the Department of State's

shipping facility for distribution to overseas educational advising centers. The web site must be designed in a user-friendly fashion, with an index of topics, and in a format that can be shared directly with students with minimal repackaging by the adviser. The web site should include additional features such as updates, reference links, and a possible bulletin board or chat room that increases contacts between advisers and U.S. university representatives. The web site may be password protected. The first posting to the web site and the first print issue should be available within 90 days of grant receipt.

The research service will provide information regarding specific degree or postgraduate programs, particular types of resources, short-term training programs, and determining institutional accreditation or legitimacy. Most inquiries are for information which is not readily available in other print or internet resources. The proposal should describe how this service will operate, and how it would respond directly to specific inquiries from Department of State-affiliated educational advisers overseas. An explanation of the staff's expertise in answering individual questions that are detailed or geographically specific should be included. The web site and publication must acknowledge that its contents were developed, in part, under a grant from the Bureau of Educational and Cultural Affairs of the Department of State. The Bureau reserves the right to use all materials produced for its own purposes.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The budget should not exceed $97,000 for the development of the web site, publication, and research service. The $97,000 should also cover all printing costs for producing the publication. For both the electronic and print versions, applicants are encouraged to sell subscriptions and use advertising to offset production costs in excess of the grant. The Applicants must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down of the administrative budget. The Bureau's grant assistance will not exceed $97,000. The $97,000 is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits
(2) Web site design costs, printing, utilities, and other direct costs
(3) Indirect expenses, auditing costs

Applicants should refer to the Grant package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–2002–09.

FOR FURTHER INFORMATION CONTACT: The Office of Global Educational Programs, Educational Information and Resources Branch, Department of State, 301 4th Street, SW., (SA–44), Washington, DC 20547, Tel: (202) 619–5549, Fax: (202) 401–1433, E-mail: *aprince@pd.state.gov.* Potential applicants are encouraged to contact the program office to request an ApplicationPackage, which includes more detailed award criteria; all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the Bureau Program Officer,Ann Prince, on all inquiries and correspondences. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's web site at: *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Thursday, March 7, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eleven copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–2002–09,Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW.—SA–44, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to other Department of State Bureaus for their review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations

and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and CulturalAffairs. Final technical authority for assistance awards resides with the Bureau's grants contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning*: Proposals should exhibit originality, substance, precision, and relevance to design a web site, produce a publication, and provide e-mail updates on timely topics that will address the need for in-depth and balanced exploration of issues and topics important to overseas educational advisers. In addition, the proposal should demonstrate the resources and professional contacts necessary to respond in a timely manner to inquiries by overseas educational advisers.

2. *Institution's Track Record/Ability*: Proposals should demonstrate an institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by the Bureau's Office of Contracts. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals.

3. *Demonstrated Ability*: Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. The proposal should describe technological and editorial capability.

4. *Project Evaluation*: Proposal should provide a plan for evaluation by the grantee institution that includes measures of success. Evaluation plan should include periodic progress reports at the end of the grant cycle, as well as intermediate reports describing results of the project.

5. *Cost-Effectiveness*: The overhead and administrative components of the proposal, including salaries, should be kept as low as possible. All other items should be necessary and appropriate.

6. *Cost-Sharing*: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. For both electronic and print versions, applicants may sell subscriptions and use advertising to offset production costs in excess of the grant.

7. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, and to exposing readers to the widest possible range of views and approaches to U.S. higher education. Attention should be given to printing articles relating to different kinds of schools and universities from various regions of the U.S. The Department of State strives to ensure that all programs conducted under its mandate reflect the diversity of the intended audiences.

The Bureau aggressively seeks and actively encourages the involvement of American and international participants from traditionally underrepresented groups in all its grants, programs and other activities. These include women, racial and ethnic minorities and people with disabilities.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961,Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 02–1260 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3835]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Friday, February 1, 2002, from 10 a.m. to approximately 5 p.m., as necessary, in Room 1207 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will discuss the Draft Convention on Jurisdiction and Enforcement of Judgments, the Draft United Nations Convention on Terrorism, the International Law Commission's Articles on State Responsibility, recent legal developments related to International Court of Justice, and other current legal topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, January 30, 2002, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes both government and non-government admittance. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: January 4, 2002.

Mary Catherine Malin,

Attorney-Adviser, Office of United Nations Affairs, Executive Secretary, Advisory Committee on International Law.

[FR Doc. 02–1259 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 4, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11268.

Date Filed: January 3, 2002.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 191—Resolution 011a.

Mileage Manual Non-TC Member/Non-IATA Carrier Sectors (Amending).

Intended effective date: 1 February 2002 for implementation 1 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–1258 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending December 28, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11251.

Date Filed: December 28, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 2002.

Description: Application of Amerijet International, Inc., pursuant to 49 U.S.C. section 41105, requesting a disclaimer of jurisdiction and reissuance of certificate or, alternatively, approval of the transfer of Amerijet's certificates of public convenience and necessity and other operating authority to Amerijet Acquisition Corporation.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–1257 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11313]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various organizational and administrative issues relating to the operation of the Committee and to develop a business plan for 2002. The meetings are open to the public.

DATES: GLPAC will meet on Friday, February 1, 2002, from 9:00 a.m. to 12:00 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before January 25, 2002. Requests to have material distributed to each member of the Council prior to the meeting should reach the Executive Director of GLPAC along with 25 copies of the material on or before January 22, 2002.

ADDRESSES: GLPAC will meet at in Room B1 of the Federal Building, 1240 East 9th Street, Cleveland, OH 44199. Send written material and requests to make oral presentations to Ms. Margie G. Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Review of GLPAC's Charter.
(2) Overview of the Federal Advisory Committee Act (FACA).
(3) Committee Operating Procedures.
(4) Committee Planning Session for 2002 and Business Plan Development.

Procedural

All meetings are open to the public. Please note that the meeting may close early if all business is finished. At the Executive Director's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation, please notify the Executive Director no later than January 25, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than January 25, 2002. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit 25 copies to the Executive Director no later than January 22, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: January 11, 2002.

Jeffrey P. High,

Director of Waterways Management.

[FR Doc. 02–1186 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 27]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Wednesday, February 13, 2002.

ADDRESSES: The meeting of the RSAC will be held at the Almas Temple Club in the Grand Ballroom, 1315 K Street, NW., Washington, DC 20005, (202) 898–1688. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation

can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Wednesday, February 13, 2002. The meeting of the RSAC will be held at the Almas Temple Club, 1315 K Street, NW, Washington, DC, 20005, (202) 898–1688. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will receive greetings and a charge from the new FRA Administrator. The morning session will be dedicated to a discussion of security of railroad passenger and freight operations. Status briefings will be held on Locomotive Cab Working Conditions (full RSAC ballot votes on the NPRM completed by December 10th, 2001), Accident/Incident Reporting, Crashworthiness, Event Recorders and other Working Group activities. The Committee may be requested to act upon recommendations of the Accident Reports Working Group regarding estimation of railroad property damages (RSAC Task 97–7) and recommendations of the Positive Train Control Working Group for resolution of comments on the proposed rule for Processor-Based Signal and Train Control Systems (RSAC Task 97–6). The RSAC will also discuss implications of the use of prescription and over-the-counter medications by safety-sensitive employees, and a briefing on safety initiatives directed a highway-rail grade crossings will be held in the afternoon.

See the RSAC Web site for details on pending tasks at: *http: //rsac.fra.dot.gov/* . Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 11, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–1255 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–11109]

Temporary Cessation of Sounding of Locomotive Horn—Yakima, Washington

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 (BNSF) is ordered to temporarily cease the sounding of locomotive horns at specific crossings within the City of Yakima, Washington. 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 February 19, 2002. 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–2001–11109) 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 (9am—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 Web site 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 Yakima, Washington, to order the BNSF to temporarily cease the sounding of locomotive horns at five highway-rail grade 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 I Street (DOT Inventory No. 098492F), D Street (DOT Inventory No. 099162D), Lincoln Avenue (DOT Inventory No. 099163K), B Street (DOT Inventory No. 099164S), and Yakima Avenue (DOT Inventory No. 099165Y). 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 Interim Final Order published today, BNSF will be required to cease sounding of the locomotive horn at the crossings under the terms of the 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 Yakima that such order be issued, and the purpose of the order is to enable effectuation of a quiet zone demonstration project proposed by the community and supported by the Washington Utilities and Transportation Commission, 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 Yakima, Washington, (City) in conjunction with The Burlington Northern and Santa Fe Railway Company (BNSF), 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 I Street (DOT Inventory No. 098492F), D Street (DOT Inventory No. 099162D), Lincoln Avenue (DOT Inventory No. 099163K), B Street (DOT Inventory No. 099164S), and Yakima Avenue (DOT Inventory No. 099165Y) (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 median barriers to prevent motorists from entering public highway-rail grade crossings when warning gates and lights are activated. The tested median barrier consists of an 18-inch wide, one-foot high, raised concrete barrier placed along the centerline of the roadway and consisting of various lengths. Reflective, flexible, three-inch diameter tubular shaped cones are mounted on top of the barrier, spaced five feet apart. This study will provide information on the effectiveness of medians in relationship to both heavy commercial motor vehicles and heavy motor vehicle traffic and the maintenance issues that may arise from these types of traffic.

3. The demonstration project has been designed with three distinct phases. ''Phase 1'' entails studying driver behavior at three of the crossings without medians for four months. ''Phase 2'' of the project, lasting four months, includes studying driver behavior at those crossings with medians installed but with locomotive horns routinely sounded. Driver behavior was compared with the results of the first phase in order to determine the effectiveness of the supplementary safety devices. ''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 data has been gathered 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. FRA will gather further data 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.

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, to cease the routine sounding of locomotive horns on approaches to and at the above crossings 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 necessary state and local governmental entities, 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; and

(c) Advance warning signs, as approved by the Washington Utilities and Transportation Commissioner 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.

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.

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA, may through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Issued in Washington, DC on January 10, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–1254 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 26]

Railroad Safety Advisory Committee (''RSAC''); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect their current status.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on April 6, 2001, (66 FR 18352). The seventeenth full Committee meeting was held April 23, 2001, at the Mayflower Hotel in the Colonial Ballroom in Washington, DC. The eighteenth meeting is scheduled for February 13, 2002.

Since its first meeting in April of 1996, the RSAC has accepted seventeen tasks. Status for each of the tasks is provided below:

Task 96–1—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. The final rule was published on January 17, 2001 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001 was published on February 12, 2001, (66 FR 9905). In addition, the FRA is reviewing petitions for reconsideration of the final rule and has published amendments to Subpart D of the final rule (66 FR 36983; 8/1/01). Contact: Thomas Hermann (202) 493–6036.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards was approved by the full RSAC in a mail ballot during August 2000. The GRMS final rule amendment was published January 10, 2001 (66 FR 1894) and the Roadway Maintenance Machines NPRM was published January 10, 2001 (66 FR 1930). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001 in accordance with the Regulatory Review Plan (66 FR 9676). Contact: Al MacDowell (202) 493–6236.

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 (62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. Contact: Gene Cox (202) 493–6319.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to

the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493–6302.

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). The final rule became effective January 18, 2000. Contact: George Scerbo (202) 493–6349.

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR 60966). Contact: John Conklin (202) 493–6318.

Task 96–7—Developing Roadway Maintenance Machine (On-Track Equipment) Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force finalized a proposed rule which was approved by the full RSAC in a mail ballot in August 2000. The NPRM was published January 10, 2001 (66 FR 1930). The Task Force is to meet to review comments on February 27—March 1, 2002. Contact: Al MacDowell (202) 493–6236.

Task 96–8—This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories, and prepared drafts of the task statements for Tasks 97–1 and 97–2.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. An accident review task force has evaluated the potential effectiveness of suggested improvements. An NPRM has been prepared and circulated, and the Working Group met to review the draft on October 9–10, 2001. The next meeting is scheduled for January 17–18, 2002 to go over proposed drafts. The full RSAC will review after approval of the Working Group. Contact: Sean Mehrvazi (202) 493–6237.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation). A draft sanitation NPRM was circulated to the Working Group on Cab Working Conditions with ballot requested by November 3, 2000. The NPRM on sanitation was discussed during the full RSAC meeting on September 14, 2000 and published January 2, 2001 (66 FR 136). A public hearing was held April 2, 2001. Refinement and substantive changes were incorporated into the rule language. A meeting was held on August 21, 2001, to discuss comments in response to the NPRM on sanitation. Agreement was reached on resolution of the comments to the NPRM. The Working Group gave concurrence to send the recommendations to the full RSAC for mail ballot vote. The recommendations were approved by the full Committee in December 2001, and FRA is preparing the final rule for early issuance.

(Noise exposure.) A Task Force has assisted in identifying options for strengthening the occupational noise exposure standard, and the Cab Working Group met in October and November, 2000, and April, 2001, and reached tentative agreement on most of the significant issues related to the noise NPRM. The Cab Working Group held a meeting April 3 to 5, 2001, to discuss Noise exposure Standards. Refinement and substantive changes were incorporated into the rule language. A full draft NPRM will be circulated to the working group for consideration. The Cab Working Group has also considered issues related to cab temperature, and is expected to consider additional issues (such as vibration) in the future. Contact: Jeffrey Horn (202) 493–6283.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. The Event Recorder Working Group is completing preparation of an NPRM. The NPRM went to the Working Group on May 21, 2001, for comments, and FRA has reviewed the comments. A new draft is under review within FRA. It will be circulated to the Working Group, which will be asked to consider it. Contact: Edward Pritchard (202) 493–6247.

Task 97–4 and Task 97–5—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group. A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The Standards Task Force, formed to develop PTC standards, is developing draft recommendations for performance-based standards for processor-based signal and train control standards. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas to formulate recommendations for resolution of issues raised in the public comments. Consultations continue to complete that activity, after which recommendations will be submitted to the full committee for consideration. Monitoring of implementation continues. Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work, and the Working Group will continue to meet to monitor project implementation. Contact: Grady Cothen (202) 493–6302.

Task 97–7—Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997. A working group was formed to address this task and conducted their initial meeting on February 8, 1999. The working group

designed a survey form to collect specific data about damages to railroad equipment. The survey started on August 1 and ended January 31, 2001. A statistical analysis, using the survey data, was done to see if the method could be used to calculate property damages. The report was complete by the last week of April, 2001. A meeting was held May 21–23, 2001 to review the report. The Working Group has agreed to terminate action on this task after reviewing the options. The Working Group is reviewing a draft close-out report for approval by the full RSAC. Contact: Robert Finkelstein (202) 493–6280.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection). A working group has been formed and held its first meeting on October 16–18, 2000. Meetings have been held: February 27–March 1, 2001, March 19–21, 2001, May 1–3, 2001, June 19–21, 2001 and October 23–25, 2001. The next meeting is tentatively scheduled for January 2002. The Working Group has reached tentative consensus on several issues. Contact: Doug Taylor (202) 493–6255.

Task 01–1—Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide). This task was accepted April 23, 2001, by the full RSAC and assigned to the Accident/Incident Working Group. At a meeting of the Working Group, held May 21–23, 2001, the task was discussed, and four task forces were set up to review changes and/or modifications. To date, these task forces have identified a series of minor modifications to the Reporting Guide/regulations for consideration. A target of September 15, 2001, was set for reporting the recommended changes. The Working Group met September 11, 2001; meeting was dismissed due to national emergency. A meeting was held November 14–15, 2001 in St. Louis, Missouri. A Task Force on Remote Control met on December 11, 2001. The next meeting is scheduled for January 23–24, 2002, in Baltimore, Maryland. Contact: Contact: Robert Finkelstein (202) 493–6280.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 11, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–1256 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. 42052]

Union Pacific Railroad Company—Petition for Declaratory Order—Unilaterally Imposed Interchange Charges

AGENCY: Surface Transportation Board Department of Transportation.

ACTION: Request for Notices of Intent to Participate.

SUMMARY: The Surface Transportation Board (Board) requests that those intending to participate in this phase of this proceeding, in which interested parties will meet to discuss ways to facilitate the interchange of railroad cars, notify the agency and the Association of American Railroads (AAR) of their intent. The Board is also suspending the procedural schedule established in the prior order (served on December 10, 2001).

DATES: We request that those intending to participate notify the Board and AAR by January 28, 2002. We will issue a further order after the notices of intent to participate have been filed, establishing dates by which the first meeting should be conducted and by which AAR should file a progress report.

ADDRESSES: An original and one copy of each party's notice of intent, referring to STB Docket No. 42052, should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, ATTN: STB Docket No. 42052. Two copies should also be sent to Association of American Railroads, 50 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: At the Board, Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.] At AAR, John Carroll, (202) 639–2373.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by the Board in response to a request for a declaratory order concerning ways in which rail carriers deal with interchange delays. However, because issues regarding interchange delays are often addressed under the framework of the industry-wide Car Service and Car Hire Agreement (CS/CH Agreement) and Code of Car Service Rules/Code of Car Hire Rules (CS/CH Rules) administered by the AAR, by notice served and published December 10, 2001 (66 FR 63741), the Board concluded that the issues raised could be better addressed in private sector discussions and that the CS/CH Rules must be considered as part of any private sector resolution of the matter that had been brought before the Board. The agency therefore requested that, before a proceeding is moved forward administratively, AAR convene a meeting or series of meetings with railroads, shippers, and other involved parties to discuss ways to address issues concerning delays in the interchange of railroad cars between railroads, and to develop proposals for addressing incidences of traffic delays associated with such interchange. The Board further requested that AAR file a report describing the progress made at the meeting(s) and recommending how best to proceed to resolve these issues.

On December 21, 2001, we received a letter from AAR's General Counsel requesting that we take certain actions to facilitate moving the process forward in the private sector. First, noting that AAR has not been a party to the agency proceeding and that it has not yet been informed of all who may be interested in the matter or what any party's position may be, the letter suggests that we issue a **Federal Register** notice asking interested parties to file notices of intent to participate. To facilitate the conduct of the meeting(s), all parties should file notices of intent to participate, which should provide the name, address, official title, and operational experience of the person who will participate on behalf of the party, along with a brief (not more than one page) summary of the party's position and preliminary recommendations.

Given the interest that we expressed in our prior order for a practical solution based on good faith cooperation among all railroads, AAR's letter further suggests that we encourage participation by persons with expertise in rail operations/interchange issues, rather than by the party's counsel. We agree that the discussions we envisioned in our prior order would focus on operational cooperation rather than legal issues, and that the meeting(s) can be most fruitful if operational solutions are pursued. Thus, we strongly encourage participation by individuals with operational backgrounds.

AAR's letter also suggests that, given the current uncertainty as to the scope of the problem or the number of parties

wishing to participate, the Board consider extending the time for holding the meeting beyond February 8, 2002. We agree. We will suspend the current procedural schedule, and adopt a new schedule after notices of intent to participate are filed.

Finally, AAR's letter expresses concern over potential antitrust exposure in the event that any proposals relating to the interchange issues under consideration could involve collective discussion of prices, rates, or tariffs. We do not want to prejudge or limit the type of permissible dialogue in a way that could undercut resolution of the matters at issue, but our purpose in asking the parties to attempt to resolve this matter in the private sector has been to make the interchange process work better, not to provide a forum for parties to collectively discuss specific rates for specific situations. Thus, in our view, if discussion of rate matters takes place, it should be of a general nature. Such general conversations—particularly given that they would be undertaken pursuant to our request—would not in our view subject the participants to antitrust exposure. And as long as any such conversations that may implicate rates are kept to a general nature, they should not undercut what we hope could be a favorable outcome here, which is the development of a framework in which parties can conduct bilateral negotiations to work out interchange issues of the sort that precipitated this proceeding. If at any point it becomes evident that antitrust issues are a concern, we will be available to address the situation.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Interested parties shall file notices of intent to participate, as described above, by January 28, 2002.

2. The procedural schedule established in our prior order is held in abeyance pending further order.

3. This decision is effective on January 17, 2002.

Decided: January 9, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1122 Filed 1–16–02; 8:45 am]

BILLING CODE 4195–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 9, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 19, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1423.

Regulation Project Number: PS–106–91 Final.

Type of Review: Extension.

Title: State Housing Credit Ceiling and other Rules Relating to the Low-Income Housing Credit.

Description: The regulations provide the order in which credits are allocated from each State's credit ceiling under section 42(h)(3)(C) and the determination of which states qualify for credits from a National Pool and of credits under section 42(h)(3)(D). Allocating agencies need this information to correctly allocate credits and determine National Poole eligibility.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 2 hours, 30 minutes.

Frequency of Response: Other (One time per event).

Estimated Total Reporting Burden: 275 hours.

OMB Number: 1545–1624.

Notice Number: Notice 98–52.

Type of Review: Extension.

Title: Cash or Deferred Arrangements; Nondiscrimination.

Description: Section 1433(a) of the Small Business Job Protection Act of 1966 requires that the Service provide nondiscriminatory safe harbors with respect to section 401(k)(12) and section 401(m)(11) for plan years beginning after December 31, 1998. This notice implements that statutory requirement.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 02–1208 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 9, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before February 19, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1632.

Regulation Project Number: REG–118662–98 Final.

Type of Review: Extension.

Title: New Technologies in Retirement Plans.

Description: These regulations provide that certain notices and consents required in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.

Respondents: Business or other for-profit, Individuals or households, Not-

for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 375,000.

Estimated Burden Hours Per Respondent: 1 hour, 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 477,563 hours.

Clearance Officer: George Freeland,Internal Revenue Service,Room 5577,1111 Constitution Avenue, NW,Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860,Office of Management and Budget,Room 10202, New Executive Office Building,Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–1263 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of intent to distribute offset for Fiscal Year 2001.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is Customs notice of intention to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2001 in connection with certain antidumping duty orders or findings or countervailing duty orders that were not previously listed in the notice of intent to distribute the offset for Fiscal Year 2001 that was published in the **Federal Register** on August 3, 2001. This document sets forth those additional antidumping duty orders or findings and countervailing duty orders that were not previously listed, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings and the dollar amount of the offset for each order or finding that is available for distribution.

DATES: Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by March 18, 2002.

ADDRESSES: Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229 (ATTN: Jeffrey J. Laxague).

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings, (202–927–0505).

SUPPLEMENTARY INFORMATION:

Background

The Continued Dumping and Subsidy Offset Act of 2000 (''CDSOA'') was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (''Act''). The provisions of the CDSOA are contained in Title X (sections 1001—1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term ''affected domestic producer'' means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) Remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC previously supplied Customs with the list of individual antidumping and countervailing duty cases for Fiscal Year 2001, and the affected domestic producers associated with each case that were potentially eligible to receive an offset. These cases were the subject of a notice of intent to distribute the continued dumping and subsidy offset for Fiscal Year 2001 that was published in the **Federal Register** (66 FR 40782) on August 3, 2001.

However, a number of antidumping and countervailing duty cases were not included on the previously-supplied list of cases that were subject to a distribution of the continued dumping and subsidy offset for Fiscal Year 2001. Accordingly, this notice essentially constitutes a supplement to the August 3, 2001, **Federal Register** notice for the purpose of listing the additional antidumping duty orders or findings or countervailing duty orders that are subject to a distribution of the offset for Fiscal Year 2001.

Customs Regulations Implementing the CDSOA

It is noted that Customs published a final rule in the **Federal Register** (66 FR 48546) on September 21, 2001, as T.D. 01–68, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of the Customs Regulations (19 CFR part 159, subpart F (§§ 159.61–159.64)).

Notice of Intent to Distribute Offset

This document announces Customs intention to distribute to affected domestic producers the assessed antidumping or countervailing duties that were available for distribution in Fiscal Year 2001 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. While § 159.62(a), Customs Regulations (19 CFR 159.62(a)), provides that Customs will publish a notice of intention to distribute assessed duties at least 90 days before the end of a fiscal year, this notice is being published at this time because it came to Customs attention that not all parties were listed in the original notice. In the future, it is not expected that supplemental notices of intent will be published.

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution.

As required by § 159.62(b), Customs Regulations (19 CFR 159.62(b)), this notice provides the specific instructions for filing a certification under § 159.63 to claim a distribution. Also, as required by § 159.62(b), for purposes of determining whether it is worthwhile to file a certification in a given case, this

notice includes the dollar amount for each listed order or finding that is available for distribution.

A successor to a company appearing on the list of affected domestic producers in this notice, or a member company of an association that appears on the list of affected domestic producers in this notice, where the member company does not appear on the list, should also consult § 159.61(b)(1)(i) or 159.61(b)(1)(ii), Customs Regulations, respectively (19 CFR 159.61(b)(1)(i) or 159.61(b)(1)(ii)), concerning whether and, if so, the additional procedures under which such party may file a certification to claim an offset.

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification, in triplicate, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

As provided in § 159.63(b), Customs Regulations (19 CFR 159.63(b)), certifications to obtain a distribution of an offset must be received by Customs 60 days after the date of publication of the notice of intent in the **Federal Register**.

While there is no established format for a certification, the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (Product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The address of the domestic producer (if a post office box, the secondary street address must also be included);
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s);
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled ''Amount Claimed for Distribution';
11. A statement of eligibility, as described in the section below entitled ''Eligibility to Receive Distribution'; and
12. A signature by a corporate officer legally authorized to bind the producer.

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the total amount of qualifying expenditures certified by the domestic producer, and the amount certified by category.

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

Additionally, these expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case (§ 159.61(c), Customs Regulations (19 CFR 159.61(c))).

Eligibility to Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer.

Where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures (§ 159.63(b)(3)(ii), Customs Regulations (19 CFR 159.63(b)(3)(ii))).

Moreover, as required by 19 U.S.C. 1675c(b)(1) and § 159.63(b)(3)(iii), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer would again not be considered an affected domestic producer entitled to receive a distribution.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled ''Verification of Certification'').

Review and Correction of Certification

A certification that is submitted in response to this notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer, as provided in § 159.63(c), Customs Regulations (19 CFR 159.63(c)). It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and

satisfactory will result in the domestic producer not receiving a distribution.

Verification of Certification

Certifications are subject to Customs verification. Because of this, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification (see § 159.63(d), Customs Regulations (19 CFR 159.63(d))). The records must be those that are normally kept in the ordinary course of business; these records must support each qualifying expenditure enumerated in the certification; and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public, as specified in § 159.63(e), Customs Regulations (19 CFR 159.63(e)). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset. Also, the amount of the offset available for distribution with respect to each listed order or finding appears in parentheses immediately below the Commerce case number for the order or finding.

Commerce case number	Commission case number	Product/country	Petitioners/supporters
A–588–015, ($24,311,452.01).	AA 1921–66 ...	Television receivers/Japan.	AGIV (U.S.A.); Casio Computer; CBM America; Citizen Watch; Funai Electric; Hitachi; Industrial Union; Department, AFL–CIO; Matsushita; Mitsubishi Electric; NEC; Orion Electric; J.C. Penney; Philips Electronics; Philips Magnavox; P.T. Imports; Sanyo; Sharp; Toshiba; Toshiba America Consumer; Products; Victor Company of Japan; Montgomery Ward; Zenith Electronics.
A–580–008, ($45,669.05).	731–TA–134 ..	Color television receivers/Korea.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics).
A–583–009, ($1,025.82).	731–TA–135 ..	Color television receivers/Taiwan.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics).
A–122–006, ($13,533.77).	AA1921–49	Steel jacks/Canada	No petition at the Commission; Commerce service list identifies: Bloomfield Manufacturing (formerly Harrah Manufacturing); Seaburn Metal Products.
A–588–029, ($65,301.74).	AA1921–85	Fish netting of man-made fiber/Japan.	No petition at the Commission; Commerce service list identifies: Jovanovich Supply; LFSI; Trans-Pacific Trading.
A–588–038, ($168,261.66).	AA1921–98	Bicycle speedometers/Japan.	No petition at the Commission; Commerce service list identifies: Avocet; Cat Eye; Diversified Products; N.S. International; Sanyo Electric; Stewart-Warner.
A–588–055, ($53.99).	AA1921–154 ..	Acrylic sheet/Japan	Polycas Technology.
C–351–037, ($2,471.93).	104–TAA–21 ..	Cotton yarn/Brazil ..	Harriet & Henderson Yarns; LaFar Industries; American Yarn Spinners Association.
A–588–005, ($572.91).	731–TA–48	High power microwave amplifiers/Japan.	Aydin; MCL.
A–122–401, ($256.98).	731–TA–196 ..	Red raspberries/Canada.	Rader Farms; Ron Roberts; Shuksan Frozen Food; Northwest Food Producers' Association; Oregon Caneberry Commission; Red Raspberry Member Group; Washington Red Raspberry Commission.
A–588–405, ($49,294.92).	731–TA–207 ..	Cellular mobile telephones/Japan.	E.F. Johnson; Motorola.
C–421–601, ($407.22).	701–TA–278 ..	Fresh cut flowers/Netherlands.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–301–602, ($32,909.01).	731–TA–329 ..	Fresh cut flowers/Colombia.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–331–602, ($385.01).	731–TA–331 ..	Fresh cut flowers/Equador.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.

Commerce case number	Commission case number	Product/country	Petitioners/supporters
A–201–601, ($24,291.74).	731–TA–333 ..	Fresh cut flowers/ Mexico.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–401–603, ($412.84).	731–TA–354 ..	Stainless steel hollow products/ Sweden.	AL Tech Specialty Steel; Allegheny Ludlum Steel; ARMCO; Carpenter Technology; Crucible Materials; Damacus Tubular Products; Specialty Tubing Group.
A–508–604, ($376.92).	731–TA–366 ..	Industrial phosphoric acid/Israel.	Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical.
A–588–802, ($8,407.02).	731–TA389	3.5″ microdisks/ Japan.	Verbatim.
A–588–809, ($70,398.66).	731–TA–426 ..	Small business telephone systems/ Japan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–583–806, ($10,079.58).	731–TA–428 ..	Small business telephone systems/ Taiwan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–580–803, ($12,773.12).	731–TA–427 ..	Small business telephone systems/ Korea.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–570–811, ($957.34).	731–TA–497 ..	Tungsten ore concentrates/China.	Curtis Tungsten; U.S. Tungsten.
A–427–804, ($59,480.21).	731–TA–553 ..	Hot-rolled lead & bismuth carbon steel products/ France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.
C–427–805, ($11,868.38).	701–TA–315 ..	Hot-rolled lead & bismuth carbon steel products/ France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.

Dated: January 11, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–1175 Filed 1–16–02; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, January 24, 2002, 9:15 a.m.—5 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 2002 Board Meeting; Approval of Minutes of the One Hundred Second Meeting (November 15, 2001) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Program Reports; Review of Individual Grant Applications; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 11, 2002.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 02–1327 Filed 1–15–02; 11:48 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments, which occur during calendar year 2002.

FOR FURTHER INFORMATION CONTACT: Karen Barber, Program Analyst, Communications and Regulatory Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: (202) 273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Public Law 104–275, section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments, which occur during calendar year 2002, is the average cost of Government-furnished graveliners in fiscal year 2001, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by

VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $153.79 for fiscal year 2001.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.50 for calendar year 2002.

The net allowance payable for qualifying interments occurring during calendar year 2002, therefore, is $144.29.

Approved: January 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–1249 Filed 1–16–02; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register
Vol. 67, No. 12
Thursday, January 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–027N]

Bovine Spongiform Encephalopathy (BSE) Current Thinking Paper; Notice of Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the Agency's current thinking paper on possible actions to minimize human exposure to meat food products from cattle that could contain the infective agent that causes Bovine Spongiform Encephalopathy (BSE). BSE, commonly referred to as ''Mad Cow Disease,'' is a chronic degenerative disease affecting the nervous system of cattle. Worldwide, there have been more than 178,000 cases since the disease was first diagnosed in 1986 in Great Britain, although no cases of BSE have been confirmed in the United States. Recent laboratory and epidemiological research indicate that there is a causal association between BSE and a variant of Creutzfeldt-Jakob Disease, a slow degenerative disease that affects the central nervous system of humans.

The Agency current thinking paper follows the recent publication of a risk assessment conducted by the Harvard University School of Public Health to analyze and evaluate the U.S. Department of Agriculture's current measures to prevent BSE. FSIS requests comments on both the current thinking paper and the Harvard risk assessment.

ADDRESSES: Copies of the current thinking paper and the Harvard risk assessment are available from the FSIS Docket Clerk, FSIS Docket Room, Room 102, 300 12th Street, SW., Washington, DC 20250–3700. Copies of both documents also are available on the Internet at: *http://www.fsis.usda.gov/OPPDE/rdad/default.htm.* Send all written comments on the current thinking paper and the risk assessment to the FSIS Docket Room. All comments received will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Director, Regulations and Directives Development Staff, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 720–5627.

Done in Washington, DC on: January 15, 2002.

Ronald F. Hicks,

Acting Associate Administrator.

[FR Doc. 02–1342 Filed 1–15–02; 2:09 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Greendale Project, Green Mountain National Forest, Manchester Ranger District, Town of Weston, Windsor County, Vermont

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Greendale Project (Project Area) is located on the Green Mountain National Forest (GMNF) in the Town of Weston on lands north of the Landgrove-Weston Road and west of Route 155, and affects National Forest Service System Lands adjacent to the Trout Club Rd., Moses Pond Rd., Jenny Coolidge Rd., and the Greendale Rd. The Project Area covers approximately 5,404 acres and includes portions of Forest Plan designated Management Areas 2.1A, 3.1, 4.1, and 6.2A encompassing Compartments 27, 29, 30, 31, 32, and 45. The 1986 Green Mountain National Forest Land and Resource Management Plan (Forest Plan) determined that these lands are administratively available for recreation, wildlife, fisheries and vegetation management to meet a range of resource management objectives.

The Proposed Action would treat approximately 895 acres through evenage and unevenage tree harvest using three or more commercial timber sales; harvesting approximately 4 million board feet of timber.

Evenage management would include 26 acres of overstory removal, 267 acres of thinning, 62 acres of clear-cutting scattered throughout the project area, and 154 acres of delayed shelter-wood harvest. Unevenage management would consist of 282 acres of individual and 104 acres of group tree selection harvest. The objective is to promote both aspen and softwood tree regeneration, maintain and restore the diversity of tree species & age classes, promote forest health, improve winter deer habitat, and maintain a diversity of wildlife habitats within the Project Area. The project would also restore and maintain approximately 32 acres of historic apple orchards and improve stream and fish habitat on approximately 1.5 miles of Jenny Coolidge Brook. There would be no new road construction or reconstruction of existing roads.

DATES: Written comments concerning the scope of the analysis should be received by February 20, 2002 to ensure timely consideration. The Forest Service will also conduct one or more public scoping meetings regarding this vegetation management proposal. The public will be notified as to the date, time and location of these meeting as they are scheduled.

ADDRESSES: Please send written comments to: Dennis Roy, District Ranger, Manchester Ranger District, 2538 Depot Street, Manchester Center, Vermont 05255.

FOR FURTHER INFORMATION CONTACT: Edward Toth, project leader either by writing to him at the Manchester Ranger District, 2538 Depot Street, Manchester Center, Vermont 05255 or by telephone at (802) 362–2307 Ext: 212 if you have questions about the project and the preparation of the EIS or if you would like to be on the mailing list for this project.

SUPPLEMENTARY INFORMATION: The Project Area is located within the Town Of Weston, Windsor County, Vermont. It encompasses approximately 5,404 acres of National Forest System Lands on the GMNF. The 1986 Forest Plan determined these public lands to be administratively available for recreation, wildlife and fisheries habitat improvement and vegetation management provided: (1) The proposed

activities are consistent with the management prescription for each Management Area (MA), and (2) that site-specific restrictions, in the form of standards and guidelines, are implemented to protect the Project Area's natural and cultural resource values. MAs found in the Project Area are:

Management Area 2.1 (38% of the Project Area)—Uneven age management is the preferred forest management method to maintain continuous forest cover and both roaded natural and dispersed recreation opportunities.

Management Area 3.1 (16% of the Project Area)—Even age management is the preferred forest management method to maintain a mosaic of vegetative conditions in a roaded, intensively managed but natural appearing environment.

Management Area 4.1 (13% of the Project Area)—Both evenage and uneven age management would be used to provide long-term suitable, stable deer winter habitat with a mix of forest age.

Management Area 6.2a (32% of the Project Area)—Even age management, using extended rotation lengths, is the preferred silvicultural method to maintain a physical setting that provides opportunities for solitude and a feeling of closeness to nature.

General standards and guidelines found in the Forest Plan as well as site-specific measures resulting from the EIS analysis would be applied to protection Forest resources including, but not limited to: Open water, wetlands, streams and riparian areas; wet, steep, and shallow soils; designated trails; developed recreational areas; and habitat for endangered, threatened, and sensitive plant and animals.

Public participation has been, and will be, an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, state county and local agencies, individuals and organizations that may be interested in or affected by the proposed activities. Initial public scoping was held on April 6, 1998, and an open house was held during the same month. Preliminary issues identified for analysis in the EIS include the potential effects by, or on: (1) Recreational use of the Project Area, (2) the solitude and a feeling of closeness to nature in MA 6.2a, (3) wildlife and wildlife habitat, (4) deer habitat management, (5) project size and intensity of vegetation management, (6) economics, (7) opportunities for ecosystem restoration, (8) the spiritual setting of the Weston Priory, (9) fish and aquatic habitat and (10) threatened, endangered and sensitive species; including the federally-listed Indiana bat.

We expect these preliminary issues to be carried through this analysis. Additional scoping will be completed to coincide with this notice, giving the public an opportunity to identify any new issues or concerns.

Based on the results of scoping and the resource conditions within the Project Area, alternatives (including a no-action alternative) will be developed for the Draft EIS.

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in June, 2002. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date EPA's Notice of Availability appears in the **Federal Register**. The final EIS is anticipated in October, 2002.

The Forest Service believes, at this early stage, it is important to notify reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage, but are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that publics interested in this proposed action participate by the close of the 45 day comment period on the draft EIS, so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Interested parties may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Lead and Cooperating Agencies: The USDA Forest Service, Green Mountain National Forest is the lead agency for preparation of this document.

Responsible Official: Dennis P. Roy, District Ranger, Manchester Ranger District is the responsible Forest Service official. In making the decisions, the responsible official will consider the comments; responses; disclosure of environmental consequences; and applicable laws, regulations and policies. The responsible officials will state the rationale for the chosen alternative in the Records of Decision.

Dated: January 7, 2002.

Paul K. Brewster,

Forest Supervisor.

[FR Doc. 02–1217 Filed 1–16–02; 8:45 am]

BILLING CODE 3401–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings on January 25 and February 8, 2002, in Quincy, California. The purpose of the meetings is to review the Resource Advisory Committee's role in implementing the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) and to determine how to proceed with project solicitation and selection.

DATES: The January 25, 2002, meeting will be held from 9–4 p.m. The February 8, 2002, meeting time will be determined at the meeting on the 25th.

ADDRESSES: Both meetings will be held at the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California, 95971.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA, 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the January 25 meeting include: (1) Review applicable laws including: Federal Advisory Committee Act (FACA), the Secure Rural Schools and Community Self-Determination Act of 2000, the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA); (2) Discuss Collaboration and Interest-Based Bargaining; (3) Continue project solicitation/design and selection process; (4) Review ongoing public and private programs of work that fit Title 2 parameters; (5) Public Comment; and, (6) Future meeting schedule/logistics/ agenda. The meeting is open to the public and individuals may address the Committee at the time provided on the agenda. Agenda items for the February 8 meeting will be determined at the meeting on the 25th.

Dated: January 10, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–1216 Filed 1–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 011402B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northwest Region).

Form Number(s): None.

OMB Approval Number: 0648–0243.

Type of Request: Regular submission.

Burden Hours: 3.

Number of Respondents: 40.

Average Hours Per Response: 5 minutes.

Needs and Uses: A telephone survey is conducted of fishery processors, joint venture companies, and fishermen's trade associations in the Pacific Northwest to determine the tonnage of fish processed or harvested, and their estimated tonnage for the next year. The information is used to help form allocations of groundfish quotas.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Office.

[FR Doc. 02–1273 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011402A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Data Collection on Marine Protected and Managed Areas.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 5,000.

Number of Respondents: 1,000.

Average Hours Per Response: 5.

Needs and Uses: Executive Order 13158 directs the Department of Commerce and the Department of the Interior to work with partners to inventory the protection of U.S. ocean and coastal resources by developing a national system of marine protected areas. The Departments of Commerce and the Interior plan to work closely with state, territorial, local, and tribal governments, as well as other stakeholders, to identify and inventory the nation's existing marine protected and managed areas. Toward this end, the National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior (DOI) have created a dataform to be used as a survey tool to collect and analyze information on these existing sites. This survey will allow NOAA and DOI to better understand and evaluate the existing protections for marine resources within marine protected and managed areas in the United States.

Affected Public: State, local, or tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1274 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–2002]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Application for Subzone, Schering-Plough Products, L.L.C., (Pharmaceutical Products), Las Piedras, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Corporation, grantee of FTZ 7, requesting special-purpose subzone status for the pharmaceutical manufacturing plant of Schering-Plough Products, L.L.C. in Las Piedras, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 10, 2002.

Schering-Plough's Las Piedras plant (3 bldgs./401,814 sq. ft. (including 84,814 square feet proposed) on 40 acres) is located at State Road No. 183, Km 2.6, Las Piedras, Puerto Rico. The facility (500 employees) produces finished pharmaceutical products and their

intermediates, including Theo-Dur®, K–Dur®, Uni-Dur®, Normodayne/Labetalol®, Eulexin®, Claritin®, and Rebetol®. Foreign-sourced materials will account for some 40–50 percent of finished product value, and include items from the following general categories: chemically pure sugars, empty capsules for pharmaceutical use, protein concentrates, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, sulfuric acid, other inorganic acids or compounds of nonmetals, ammonia, zinc oxide, titanium oxides, fluorides, chlorates, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, phosphoric esters and their salts, diazo-compounds, glands for therapeutic uses, wadding, gauze and bandages, pharmaceutical glaze, hair preparations, lubricating preparations, albumins, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, stoppers, caps, and lids, aluminum foil, tin plates and sheets, taps, cocks and valves, and medical instruments and appliances.

Zone procedures would exempt Schering-Plough from Customs duty payments on foreign materials used in production for export. Some 30–35 percent of the plant's shipments are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products and intermediates (primarily duty-free) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 20.0 percent). At the outset, zone savings would primarily involve choosing the finished product duty rate on a cholesterol absorption inhibitor, (HTSUS 3004.90.9060–duty-free), rather than the rate for a foreign-sourced active ingredient (bulk ezetimibe, HTSUS 2933.79.0800–7.9%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is March 18, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 2, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: January 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–1271 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending the time limits for the preliminary results of the antidumping administrative review.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Ross, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4794.

The Applicable Statute

Unless otherwise indicated, all citations made 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 by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Reviews

The Department has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. On June 19, 2001, the Department initiated these administrative reviews covering the period May 1, 2000, through April 30, 2001. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 66 FR 32934, June 19, 2001.

Because of the complexity of certain issues in each review and the large number of respondents in each review, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results of these administrative reviews until April 1, 2002.

Dated: January 10, 2002.

Susan H. Kuhbach,

Deputy Assistant Secretary, Acting, for AD/CVD Enforcement I.

[FR Doc. 02–1270 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and rescission in part of antidumping duty administrative review of certain cased pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) has preliminarily determined that sales by the respondents in this review, covering the

period December 1, 1999, through November 30, 2000, have been made below normal value (NV). In addition, we are preliminarily rescinding this review with respect to Three Star Stationery Industry Co., Ltd. (Three Star) and Guangdong Provincial Stationary & Sporting Goods Import and Export Corporation (GSSG). If these preliminary results are adopted in the final results of this review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Michele Mire, Crystal Crittenden, or Paul Stolz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4711, (202) 482–0989, and (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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's regulations are to the regulations at 19 CFR part 351 (2000).

Period of Review

The period of review (POR) is December 1, 1999 through November 30, 2000.

Background

On December 20, 2000, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC), covering the period December 1, 1999 through November 30, 2000. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR 79802–02 (December 20, 2000).

On December 21, 2000, in accordance with 19 CFR 351.213(b), the respondent, Kaiyuan Group Corporation (Kaiyuan), requested an administrative review of its exports of subject merchandise to the United States during the POR. On December 29, 2000, China First Pencil Co., Ltd. (CFP) requested an administrative review of its exports of subject merchandise to the United States. In addition, on January 2, 2001, in accordance with 19 CFR 351.213(b), the Writing Instrument Manufacturers Association, Inc., Pencil Section; Sanford Corp.; Berol Corp.; General Pencil Co., Inc; J.R. Moon Pencil Co.; Tennessee Pencil Co.; and Musgrave Pencil Co. (collectively, the petitioners), requested that we conduct an administrative review of exports of the subject merchandise made by an additional 37 producers/exporters. The Department published a notice of initiation of this review on January 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 21 (January 31, 2001).

On February 12, 2001, we issued antidumping duty questionnaires to all parties named in the notice of initiation for whom we were able to obtain addresses.[1] In addition, on March 6, 2001, we issued a questionnaire to the PRC embassy in order to collect information relevant to the calculation of the PRC-wide rate. CFP, Orient International Holding Shanghai Foreign Trade Corporation (OIHSFTC), Kaiyuan, GSSG, and Three Star responded to our February 12, 2001, questionnaire. In their March 21, 2001, response to the Department's questionnaire, Three Star and GSSG stated that they did not export subject merchandise to the United States during the POR. Specifically, Three Star stated that it had no exports of subject merchandise to the United States. GSSG stated that it shipped pencils to the United States during the POR which were produced by Three Star. GSSG noted that this was not subject merchandise because GSSG was excluded from the antidumping duty order with respect to merchandise it exported which was produced by Three Star.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On August 6, 2001, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until December 1, 2001 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 65 FR 53701). On November 28, 2001, the deadline was extended a second time until December 31, 2001 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 63018).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Preliminary Partial Rescission

We are preliminarily rescinding this review with respect to Three Star and GSSG because they made no shipments of subject merchandise to the United States during the POR. The Department reviewed Customs data which indicates that Three Star and GSSG did not export subject merchandise to the United States during the POR.

[1] On February 9, 2001, we sent a letter to the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) requesting that it deliver questionnaires to twelve parties for whom we could not find addresses. On August 7, 2001, we sent a letter to MOFTEC repeating our request that MOFTEC deliver the questionnaires to the twelve parties. We also requested that it deliver questionnaires to 5 parties for whom questionnaires were returned to us as undeliverable due to incorrect addresses or contact information. We requested that MOFTEC contact us by August 24, 2001, if it could not deliver any of these questionnaires and advised MOFTEC that if we did not receive its response within the time provided, we would be required to base our findings with respect to these firms on facts available which could be adverse to the firms' interests. The China Chamber of Commerce For Import & Export of Light Industrial Products and Arts—Crafts (CCCLA) faxed us on August 21, 2001, informing us that MOFTEC had asked it to transmit questionnaires to listed parties but could contact only two companies: China National Light Industrial Products Import/Export Corp. (CNLIP) and Jiangsu Light Industrial Products Import and Export Group Corp. (JP). However, we did not receive questionnaire responses from these firms.

Verification

As provided in section 782(i) of the Act, during October 2001, the Department conducted verifications of OIHSFTC and its suppliers. The Department intends to conduct verifications of CFP, GSSG, Three Star and Kaiyuan subsequent to the publication of these preliminary results. During the verification of OIHSFTC and its suppliers, we followed standard procedures in order to test information submitted by the respondents. These procedures included on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the report: Verification of the Sales Responses of OIHSFTC in the 1999–2000 Administrative Review of Certain Cased Pencils from the People's Republic of China (Verification Report), the public version of which is on file in the Department's Central Records Unit, Room B099, of the Main Commerce building (CRU–Public File).

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. OIHSFTC, CFP and Kaiyuan provided the separate rates information requested by the Department and reported that their export activities are not subject to government control.

We examined the separate rates information provided by OIHSFTC, CFP and Kaiyuan in order to determine whether the companies are eligible for a separate rate. The Department's separate rates test which is used to determine whether an exporter is independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20508 (May 6, 1991).

OIHSFTC, CFP and Kaiyuan reported that the subject merchandise was not restricted to any government list regarding export provisions or export licensing, and was not subject to export quotas during the POR. OIHSFTC, CFP and Kaiyuan submitted copies of their business licenses in their questionnaire responses. We inspected OIHSFTC's original business license at verification. We found no inconsistencies with their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, OIHSFTC, CFP and Kaiyuan submitted copies of PRC legislation demonstrating the statutory authority for establishing the de jure absence of government control over the companies. Thus, we believe that the evidence on the record supports a preliminary finding of absence of de jure governmental control based on: (1) An absence of restrictive stipulations associated with the business licenses of OIHSFTC, CFP and Kaiyuan; and (2) the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether a respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

OIHSFTC, CFP and Kaiyuan reported that they determine prices for sales of the subject merchandise based on the cost of the merchandise, movement expenses, overhead, profit, and the market situation in the United States. Moreover, OIHSFTC, CFP and Kaiyuan stated that they negotiated the price directly with their customers. Also, OIHSFTC, CFP and Kaiyuan claimed that their prices are not subject to review or guidance from any governmental organization. In addition, the record indicates that OIHSFTC, CFP and Kaiyuan have the authority to negotiate and sign contracts and other agreements. Further, OIHSFTC, CFP and Kaiyuan claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, CFP and Kaiyuan reported that they have autonomy in making decisions regarding the selection of management. CFP and

Kaiyuan claimed that its selection of management is not subject to review or guidance from any governmental organization and there is no evidence on the record to suggest that there is any governmental involvement in the selection of the management of CFP and Kaiyuan. Although there is evidence on the record indicating that the Shanghai State Assets Administration plays an indirect role in the appointment of OIHSFTC management, we do not find that this constitutes de facto government control of the business operations of the company relating to its export activity.

Finally, OIHSFTC, CFP and Kaiyuan reported that they retain the proceeds of their export sales, they use profits according to their business needs, and their management determines how to allocate profits. There is no evidence on the record to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, we find that the evidence on the record supports a preliminary finding of absence of de facto governmental control based on record statements and supporting documentation showing that: (1) OIHSFTC, CFP and Kaiyuan set their own export prices independent of the government and without the approval of a government authority; (2) OIHSFTC, CFP and Kaiyuan have the authority to negotiate and sign contracts and other agreements; (3) OIHSFTC, CFP and Kaiyuan have adequate autonomy from the government regarding the selection of management; and (4) OIHSFTC, CFP and Kaiyuan retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this investigation by OIHSFTC, CFP and Kaiyuan demonstrates an absence of government control, both in law and in fact, with respect to their exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for the purposes of this preliminary determination, we are granting a separate rate to OIHSFTC, CFP and Kaiyuan.[2]

[2] In the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625 (November 8, 1994) (LTFV), the Department granted separate rates to CFP and Shanghai Foreign Trade Corporation (SFTC). In December of 1999, SFTC was merged into Orient International (Holding) Co., Ltd. (OIH) and was renamed Orient International Holding Shanghai Foreign Trade Co., Ltd. (OIHSFTC). While CFP and OIHSFTC received separate rates in a previous segment of this proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12441 (March 13, 1998).

Country-Wide Rate

As noted below, Anhui, CNLIP and JP failed to respond to the Department's questionnaire. As these exporters do not qualify for separate rates, they will continue to be subject to the PRC country-wide rate of 53.65 percent.

Normal Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than normal value (NV), we compared for all responding entities, the export price (EP) to NV, as described in the *Export Price* and *Normal Value* sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for sales to the United States because the subject merchandise was sold directly to an unaffiliated customer in the United States prior to importation and constructed export price methodology was not otherwise indicated. We made deductions from the sales price for foreign inland freight, foreign brokerage and handling, and domestic inland insurance. Each of these services was provided by a NME vendor, and thus, we based the deductions for these movement charges on surrogate values.

We valued foreign brokerage and handling using Indian values that were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod from India; Preliminary Results of Antidumping Duty Administrative and New Shipper Review,* 63 FR 48184 (September 9, 1998) (*India Wire Rod*). We valued domestic inland insurance using the Department's recently revised Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC (available on the Department's website). We identify the source used to value foreign inland freight in the *Normal Value* section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*.

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if: (1) The subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology used by the Department to calculate the NV of merchandise exported from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Since none of the parties to this proceeding contested such treatment, we calculated NV in accordance with section 773(c)(3) and (4) of the Act and section 351.408(c) of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOPs utilized in producing pencils include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in a market economy that is (1) at a level of economic development comparable to the PRC, and (2) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. *See Memorandum From Jeff May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement,* dated July 30, 2001, which is on file in the CRU–Public File. In instances where Indian surrogate value information was not available, we relied on Indonesian values and, as noted below, U.S. values. Indonesia is also comparable to the PRC in terms of per capita gross national product and the national distribution of labor, and it is a significant producer of comparable merchandise. We valued Chinese Lindenwood, the wood product used to produce pencils in the PRC, using U.S. publicly available, published prices for American Basswood because price information for Chinese Lindenwood

and for American Basswood is not available elsewhere.[3]

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. However, when we were unable to obtain the surrogate values in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF's) publication, *International Financial Statistics*. We valued the FOP as follows:

(1) We calculated a surrogate value for Chinese Lindenwood Pencil Slats based on the publicly available U.S. lumber prices for Basswood published in the ©§ 2001 Hardwood Market Report for the period December 1999 to November 2000.

(2) We valued Chinese Lindenwood Logs using prices for grade 2 U.S. basswood, kiln dried, 9/4 lumber prices set forth in the Sawlog Bulletin for the period January 2000 to November 2000.

(3) We valued the following material inputs based on Indian import data from the Monthly Statistics of the Foreign Trade of India (MSFTI) for April–August 2000[4]: graphite, kaolin clay, bees wax, mixed wax, wax, clear wax, lacquer, paint, dipping lacquer, glue, clear glue, foil, sealing paper, stearic acid, printing ink, key chain, plastic, foam grip, glitter, talcum powder, heat transfer film, pigment, dye, dyestuff, diluent, hardening oil, and cellulose.

(4) We valued the following material inputs based on Indian import data from the MSFTI for January–December 2000: black cores, color cores, raw pencils, erasers, and ferrules.

(5) We valued the following material inputs based on Indonesian import data from the Foreign Trade Statistical Bulletin of Indonesia (FTSBI) for January–December, 2000: petrol wax, tallow, paraffin wax, emulsified paraffin wax.

(6) In accordance with section 351.408(c)(1) of the Department's regulations, we valued solid glue at the actual purchase price because it was purchased from a market economy in U.S. Dollars.

(7) We valued the following packing materials based on Indian import data from MSFTI for April–August, 2000: paperboard blister cards (sleeves), inner paperboard boxes, master paperboard cartons, pencil paperboard packaging, non-corrugated paper cartons, cardboard boxes, inner paper boxes, cards, sticker paper, corrugated cardboard, PVC covers for blister cards, plastic shrink wrap, plastic film, plastic strips, poly bags, plastic twisty, plastic canisters, plastic boxes, packing tape and paper labels.

(8) We valued energy inputs as follows. We valued coal based on Indian import data from MSFTI for April–August 2000. We valued steam based on Asian Development Bank data published in October, 1997. We valued electricity based on the 1998/1999 consumer category-wise average tariff of electricity (paise/kWh) for industrial enterprises from the publicly available 1999–2000 ''Energy Data Directory & Yearbook'' published by Tata Energy Research Institute.

(9) In accordance with 19 CFR 351.408(c)(3) we valued labor using a regression-based wage rate for the PRC listed in the Import Administration Web site under ''Expected Wages of Selected NME Countries.'' *See http://ia.ita.doc.gov/wages*.

(10) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1999–2000 in the *Reserve Bank of India Bulletin* of March 31, 2001. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(11) We used the following sources to value truck and rail freight services incurred to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to the producers. We valued truck freight services using the 1999 rate quotes reported by Indian freight companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000). We valued rail freight services using the April 1995 rates published by the Indian Railway Conference Association.

For further discussion of the surrogate values used in this review, see *Memorandum From The Team Regarding Selection of Surrogate Values for Factors of Production for the Preliminary Results of the Administrative Review of Certain Cased Pencils from the People's Republic of China,* (December 31, 2001), which is on file in the CRU–Public File.

Facts Available

On August 7, 2001, in letters to all non-responding parties to whom we issued antidumping duty questionnaires, we noted that the questionnaire deadline had passed without the Department having received either the party's response or a request to extend the deadline for responding. Also, we advised these parties that, pursuant to 19 CFR 351.302(d)(i), we would consider any information submitted after the deadline as untimely filed and would return it to the submitting party. Finally, we advised these parties that since we had not received their responses, we were required by section 776(a)(2)(B) of the Act to rely on facts available in our determination.

Anhui Light Industrial Products Import/Export Corporation (Anhui) submitted a letter dated August 20, 2001, indicating that it would not respond to the Department's questionnaire.

On August 21, 2001 the Department received a facsimile from the CCCLA stating that MOFTEC entrusted CCCLA to transmit the Department's questionnaires to listed respondents. CCCLA stated that it could contact only two firms: CNLIP and JP. CNLIP and JP, however, failed to respond to the Department's questionnaire.

For non-responding parties that received the Department's questionnaire but failed to respond, including Anhui, CNLIP and JP, the Department is applying adverse facts available.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because these firms to whom we sent questionnaires did not respond, we preliminarily determine that these entities did not act to the best of their abilities to comply with our requests. Moreover, we have determined that these firms are not eligible for separate rate status. Therefore, they are all being treated as part of the PRC-wide

[3] Chinese Lindenwood and American Basswood are virtually the same type of wood. U.S. prices for American Basswood were used to value Chinese Lindenwood in the Less Than Fair Value Investigation. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cased Pencils from the People's Republic of China,* 59 FR 55625, 55632 (1994). This methodology was upheld by the Court of International Trade on remand. *See Writing Instrument Manufacturers Association, Pencil Section, et al.* v. *United States,* Slip Op. 97–151 (Ct. Int'l. Trade, Nov. 13, 1997) at 16.

[4] We note that we were unable to collect surrogate value data for certain months of the POR. We intend to continue to research and gather this data for the final results of this review.

entity. Pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margins for the PRC-wide entity. Specifically, for adverse facts available for the PRC-wide entity, we have applied the highest rate from any prior segment of this proceeding, 53.65 percent, which is the current PRC-wide rate. This rate was the ''recalculated'' petition rate from the LTFV investigation.

Corroboration

Section 776(c) of the Act provides that when the Department resorts to facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (H.R. Doc. 103–316 (1994)) (SAA) states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at *870*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In this review, we are using, as adverse facts available, the highest margin from this or any prior segment of the proceeding. Specifically, we are using 53.65 percent, the current PRC-wide rate. This rate was the petition rate which was ''recalculated'' for the final determination in the investigation. *See Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order in Accordance With Final Court Decision,* 64 FR 25275 (May 11, 1999).

The ''recalculated'' petition rate constitutes secondary information within the meaning of the SAA. *See* SAA at 870. This rate is currently applicable to all exporters that do not have separate rates and was corroborated by the Department in a prior segment of this proceeding. Further, nothing on the record of the instant review calls into question the reliability of the ''recalculated'' rate. *See Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Administrative Review,* 63 FR 779 (January 7, 1998). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevancy of the selected margin. Furthermore, the rate has not been judicially invalidated. Moreover, the rate used is the rate currently applicable to the uncooperative exporters. Assigning a lower rate to these firms would reward them for their failure to cooperate. Thus it is appropriate to use the selected rate as adverse facts available in the instant review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1999 through November 30, 2000:

Manufacturer/exporter	Margin (percent)
China First Pencil Co., Ltd.	59.81
Orient International Holding Shanghai Foreign Trade Co., Ltd.	76.46
Kaiyuan Group Corporation	223.60
PRC-wide Rate	53.65

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). We will issue a memorandum detailing the dates of a hearing, if any, and deadlines for submission of case briefs/written comments and rebuttal briefs or rebuttals to written comments, limited to issues raised in such briefs or comments, after verification of CFP, GSSG, Three Star and Kaiyuan. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will issue the final results of these administrative reviews, which will include the results of its analysis of issues raised in interested party comments, within 120 days of publication of these preliminary results.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Duty Assessment Rates

Upon completion of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs upon completion of this review. For assessment purposes, for CFP, OIHSFTC and Kaiyuan we calculated importer-specific assessment rates for pencils from the PRC. We divided the total dumping margin (calculated as the difference between NV and CEP) for the importer by the entered value of the reviewed sale. Where the importer-specific assessment rate is above de minimis, we will direct U.S. Customs to assess the resulting ad valorem rate against the entered value of the entry of the subject merchandise by that importer during the POR. For exporters subject to the PRC-wide rate, we will instruct Customs to assess the PRC-wide rate against the entered value of the subject merchandise.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pencils from the PRC 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 rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in this review, the cash deposit rate will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of this review; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. 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 serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with

sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 31, 2001.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–1269 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On July 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Preliminary Results of Antidumping Administrative Review,* 66 FR 35928 (*Preliminary Results*). The period of review (POR) is February 19, 1999 through May 31, 2000. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. We have determined that Kawasaki did not make sales to the U.S. below normal value during the POR. *See Final Results of the Review* section, below.

EFFECTIVE DATE: January 17, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2000).

Case History

On June 29, 1999, the Department published in the **Federal Register** an antidumping duty order on certain hot-rolled, flat-rolled, carbon-quality steel products (hot-rolled steel) from Japan. *See Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* 64 FR 34778. On June 30, 2000, the Department received a timely request from Kawasaki Steel Corporation (Kawasaki) to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. On July 31, 2000, the Department published its notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 64 FR 46687. As noted above, on July 10, 2001, the Department published the preliminary results of this antidumping administrative review. *See Preliminary Results.* The Department determined that it was impracticable to complete this antidumping administrative review within the standard time frame, and extended the due date for the final results from November 7, 2001 to January 7, 2002. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Extension of Time Limit for Final Results of Antidumping Administrative Review,* 66 FR 57423 (November 15, 2001).

Scope of the Antidumping Duty Order

The products covered by this antidumping duty order are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14% ...	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the *Issues and Decision Memorandum* from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 7, 2002 (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in B–099 in the main Department of Commerce Building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ia.ita.doc.gov/frn.

The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have changed our approach to the margin calculation for Kawasaki. Below is a list of the changes for the final results. *See* the *Decision Memorandum* for further details.

- The Department treated home market sales made through Channel 1 as having been made at one home market level of trade, and treated home market sales made through Channels 2 and 3 as having been made at a second, more advanced home market level of trade. All U.S. sales were matched at the same LOT, *i.e.,* to home market Channel 1 sales. (*See* Comment 1 in the *Decision Memorandum*.)
- The Department matched Home Market sales to U.S. sales using CONNUMH rather than CONNUM2H. (*See* Comment 4 in the *Decision Memorandum*.)
- The Department included lease income and associated lease expenses in the G&A rate calculation. (*See* Comment 9 in the *Decision Memorandum*.)
- The Department included only the current portion of the gains and losses from cancellation of interest rate swap agreements for the final results. (*See* Comment 10 in the *Decision Memorandum*.)
- The Department included the profit on sale of scrap in the G&A rate calculation. (*See* Comment 11 in the *Decision Memorandum*.)

Currency Conversion

We made currency conversions based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for Kawasaki for the period February 19, 1999 through May 31, 2000:

Manufacturer/exporter	Time period	Margin
Kawasaki Steel Corporation ...	02/19/1999–05/31/2000	0.00 %

Because the weighted-average dumping margin is zero, we will instruct the U.S. Customs Service to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that Kawasaki exported.

In addition, the following deposit requirements will be effective upon publication of this notice for all shipments of hot-rolled steel from Japan, entered or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For Kawasaki, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final determination in which that manufacturer or exporter was covered; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 29.30 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final 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 in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: January 7, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

1. Level of Trade in the Home Market
2. Level of Trade Adjustment
3. Billing Adjustments
4. Matching Home Market Sales to U.S. Sales Using CONNUMH Rather than CONNUM2H
5. Zeroing Negative Margins
6. Application of the Department's Arm's Length Test
7. Exclusion of Inter-company Profit and Loss from Production Variances
8. Adjustment of Electricity Cost for Affiliated Party Transactions
9. Exclusion of Lease Income and Expenses from G&A Rate Calculation
10. Exclusion of Gain on Cancellation of Interest Rate Swaps from Net Financing Expense
11. Inclusion of Gain on Sale of Steel Scrap in the G&A Expense Rate Calculation
12. Allowing Kawasaki to Report Sales by Kawasho Instead of Downstream Sales

[FR Doc. 02–1268 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083000B]

RIN 0648–AN92

Notice of the Continuing Effect of the List of Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the list of fisheries for 2002.

SUMMARY: The National Marine Fisheries Service is providing notification that the 2001 List of Fisheries (LOF) remains in effect for 2002. Under the Marine Mammal Protection Act (MMPA), NMFS must place a commercial fishery on the LOF under one of three categories, based upon the level of serious injury and mortality of marine mammals that occur incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Sandra Arvilla.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Don Peterson.

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office.

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Emily Menashes, Office of Protected Resources, 301–713–2322 ext. 101; Kim Thounhurst, Northeast Region, 978–281–9138; Katie Moore, Southeast Region, 727–570–5312; Tim Price, Southwest Region, 562–980–4029; Brent Norberg, Northwest Region, 206–526–6733; Amy Van Atten, Alaska Region, 907–586–7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

The 2001 List of Fisheries is accessible by the Internet at http://www.nmfs.noaa.gov/prot—res/PR2/Fisheries—Interactions/list—of—fisheries.html.

Background

This notice provides that the 2001 LOF published in August 15, 2001 (66 FR 42788) remains in effect for 2002 with no changes. NMFS intends to propose changes to the LOF for 2003, which is scheduled to publish as a proposed rule and be available for public comment in the summer of 2002.

What Is the List of Fisheries?

Under section 118 of the MMPA, NMFS must publish, at least annually, a LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

How Does NMFS Determine In Which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR part 229). In addition, these definitions are summarized in the preambles to the final rule implementing section 118 (60 FR 45086, August 30, 1995), the final LOF for 1996 (60 FR 67063, December 28, 1995), and the proposed LOF for 2001 (66 FR 6545, January 22, 2001).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This document includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under 50 CFR 229.4 to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

You must register through NMFS' Regional Offices (see **ADDRESSES**) unless you participate in a fishery that has an integrated registration program. Upon receipt of a completed registration, NMFS will issue vessel or gear owners a decal or other physical evidence of a current and valid registration that must be displayed or that must be in the possession of the master of each vessel while fishing (MMPA Section 118(c)(3)(A)).

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to pay the $25 registration fee.

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA: all Alaska Category II fisheries; all Washington and Oregon Category II fisheries; the Gulf of Maine/U.S. Mid-Atlantic lobster trap/pot fishery; the Federal portion of the Northeast sink gillnet fishery; and, the Federal portion of the Atlantic squid, mackerel, butterfish trawl fishery. Special procedures and instructions for registration in these integrated fisheries are described in the preamble to the final LOF for 1998 (63 FR 5748, February 4, 1998).

How Do I Renew My Registration Under the MMPA?

The Regional Offices annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is your responsibility to ensure that registration or renewal forms are submitted to NMFS at least 30 days in advance of fishing. If you have not received a renewal packet by January 1 or are registering for the first time, request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

Any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must comply with 50 CFR 229.6 and report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard your vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. NMFS may develop and implement take reduction plans for any Category I or II fishery that interacts with a strategic stock. 50 CFR part 229, subpart C provides take reduction plan regulations.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fishers' reports. This list includes all species or stocks known to incur injury or mortality in a given fishery. However, not all species or stocks identified are necessarily independently responsible for a fishery's categorization. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to injure or kill marine mammals, as discussed in the final LOF for 1996.

Commercial fisheries in the Pacific Ocean (including Alaska) are included in Table 1; commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean are included in Table 2. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the Endangered Species Act.

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet	130	Steller sea lion, Eastern U.S.*+ Sperm whale, CA/OR/WA*+ Dall's porpoise, CA/OR/WA Pacific white sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA* Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico* Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern north Pacific Spotted seal, AK Pacific white-sided dolphin, North Pacific
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific* Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+
AK Kodiak salmon set gillnet	188	Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Northern fur seal, Eastern Pacific* Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S.*+ Harbor porpoise, Bering Sea
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA Pacific white-sided dolphin, North Pacific Harbor porpoise, GOA Dall's porpoise, AK Sea Otter, AK
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S.*+ Harbor seal, Southeast AK Pacific white-sided dolphin, North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific*+
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, central North Pacific*+
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA*
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	2	None documented
LONGLINE FISHERIES:		
California longline	45	California sea lion
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
Category III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.*+
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S.*+ Harbor seal, GOA
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA
CA herring purse seine	100	Bottlenose dolphin, CA coastal California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Western U.S.*+ Steller sea lion, Eastern U.S.*+
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES:		HI trolling, rod and reel
AK Bering Sea, Aleutian Islands groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	115	Northern elephant seal, CA breeding Killer whale, Eastern North Pacific resident Killer whale, transient Steller sea lion, Western U.S.*+ Pacific white-sided dolphin, North Pacific Dall's porpoise, AK Harbor seal, Bering Sea
AK Gulf of Alaska groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	876	Steller sea lion, Western U.S.*+ Harbor seal, Southeast AK Northern elephant seal, CA breeding
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.*+
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish).	731	None documented
CA shark/bonito longline/set line	10	None documented
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific*+ False killer whales, HI Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI Sperm whale, HI
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Bering Sea and Aleutian Islands Groundfish Trawl	166	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern pacific* Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Pacific white sided dolphin, North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Harbor seal, GOA Bearded seal, AK Ringed seal, AK Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, AK Pacific walrus, AK Humpback whale, Central North Pacific*+ Humpback whale, Western North Pacific*+
AK food/bait herring trawl	3	None documented
AK Gulf of Alaska groundfish trawl	198	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA Dall's porpoise, AK Northern elephant seal, CA breeding Fin whale, Northeast Pacific
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Gulf of Alaska finfish pot	257	Harbor seal, GOA Harbor seal, Bering Sea Sea otter, AK
AK crustacean pot	1,852	Harbor porpoise, Southeast AK
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal*+
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal*+
Hi inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal*+
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented

TABLE 1—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI ''other''	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

* Marine mammal stock is strategic.

+ stock is listed as threatened or endangered under the Endangered Species Act (ESA) or as depleted under the MMPA. List of Abbreviations Used in Table 1: AK, Alaska; CA , California; HI, Hawaii; GOA, Gulf of Alaska; OR, Oregon, and WA, Washington

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Category I		
GILLNET FISHERIES:		
Northeast sink gillnet	341	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA* Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA Common dolphin, WNA * Fin whale, WNA *+ Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LONGLINE FISHERIES:		

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline ..	<200	Humpback whale, WNA*+ Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF*
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Fin whale, WNA*+ Minke whale, Canadian east coast Harbor seal, WNA
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA*
Category II		
GILLNET FISHERIES:		
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal*+
Northeast anchored float gillnet	133	Humpback whale, WNA*+ White-sided dolphin, WNA* Harbor seal, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal* North Atlantic right whale, WNA*+ Atlantic spotted dolphin, WNA
U.S. Mid-Atlantic coastal gillnet	>655	Humpback whale, WNA*+ Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF* Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White sided dolphin, WNA Common dolphin, WNA
TRAWL FISHERIES:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal* West Indian manatee, FL
Northeast trap/pot	unknown	Fin whale, WNA
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal* Harbor porpoise, GME/BF*
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal*
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal*
POUND NET FISHERIES:		

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Virginia pound net	187	Bottlenose dolphin, WNA coastal*
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF
Delaware Bay inshore gillnet	60	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, and Estuarine*
Long Island Sound inshore gillnet	20	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
TRAWL FISHERIES:		
Calico scallops trawl	12	None documented
Crab trawl	400	None documented
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Gulf of Mexico mixed species trawl	20	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* White-sided dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal*+
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA*
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal*+ Humpback whale, WNA*+
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line ..	46	Harbor seal, WNA Gray seal, Northwest North Atlantic Humpback whale, WNA
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.	124	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, U.S. Mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern Gulf of Mexico coastal

TABLE 2—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine* West Indian manatee, FL*+
Gulf of Mexico mixed species trap/pot	unknown	None documented
Mid-Atlantic mixed species trap/pot	unknown	Humpback whale, Gulf of Maine Minke whale, Canadian east coast Harbor porpoise, GM/BF
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA* Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/ pound net (except the North Carolina roe mullet stop net).	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented

* Marine mammal stock is strategic.

\+ Stock is listed as threatened or endangered under the ESA or as depleted under the MMPA. List of Abbreviations Used in Table 2 FL - Florida;GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

Dated: January 10, 2002.

Samuel W. Mckeen,

Acting Assistant Administrator, national Marine Fisheries Service.

[FR Doc. 02–1275 Filed 1–16–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Recognition of Multilateral Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is issuing an Order pursuant to section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act (''FDICIA''). Section 409 provides that the Commission (or one of several other authorized U.S. financial regulators) may determine that the supervision by a foreign financial regulator of a multilateral clearing organization for over-the-counter derivative instruments satisfies appropriate standards. The Commission is issuing this Order pursuant to section 409(b)(3) of FDICIA with respect to the Norwegian Banking, Insurance and Securities Commission and its supervision of NOS Clearing ASA, a Norwegian clearing house.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Issued Pursuant to Section 409 of the Federal Deposit Insurance Corporation Improvement Act Regarding the Multilateral Clearing Activities of NOS Clearing ASA in Connection With Transactions Entered Into on the International Maritime Exchange

On December 21, 2000, the President signed into law the Commodity Futures Modernization Act (''CFMA''), which substantially revised the Commodity Exchange Act (''CEA'') and other federal statutes, including FDICIA.[1] In particular, new section 409 of FDICIA provides that a clearing organization may operate a multilateral clearing organization (''MCO'') [2] for over-the-counter derivatives instruments (''OTC derivatives'') [3] if, among other alternatives, it is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commission, as applicable, has determined satisfies appropriate standards.

NOS Clearing ASA (''NOS'') has requested that the Commission determine that the oversight of its activities by the Norwegian Banking, Insurance and Securities Commission (''BISC'') satisfies the criteria for operating as an MCO set forth in section 409(b)(3) of FDICIA.[4] NOS intends to operate as an MCO with respect to OTC derivatives transactions to be executed on the International Maritime Exchange (''IMAREX'').[5] IMAREX operates an electronic trading facility for cash-settled futures contracts for the transportation of maritime freight.

In its request, NOS provided the Commission with a detailed description of the Norwegian regulatory program applicable to clearing organizations along with English translations of the relevant Norwegian statutes and regulations. NOS also provided the Commission with information comparing the regulatory requirements applicable to NOS and the regulatory requirements applicable to derivatives clearing organizations (''DCOs'') in the U.S., as set forth in Part 39 of the Commission's rules.[6] The Commission also evaluated the oversight activities undertaken by BISC in the context of the Principles and Objectives of Securities Regulation issued by the International Organization of Securities Commissions.

In support of NOS's request for relief, BISC confirmed that:

- BISC is authorized under the Norwegian Securities Trading Act and the Financial Supervision Act to supervise the clearing of financial instruments by persons located in Norway and has the ability to enforce compliance with the applicable laws, rules and regulations;[7]
- Clearing in Norway of financial derivatives, including commodity derivatives, as defined in the Securities Trading Act,[8] as well as financial forward contracts, options or swaps, may be conducted only by a clearing house with authorization from the Norwegian Ministry of Finance, and NOS Clearing ASA has received such authorization;
- Trading on IMAREX that is cleared by NOS is subject to regulatory oversight by BISC;
- BISC is a member of IOSCO, has adopted IOSCO's Principles and Objectives of Securities Regulation, and has established systems consistent with those Principles and Objectives; and
- BISC has the ability and undertakes to share with the Commodity Futures Trading Commission, upon request, information in its possession regarding U.S. persons using NOS as a clearing facility in connection with contracts listed for trading on IMAREX and to otherwise cooperate with the CFTC, subject to Norwegian law.[9]

Based upon the information and materials submitted by NOS, and the representations made by BISC, the Commission has determined that the supervision by BISC of an MCO for OTC derivatives operated by NOS satisfies the criteria set forth in section 409(b)(3) of FDICIA. The Commission has not, however, made any independent investigation or assessment of the Norwegian regulatory program applicable to NOS and its clearing activities. Any material changes or omissions in the facts and circumstances pursuant to which this Order is issued might require the Commission to reconsider this matter.

Issued in Washington, DC on January 11, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1205 Filed 1–16–02; 8:45 am]

BILLING CODE 6351–01–M

[1] *See* Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 408(1) of FDICIA defines MCO to mean ''a system utilized by more than [two] participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.''

[3] Section 408(2) of FDICIA defines over-the-counter derivative instrument to include any agreement, contract, or transaction exempt under section 2(h) of the CEA.

[4] Letter from Joshua M. Cohn, Esq., Allen & Overy, counsel to NOS, to Jean Webb, Secretary, Commodity Futures Trading Commission, dated December 21, 2001, with exhibits.

[5] IMAREX filed a notification with the Commission indicating its intent to operate an electronic trading facility in reliance on the exemption set forth in section 2(h)(3) of the CEA. In accordance with the notification requirement applicable to section 2(h)(3) electronic trading facilities, IMAREX identified NOS as the MCO to which IMAREX will transmit transaction data for the purpose of facilitating clearance and settlement of transactions. IMAREX commenced trading on November 2, 2001.

[6] *See* 66 FR 45604 (August 29, 2001). Part 39 of the Commission's rules stipulates the form and provides guidance for what should be included in applications for DCO registration. Part 39 also addresses ongoing compliance by DCOs with the core principles and other provisions of the CEA and rules thereunder. The guidance set forth in Part 39 merely illustrates the manner in which a clearing organization may meet a core principle and is not intended to be a mandatory checklist.

[7] *See* Act on Securities Trading, No. 79 of 19 June 1997 (''Securities Trading Act''); Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading of 1956 (''Financial Supervision Act''), paragraph 1 No. 13.

[8] *See* Securities Trading Act, section 1–2 paragraph 2 No. 8.

[9] *See* Act of 10 February 1967 Relating to Procedure in Cases Concerning the Public Administration; Act of 19 June 1970 no. 69 on Public Access to Documents in the Public Administration; Financial Supervision Act.

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting That ASTM F400–00, Safety Standard for Lighters, Be Adopted as a Consumer Product Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP 02–1) requesting that the Commission adopt a voluntary standard for cigarette lighters, ASTM F400–00, as a consumer product safety standard. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by March 18, 2002.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov. Comments should be captioned ''Petition CP 02–1,

Petition on Lighters.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Lighter Association, Inc., the national trade association of the lighter industry, requesting that the Commission issue a rule adopting an ASTM voluntary standard as a consumer product safety standard. The Commission is docketing this request as a petition under the Consumer Product Safety Act. 15 U.S.C. 2056 and 2058. The petitioner states that the ASTM standard has the force and effect of law in Canada and Mexico. The petitioner asserts that unreasonable risks of injury are being created by failure to enforce the existing voluntary standard in the U.S. The petitioner states that although most disposable lighters imported to the U.S. are child-resistant, they do not meet minimum safety standards followed by the U.S. lighter industry in accordance with the ASTM standard.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: January 14, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–1278 Filed 1–16–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 18, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 11, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: Reinstatement.

Title: 2002 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 48,110; Burden Hours: 360,825.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is a biennial survey which collects data from schools and school districts on issues of interest to the Office for Civil Rights (OCR), U.S. Department of Education. The Compliance Report may be used by OCR in tracking civil rights issues and trends and may be used by OCR to aid in identifying sites for compliance reviews. The Compliance Report provides a database that can provide information about critical civil rights issues. It is also used to provide contextual information on the state of civil rights in the nation. The Compliance Report collects data related to Title VI of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, or national origin), Title IX of the Education Amendments of 1972 (which prohibits discrimination on the basis of sex) and Section 504 of the Rehabilitation Act of 1973 (which prohibits discrimination on the basis of handicap).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO__RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via her Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1204 Filed 1–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–16: Early Career Principal Investigator Program in Applied Mathematics, Computer Science and High-Performance Networks

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of its

Early Career Principal Investigator Program. The purpose of this program is to support research in applied mathematics, computer science and networks performed by exceptionally talented scientists and engineers early in their careers. The full text of Program Notice 02–16 is available via the Internet using the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

DATES: To permit timely consideration for award in Fiscal Year 2002, completed applications in response to this notice should be received by April 17, 2002, to be accepted for merit review and funding in Fiscal Year 2002.

ADDRESSES: Completed applications referencing Program Notice 02–16, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 02–16. This address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Walter M. Polansky, Office of Advanced Scientific Computing Research, SC–31, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–5800, e-mail: *walt.polansky@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Program Mission

The primary mission of the Office of Advanced Scientific Computing Research, which is carried out by the Mathematical, Information and Computational Sciences (MICS) Division, is to discover, develop and deploy the computational and networking tools that enable researchers in the scientific disciplines to analyze, model, simulate and predict complex physical, chemical, and biological phenomena important to DOE. To accomplish this mission, the MICS Division fosters and supports fundamental research in advanced scientific computing—applied mathematics, computer science and networking—and operates supercomputers, a high performance network and related facilities. Further descriptions of the base research portion of the MICS portfolio, which is the scope of this Notice is provided below:

Applied Mathematical Sciences Research

The objective of the applied mathematics component of the MICS research portfolio is to support research on the underlying mathematical understanding as well as the numerical algorithms needed to enable effective description and prediction of physical, chemical and biological systems such as fluids, materials, magnetized plasmas, or protein molecules. This includes, but is not limited to, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

In addition to the existing research topics described, MICS plans to invest in new areas of applied mathematics research to support DOE's mission. Such investments may include research in multiscale algorithms, the mathematics of feature identification in large datasets, asymptotically optimal algorithms for solving PDEs, fast multipole and related hybrid methods, and algorithms for handling complex systems with constraints. The MICS research portfolio in Applied Mathematics emphasizes investment in long-term research that will result in the next generation of computational tools for scientific discovery.

Computer Science Research

The objective of the computer science component of the MICS research portfolio is to support research that results in a comprehensive, scalable, and robust high performance software infrastructure that translates the promise and potential of high peak performance to real performance improvements in DOE scientific applications. This software infrastructure must address needs for: portability and interoperability of complex high performance scientific software packages; operating systems tools and support for the effective management of terascale and beyond systems; and effective tools for feature identification, data management and visualization of petabyte-scale scientific data sets. The Computer Science component encompasses a multi-discipline approach with activities in:

- Program development environments and tools—Component-based, fully integrated, terascale program development and runtime tools, which scale effectively and provide maximum performance, functionality and ease-of-use to developers and scientific end users.
- Operating system software and tools—Systems software that scales to tens of thousands of processors, supports high performance application-level communication and provides the highest levels of performance, fault tolerance, reliability, manageability, and ease of use for system administrators, tool developers and end users.
- Visualization and data management systems—Scalable, intuitive systems fully supportive of DOE application requirements for moving, storing, analyzing, querying, manipulating and visualizing multi-petabytes of scientific data and objects.
- Problem Solving Environments—Unified systems focused on the needs of specific scientific applications, which enable radically improved ease-of-use of complex systems software and tools by domain application scientists.

The MICS research portfolio in Computer Science emphasizes investment in long-term research that will result in the next generation of high performance tools for scientific discovery.

High-Performance Networks Research

Scientists working in teams on emerging complex energy problems involving the fundamental building blocks of life and matter are increasingly dependent on advanced networking to harness the capabilities of geographically distributed science facilities and data resources. Networks enable access to distributed terascale computing facilities and remote instrumentation, provide a medium for large-scale scientific collaboration between distributed teams, and make remote visualization possible. Unlike today's commodity Internet, optimized for low-speed commercial applications, networks used to support science infrastructures are high-speed and high-performance networks capable of delivering and sustaining multi-Gigabits/sec to high-end data intensive applications and of providing transparent security to end users.

These networks should be amenable to dynamically controllable end-to-end performance and differentiated services. Designers developing networks with these capabilities are faced with the challenge of:

- Developing high-performance transport protocols that deliver and sustain multi-gigabits/sec to scientific applications.
- Understanding and characterizing large traffic flows generated by single

sources and their impact on aggregate traffic in the core networks.

• Developing innovative formal techniques for estimating the robustness of proactive secure systems.

• Developing network-aware middleware services and toolkits that couple scientific applications to networks.

This announcement calls for proposals to address the fundamental issues of high-performance networks that support DOE's science mission. It focuses on four major topics: (1) High-throughput transport protocols, (2) traffic engineering and characterization, (3) cyber-security science and engineering, and (4) modeling of network-aware middleware and middleboxes (firewalls, NAT, proxies, etc.) deployed in networks to perform functions other than standard routing functions. Responses to this announcement must go beyond the development of tools and software to an emphasis on rigorous techniques and proofs for analyzing and validating the performance of the proposed approaches.

The focus of this announcement is on the fundamental issues of networking technologies that address these challenges.

Background: Early Career Principal Investigator Program

This is the first year of the Early Career Principal Investigator Program. A principal goal of this program is to identify exceptionally talented applied mathematicians, computer scientists and high-performance networks researchers early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is restricted to tenure-track regular academic faculty investigators, who are no more than five years beyond completing either a Ph.D., or equivalent, or a postdoctoral position, and are conducting research in applied mathematics, computer science, or high-performance networks. Applications should be submitted through a U.S. academic institution. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. However, no salary support will be provided for other faculty members or senior personnel.

It is anticipated that up to $4 million will be available for grant awards during Fiscal Year 2002, contingent upon the availability of appropriated funds. DOE expects to make up to forty (40) awards for exceptional applications in Fiscal Year 2002, to meet the needs of the program. Multiple-year funding of grant awards is expected, with funding provided on an annual basis subject to the availability of funds. The typical duration of these grants is three years, and they will not normally be renewed after the project period has been completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to DOE or other Federal funding agencies.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, which are listed in descending order of importance as codified at 10 CFR 605.10(d):

(1) Scientific and/or Technical Merit of the Project;

(2) Appropriateness of the Proposed Method or Approach;

(3) Competency of Applicant's Personnel and Adequacy of Proposed Resources;

(4) Reasonableness and Appropriateness of the Proposed Budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay attention to the responsiveness of the proposed research to the research challenges of the MICS base research programs in Applied Mathematics, Computer Science, and Network Research.

It is expected that the application will include involvement of graduate and/or undergraduate students in the proposed work.

Applicants are encouraged to collaborate with DOE National Laboratory researchers. The collaborations may include one, or more, extended visits to the laboratory by the applicant each year. Such an arrangement, if proposed, must be clearly explained in the grant application. Furthermore, a letter of support from the DOE National Laboratory collaborator(s) should be included with the application. A list of the DOE National Laboratories can be found at: *http://www.sc.doe.gov/sub/lab__map/index.htm.*

Grantees under the Early Career Principal Investigator Program may apply for access to high-performance computing and network resources at several National Laboratories. Such resources include, but are not limited to, the National Energy Research Scientific Computing (NERSC) Center: *http://www.sc.doe.gov/production/octr/mics/nersc/index.html;* the Advanced Computing Research Testbeds *http://www.sc.doe.gov/production/octr/mics/acrt/index.html;* the Energy Sciences Network *http://www.sc.doe.gov/production/octr/mics/esnet/index.html;* and the High-Performance Networking Research effort at the Oak Ridge National Laboratory; *http://www.csm.ornl.gov/net.*

The evaluation under item 2, Appropriateness of the Proposed Method or Approach, will consider the quality of the proposed plan, if any, for interacting with a DOE National Laboratory.

Please note that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator and the submitting institution.

Submission Information

The Project Description should be 20 pages or less, exclusive of attachments. It must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, FAX and E-mail listed, and a short curriculum vita for the applicant.

To provide a consistent format for the submission, review, and solicitation of grant applications under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program, 10 CFR part 605. Access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on January 11, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–1227 Filed 1–16–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

North American Energy Working Group

AGENCY: Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a public workshop sponsored by the US

delegation (Department of Energy, Department of Commerce and Department of State) of the North American Energy Working Group (NAEWG) Electricity Regulatory Issues Group of Experts, and a request for comments.

DATES: The Department of Energy will host a public workshop to hear the views of U.S. stakeholders at the following date, time and location. Those planning to attend the workshop should register by calling 202 586–5125,

—February 13, 2002/9 a.m.—4 p.m./ Washington, DC.Department of Energy, 1000 Independence Ave., SW, Room 1E–245

Public Participation: The workshops are open to the public. Written comments can be submitted at the workshop or to the address below on or before February 13, 2002. E-mailed comments are preferable.

ADDRESSES: Send comments to: Debra.Smith@hq.doe.gov or Debra Smith, US DOE, Office of Policy and International Affairs, PI–32, 1000 Independence Avenue, SW Washington, DC 20585.

SUPPLEMENTARY INFORMATION: President Bush and Mexican President Fox, during President Bush's visit to Mexico on February 16, 2001, and President Bush and Canadian Premier Chretien, during a subsequent visit to Washington, DC, agreed to the development of a North American Energy Initiative. The Initiative is being developed by the NAEWG. In March 2001, Secretary Abraham, Minister of Natural Resources Canada Goodale, and Mexican Secretary of Energy Martens, met in Mexico City and agreed to the overarching principles and approach that would govern the NAEWG. President Bush's National Energy Policy, released in May 2001, directed the Secretaries of Energy, State, Commerce, to engage in a dialogue with Canada and Mexico through the NAEWG.

The broad goals of the NAEWG are to foster communication and cooperation among the governments and energy sectors of the three countries; enhance North American energy trade, development and interconnections; and promote regional integration and increased energy security for the people of North America. The NAEWG agreed to three areas of work to be carried out by three Groups of Experts. One such group, the Electricity Regulatory Issues Group of Experts, was formed to examine key regulatory issues associated with North American electricity markets, such as reliability, regional transmission organizations, and transmission access. Canada led the Electricity Experts Group which drafted a discussion paper and made recommendations to the NAEWG as to further actions. One recommendation accepted by the NAEWG suggested soliciting stakeholder input regarding the Experts Group discussion paper and other issues identified in this Supplementary Information section.

The purpose of the workshop is to solicit public comments on the issues raised in the Draft Discussion Paper with a view to better enable the Group of Experts to further its work and, in particular, to solicit public comments on the following question, drafted by the Group of Experts, to facilitate discussion:

What issues present challenges to Regional Transmission Organizations with international members? Issues that should be explored by stakeholders include, but are not limited to, organization, governance, rates, reliability standards, enforcement, and dispute resolution and transmission access.

Issued in Washington, DC, on January 11, 2002.

Vicky Bailey,

Assistant Secretary, Office of Policy and International Affairs.

[FR Doc. 02–1226 Filed 1–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (IC01–521–001 FERC–521)

January 11, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of October 9, 2001 (66 FR 51416). The Commission has noted this fact in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before February 19, 2002.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE, Washington, D.C. 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: *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–521 ''Headwaters Benefits''

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* OMB No. 1902–0087. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Section 10(f) of the Federal Power Act (FPA). The reporting requirements associated with FERC–521 are codified at 18 CFR Part 11 of the Commission's regulations.

FERC–521 implements the Commission's regulations for the determination of headwater benefits derived by downstream parties. The regulations set forth a formula for determining an equitable apportionment of the annual charges for interest, maintenance, and depreciation for a storage reservoir or other headwater improvement owned by the United States, a licensee, or pre-1920 permittee. Headwater benefits are the additional energy production possible at a downstream hydropower project. Under Section 10(f) of the Federal Power Act, an owner of a hydropower project is required to reimburse upstream headwater project owners for an

equitable part of the benefits it receives. This includes paying equitable portions of annual charges for interest, maintenance, and depreciation of the headwater project to the U.S. Treasury.

The Commissions regulations provide for apportionment of the costs between the headwater project and down-stream 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. In determining energy gains, the size and efficiency of the turbines and their generators, and the load to be served will remain constant, while streamflow, reservoir storage, and head will vary depending on the operating conditions of the upstream reservoirs. Because head and streamflow determine the amount of energy produced at the hydropower project, a relationship that the generation is a function of the head and streamflow can be developed. Commission experience has shown that the relationship between generation and streamflow is an adequate tool for estimating generation in calculating energy gains. The information submitted enables the Commission to carry out its responsibilities in implementing the statutory provisions of the FPA.

Respondent Description: The respondent universe currently comprises on average, five entities subject to the Commission's jurisdiction.

6. *Estimated Burden:* 200 total burden hours, five respondents, one response annually, 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 200 hours ÷ 2,080 hours per year × $117,041 per year = $11,254, average cost per respondent = $2,250.

Statutory Authority: Section 10(f) of the Federal Power Act (16 U.S.C. 803).

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1229 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–143–000]

Kansas Gas Service, A Division of ONEOK, Inc., Complainant, v. Enbridge Pipelines (KPC), Respondent; Notice of Complaint

January 11, 2002.

Take notice that, on January 10, 2002, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2001), Kansas Gas Service, a Division of ONEOK, Inc. (Kansas Gas Service) tendered for filing a Complaint against Enbridge Pipelines (KPC).

Kansas Gas Service alleges that: (1) KPC is violating the terms of certain service agreements with Kansas Gas Service, which are part of KPC's approved FERC Gas tariff, by failing to charge lower rates under those service agreements, and (2) KPC's obligation to charge the lower rates was triggered by a separate written agreement, a July 9, 1997 Settlement Agreement, in which KPC, in consideration for Kansas Gas Service's payment of: (1) $7.5 million in August 1997, and (2) rates based on an annual cost of service of $31 million from August 1997 through July 2001, agreed to charge Kansas Gas Service, under the service agreements, a lower Zone 3 rate, effective August 1, 1998, and lower rates based on Williams Gas Pipelines Central's rates for comparable service, effective August 1, 2001.

Kansas Gas Service requests that the Commission determine that: (1) KPC's actions and inaction described in the Complaint constitute unjust and unreasonable rates and rate practices in violation of its FERC Gas tariff and Section 4 of the Natural Gas Act; and (2) KPC should take steps necessary to implement the Settlement Agreement rates as discounted or negotiated rates (and bill Kansas Gas Service accordingly) in order to comply with its tariff and give full effect to the ''motion rates,'' which KPC urged the Commission to approve in February 1998. Kansas Gas Service further requests that the Commission affirm that: (1) The Commission, in its April 2, 1999 Order in Docket No. CP96–152, 87 FERC ¶ 61,020, did not intend to interpret its various provisions, nor did it intend to void, or otherwise disturb the Agreement, or adjudicate the issue of whether the Settlement Agreement amended the then existing contracts between KPC and Kansas Gas Service; (2) Kansas Gas Service's claims for common law relief based on KPC's breach of contract, repudiation, fraud and breach of the duty of good faith and fair dealing, as pleaded in Kansas Gas Service's Petition in Kansas state court, belong properly in state court in accordance with Commission and court precedent; and (3) if the relief sought by Kansas Gas Service in its state court Petition were granted, such relief would neither violate the filed rate doctrine nor impinge upon the Commission's jurisdiction under the NGA.

Kansas Gas Service requests that the Commission complete action on the Complaint within 110 days, in accordance with the time standards established in Order No. 602 for a decision on the pleadings, III FERC Stats. and Regs. ¶ 31,071, on reh'g and clarification, 88 FERC ¶ 61,114 (1999).

In accordance with subsection (f) of Rule 206, answers, interventions and comments must be filed with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, on or before January 30, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202)208–2222 for assistance).

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1232 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–141–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Technical Conference

January 11, 2002.

On August 6, 2001, the Commission issued an order granting PG&E Gas Transmission, Northwest Corporation (PG&E Transmission) a certificate of public convenience and necessity authorizing a proposed pipeline expansion project. 96 FERC ¶ 61,194 (2001). The PG&E Transmission certificate was conditioned upon PG&E Transmission developing a fuel surcharge mechanism to ensure that expansion shippers, rather than existing shippers, be responsible for all fuel costs above those attributable to fuel absent the proposed expansion's additional 97,500 horsepower of compression. On October 26, 2001, on rehearing, the Commission reiterated its rationale for and affirmed the imposition of this fuel surcharge. 97 FERC ¶ 61,101 (2001).

On November 26, 2001, PG&E Transmission filed a motion requesting the Commission reconsider the fuel surcharge for expansion shippers. Alternatively, PG&E Transmission requests the Commission initiate a technical conference to discuss aspects of the fuel charge. PG&E Transmission states that without further guidance it is unable to develop an incremental

surcharge that both insulates existing shippers from fuel costs attributable to expansion compression, and at the same time, protects expansion shippers from fuel costs which do not reflect their actual share of such costs.

Take notice that a technical conference to discuss issues associated with the PG&E Transmission expansion project's fuel surcharge will be held on Tuesday, February 5, 2002, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The Conference will continue through Wednesday, February 6, 2002, if necessary. Parties objecting to aspects of PG&E Transmission's filings should be prepared to discuss alternatives.

All interested parties and staff are permitted to attend.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1228 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030]

Portland General Electric Company Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Authorization for Continued Project Operation

January 11, 2002.

On December 16, 1999, Portland General Electric Company and on December 17, 1999, the Confederated Tribes of the Warm Springs Reservation of Oregon, joint licensees for the Pelton Round Butte Project No. 2030, filed competing applications for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. On June 29, 2001, they filed a joint application for a new or subsequent license. Project No. 2030 is located on the Deschutes River in Jefferson, Wasco, and Marion Counties, Oregon.

The license for Project No. 2030 was issued for a period ending December 31, 2001. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2030 is issued to Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon for a period effective January 1, 2002, through December 31, 2002, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or beforeJanuary 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon are authorized to continue operation of the Pelton Round Butte Project No. 2030 until such time as the Commission acts on their application for subsequent license.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1231 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2887–000, ER01–2887–001]

South Point Energy Center, LLC;Notice of Issuance of Order

January 11, 2002.

South Point Energy Center, LLC (South Point), an affiliate of Calpine Energy Services, L.P., submitted for filing a proposed tariff under which South Point will make sales of various electric services at market-based rates, as well as, reassign transmission capacity and resell Firm Transmission Rights. South Point also requested waiver of various Commission regulations. In particular, South Point requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by South Point.

On December 3, 2001, pursuant to delegated authority, the Director, OMTR/Tariffs and Rates-West, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by South Point 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).

Absent a request to be heard in opposition within this period, South Point is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of South Point, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of South Point's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may

also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (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 at *http://www.ferc.fed.us/efi/doorbell.htm*.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1233 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–454–002, et al.]

West Penn Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 10, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. West Penn Power Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, dba Allegheny Power

[Docket No.ER02–454–002]

Take notice that on December 31, 2001, West Penn Power Company, Monongahela Power Company, and The Potomac Edison Company, all doing business as Allegheny Power, filed an unexecuted Network Integrated Transmission Service Agreement and an unexecuted Network Operating Agreement for service to Allegheny Electric Cooperative, Inc. Allegheny Power requests an effective date of January 1, 2002.

Comment Date: January 22, 2002.

2. Oildale Energy LLC

[Docket No. EG02–44–000]

Take notice that on December 6, 2001, Oildale Energy LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generators Status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Comment Date: January 17, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. TXU Tradinghouse Company LP

[Docket No. EG02–49–000]

Take notice that on January 7, 2002, TXU Tradinghouse Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. TXU DeCordova Company LP

[Docket No. EG02–50–000]

Take notice that on January 7, 2002, TXU DeCordova Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. TXU Mountain Creek Company LP

[Docket No. EG02–51–000]

Take notice that on January 7, 2002, TXU Mountain Creek Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. TXU Big Brown Company LP

[Docket No. EG02–52–000]

Take notice that on January 7, 2002, TXU Big Brown Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. TXU Handley Company LP

[Docket No. EG02–53–000]

Take notice that on January 7, 2002, TXU Handley Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. TXU Generation LP

[Docket No. EG02–54–000]

Take notice that on January 7, 2002, TXU Generation Company LP tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment of application for exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: January 31, 2002. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Prairie Gen L.P.

[Docket No. EG02–64–000]

Take notice that on January 7, 2002, Prairie Gen L.P., 80 South 8th Street, Suite 4040, Minneapolis, Minnesota 55402, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant is a limited partnership organized under the laws of the state of Minnesota.

The Facility consists of a gas-fired, simple-cycle turbine project located in St. Paul, Ramsey County, Minnesota (the Facility). The Facility will have a maximum net electrical capacity of 49MW. The point of delivery is the point at which the Facility interconnects with Xcel Energy's Highbridge substation.

The applicant will be engaged directly and exclusively in the business of owning an eligible facility and selling the electric energy from the Facility at wholesale.

Copies of the application have been served upon the Minnesota Public Utilities Commission, the ''Affected State Commission,'' and the Securities and Exchange Commission.

Comment Date: January 31, 2002. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. American Electric Power Service Corporation

[Docket No. ER02–141–001]

Take notice that on January 7, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an Amendment to Filing in Docket ER02–141–000 to comply with FERC

Order 614. AEPSC respectfully requests waiver of notice to permit ER02–141–000 to be made effective on or prior to September 20, 2001, as initially requested on October 15, 2001. AEPSC also respectively requests that the Commission accepts its request to terminate those Service Agreements identified in Attachment B and the assignments identified in Attachment C to be effective on, or prior to September 20, 2001, as initially requested in its filing on October 15, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 28, 2002.

11. West Penn Power Company (dba Allegheny Power)

[Docket No. ER02–288–001]

Take notice that on January 7, 2002, West Penn Power Company, dba Allegheny Power, filed with the Federal Energy Regulatory Commission (Commission) an Addendum to its Electric Service Agreement with Allegheny Electric Cooperative. An effective date for the Addendum is December 19, 2001 in accordance with the Commission's Order issued in Docket No. ER02–123–000, 97 FERC 61,274.

Copies of the filing have been provided to all parties of record.

Comment Date: January 28, 2002.

12. San Diego Gas & Electric Company

[Docket No. ER02–613–000]

Take notice that on December 26, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing its forecast of the changes it will pay under its Reliability Must Run (RMR) contracts with the California Independent System operator (ISO) for the year 2002, and proposed allocation for recovering those costs in rates.

SDG&E states that, under Section 5.2.8 of the ISO tariff, it is the Responsible Utility (RU) for payments to operators of RMR units within its service territory. SDG&E recovers its costs for those payments through a dedicated rate component, and requests an effective date of January 1, 2002 for the proposed rate.

SDG&E states that copies of the filing have been served on the California Independent System Operator and on the California Public Utilities Commission.

Comment Date: January 22, 2002.

13. Consolidated Water Power Company

[Docket No. ER02–695–000]

Take notice that Consolidated Water Power Company (CWP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an umbrella service agreement with Wisconsin Public Service Corporation (WPSC) under CWP's market-based rates tariff, FERC Electric Rate Schedule No. 1. CWP states that it has served the Customer with a copy of this filing.

CWP requests that the umbrella service agreement be made effective on June 11, 2001.

Comment Date: January 24, 2002.

14. American Transmission Company LLC

[Docket No. ER02–702–000]

Take notice that on January 7, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a Revised Service Agreement No. 90 with additions to the Generation-Transmission Interconnection Agreement between Wisconsin Power and Light Company and ATCLLC.

ATCLLC requests an effective date of January 1, 2002.

Comment Date: January 28, 2002.

15. Puget Sound Energy, Inc.

[Docket No. ER02–703–000]

Take notice that on January 7, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Long-Term Firm Point-To-Point Transmission Service with TransAlta Energy Marketing (US) Inc. (TransAlta), as Transmission Customer. A copy of the filing was served upon TransAlta.

Comment Date: January 28, 2002.

16. Entergy Services, Inc.

[Docket No. ER02–704–000]

Take notice that on January 7, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and City Water and Light Plant of the City of Jonesboro, Arkansas.

Comment Date: January 28, 2002.

17. Michigan Electric Transmission Company

[Docket No. ER02–705–000]

Take notice that on January 7, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing executed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service with each of the following: Detroit Edison Merchant Operation; Exelon Generation Company, LLC; FirstEnergy Solutions Corp.; and Virginia Electric & Power Company (jointly, Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). The Service Agreements being filed are Nos. 127 through 134 under that tariff.

Michigan Transco is requesting an effective date of January 1, 2002 for the Agreements. Copies of all filed agreements were served upon the Michigan Public Service Commission and ITC. And each Customer was served with its own Service Agreements.

Comment Date: January 28, 2002.

18. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–706–000]

Take notice that on January 7, 2002, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements with NRG Power Marketing Inc., establishing NRG Power Marketing Inc., as a Short-Term Firm and Non-Firm Point-to-Point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., Open Access Transmission Tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of November 30, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment Date: January 28, 2002.

19. Cinergy Services, Inc.

[Docket No. ER02–707–000]

Take notice that on January 7, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Network Service Agreement, Network Operating Agreement, and Specifications for Network Integration Service under Cinergy's Open Access Transmission Tariff (OATT) entered into between Cinergy and Union Light, Heat and Power Company (Union). An application for Network Integration Service for Union has been included as an Exhibit to the Service Agreement under OATT. Copies of the filing were served upon Union.

Cinergy and Union are requesting an effective date of January 1, 2002.

Comment Date: January 28, 2002.

20. Central Illinois Light Company

[Docket No. ER02–708–000]

Take notice that on January 7, 2002, Central Illinois Light Company (CILCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a new tariff, the Ancillary Service Tariff, and revised transmission rates to be effective through Attachment O of the Midwest Independent System Operator's Open Access Transmission Tariff. Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

CILCO requested an effective date of February 1, 2002.

Comment Date: January 28, 2002.

21. Generator Coalition, consisting of: Calcasieu Power, LLC; Calpine Central, L.P.; Exelon Generation Company, LLC; Mirant Americas Energy, Marketing, LP, Perryville Energy Partners, LLC, and Wrightsville Power Facility, LLC; Mississippi Delta Energy Agency, the Clarksdale Public Utilities, Commission, and the Public Service Commission of Yazoo City; Occidental Chemical Corporation, PLC II, LLC; Reliant Energy Power Generation, Inc.; TECO Power Services Corp.; Tenaska Frontier Partners, Ltd.; Williams Energy Marketing & Trading Company, Complainants, v. Entergy Services, Inc., Respondent

[Docket No. EL02–46–000]

Take notice that on January 8, 2002, The Generator Coalition, comprised of Calcasieu Power, LLC, Calpine Central, L.P., Exelon Generation Company, LLC, Mirant Americas Energy Marketing LP, Perryville Energy Partners, LLC, Wrightsville Power Facility, LLC, Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, Occidental Chemical Corporation, PLC II, LLC, Reliant Energy Power Generation, Inc., TECO Power Services Corp., Tenaska Frontier Partners, Ltd., and Williams Energy Marketing & Trading Company, submitted a complaint against Entergy Services, Inc. (''Entergy'') requesting fast track processing by the Commission.

The Generator Coalition alleges that Entergy is charging independent generating facility customers unjust, unreasonable, and unduly discriminatory rates for energy imbalances resulting from generation under deliveries by overstating its incremental cost for supplying such balancing energy in rates under its Generator Imbalance Agreement (''GIA''). The Generator Coalition also alleges that Entergy refuses to credit non-offending generators with the penalties it collects under the GIA. Entergy is also preventing unaffiliated generators from self-supplying imbalance service or obtaining imbalance service from third parties, and thus forces generators into paying these inflated ''incremental costs.'' Further, The Generator Coalition contends that Entergy is violating the Standards of Conduct by allowing its wholesale merchant arm, the entity that competes with independent generators in the Entergy control area, to control numerous transmission-related functions under the guise of implementing Entergy's generator imbalance agreements. Entergy has also refused to include an appropriate RTO clause in its GIA, making clear that generators may, at their discretion, properly obtain generator imbalance services from an RTO-wide generator imbalance market that may be implemented by the Commission in the future. Lastly, the Generator Coalition contends that Entergy has failed to explain or justify the criteria it utilizes when it declares a ''Low-Load Event'' under the GIA.

Comment Date: January 28, 2002. Answers to the complaint shall also be filed on or before January 28, 2002.

22. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–713–000]

Take notice that on January 7, 2002, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement Nos. 369 and 370 to add Service Agreements with Old Dominion Electric Cooperative to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the Service Agreements is January 1, 2002.

Copies of the filing have been provided to the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment Date: January 28, 2002.

23. Wisconsin Public Service Corporation

[Docket No. ER02–714–000]

Take notice that on January 7, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing an amendment to its February 22, 1993 Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service Requests waiver of the Commission's regulations to permit the amendment to become effective on January 1, 2002.

Comment Date: January 28, 2002.

24. Northern Indiana Public Service Company

[Docket No. ER02–715–000]

Take notice that on January 7, 2002, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with American Electric Power Service Corporation (AEP). Northern Indiana has requested an effective date of January 7, 2002.

Copies of this filing have been sent to AEP, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: January 28, 2002.

25. Ameren Energy, Inc. on Behalf of Union Electric Company, D/b/a Ameren UE and Ameren Energy Generating Company

[Docket No. ER02–716–000]

Take notice that on January 7, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a Ameren UE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the FPA and the market rate authority granted to the Ameren Parties, submitted for filing to the Federal Energy Regulatory Commission (Commission) umbrealla power sales service agreements under the Ameren parties' market rate authorizations entered into with Mirant Americas Energy Marketing, LP.

Ameren Energy seeks Commission acceptance of these service agreements effective November 30, 2001.

Comment Date: January 28, 2002.

26. Southwest Power Pool, Inc.

[Docket No. ER02–709–000]

Take notice that on January 7, 2002, Southwest Power Pool, Inc. (SPP) tendered for filing an unexecuted service agreement with Power Resources Group, Inc. (PRG) for long-term firm point-to-point transmission service under the SPP Open Access Transmission Tariff. This agreement was filed at the direction of PRG.

SPP request an effective date of October 1, 2004 for this service

agreement. A copy of this filing was served on representatives of PRG and other affected parties.

Comment Date: January 28, 2002.

27. Duke Energy Corporation

[Docket No. ER02–710–000]

Take notice that on January 7, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed a revised service agreement (First Revised Service Agreement No. 170) with Rockingham Power L.L.C. in this proceeding.

Comment Date: January 28, 2002.

28. American Electric Power Service Corporation

[Docket No. ER02–711–000]

Take notice that on January 7, 2002, American Electric Power Service Corporation submitted for filing an unexecuted interconnection and Parallel Operation Agreement between Southwestern Electric Power Company (SWEPCO), Entergy Power Ventures, L.P., Northeast Texas Electric Cooperative, Inc. and EN Services, L.P. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

SWEPCO requests an effective date of March 5, 2002. Copies of SWEPCO's filing have been served upon Entergy Power Ventures, LP, Northeast Texas Electric Cooperative, Inc., NE Services, L.P. and the Public Utility Commission of Texas.

Comment Date: January 28, 2002.

29. PJM Interconnection, L.L.C.

[Docket No. ER02–712–000]

Take notice that on January 7, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the currently effective PJM Open Access Transmission Tariff (PJM Tariff) and the PJM Tariff that will implement PJM West as well as the currently effective Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) and the Operating Agreement that will implement PJM West to accommodate providers of last resort under the New Jersey Basic Generation Service (BGS) program and other similar state programs for the provision of provider of last resort services.

Copies of this filing were served upon all PJM members, Allegheny Power, and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: January 28, 2002.

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.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1207 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket Nos. CP01–22–002 and CP01–23–000; CA Clearinghouse No. 2001011020; BLM Reference No. CACA–42662]

North Baja Pipeline, LLC; Notice of Availability/Completion of the Final Environmental Impact Statement/Report and Proposed Land Use Plan Amendment for the North Baja Pipeline Project

January 3, 2002.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission), the California State Lands Commission (CSLC), and the Bureau of Land Management (BLM) have prepared a final environmental impact statement/report (EIS/EIR) and proposed land use plan amendment (plan amendment) to address natural gas pipeline facilities proposed by North Baja Pipeline, LLC (NBP).

The final EIS/EIR and proposed plan amendment was prepared as required by the National Environmental Policy Act (NEPA), the California Environmental Quality Act, and the Federal Land Management and Policy Act. Its purpose is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed project and its alternatives, and recommend mitigation measures that would reduce any significant adverse impacts to the maximum extent possible and, where feasible, to a less than significant level. The FERC, the CSLC, and the BLM staffs conclude that if the project is constructed as modified and in accordance with NBP's proposed mitigation and our recommendations it would be an environmentally acceptable action.

The BLM is participating as a cooperating agency in the preparation of the final EIS/EIR and proposed plan amendment because the project would cross Federal land under the jurisdiction of the Palm Springs, El Centro, and Yuma Field Offices. The Bureau of Reclamation (BOR) is also a cooperating agency in the preparation of the document because lands administered by the BOR would be crossed by the project. The final EIS/EIR and proposed plan amendment will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on lands managed by the BLM and the BOR. The document will also be used by the BLM to consider amending the California Desert Conservation Area (CDCA) Plan (as amended), which would be necessary for pipeline construction outside of designated utility corridors, as well as amending the Yuma District Resource Management Plan (Yuma District Plan), which would be necessary for pipeline construction across the Milpitas Wash Special Management Area. The BLM proposes to adopt the final EIS/EIR and proposed plan amendment per Title 40 Code of Federal Regulations (CFR) part 1506.3 to meet its responsibilities under NEPA and its planning regulations per Title 43 CFR part 1610. The BLM Arizona and California State Directors have approved the proposed plan amendments for their respective planning areas. The BLM will present separate Records of Decision for the right-of-way grant and the plan amendment for the North Baja Pipeline Project after the issuance of the final EIS/EIR and proposed plan amendment.

The final EIS/EIR and proposed plan amendment addresses the potential environmental effects of the construction and operation of the following facilities in Arizona and California:

• About 79.9 miles of 36-inch-diameter (11.8 miles) and 30-inch-diameter (68.1 miles) natural gas pipeline (North Baja pipeline) extending from an interconnection with El Paso Natural Gas Company (El Paso) in La Paz County, Arizona, through Riverside and Imperial Counties, California to the international border between the United States and Mexico;

• A new compressor station (Ehrenberg Compressor Station) consisting of three 7,200-horsepower (hp) gas-fired centrifugal compressor units for a total of 21,600 hp (with one additional 7,200-hp spare unit) at the El Paso interconnect in La Paz County, Arizona;

• Two meter stations, one at the interconnect with El Paso at the Ehrenberg Compressor Station site (Ehrenberg Meter Station) and one in Imperial County, California near the interconnect at the international border (Ogilby Meter Station);

• A pig launcher at the Ehrenberg Compressor Station site; a pig launcher and receiver at the Ogilby Meter Station site; and a separate pig launcher and receiver facility (Rannells Trap) in Riverside County, California; and

• Seven mainline valves, one each at the Ehrenberg Compressor Station site, Rannells Trap, and Ogilby Meter Station site, and another four spaced as required along the proposed pipeline route.

The final EIS/EIR and proposed plan amendment has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Regulatory Energy Commission
Public Reference and Files Maintenance Branch
888 First Street, NE., Room 2A
Washington, DC 20426
(202) 208–1371
and
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825–8202
(916) 574–1889

The final EIS/EIR and proposed plan amendment has been mailed to appropriate Federal, state, and local agencies; elected officials; Native American groups; newspapers; public libraries; intervenors to the FERC's proceeding; and other interested parties who provided scoping comments, commented on the draft EIS/EIR and draft plan amendment, or wrote to the FERC, the CSLC, or the BLM asking to receive a copy of the document. A formal notice indicating that the final EIS/EIR and proposed plan amendment is available was sent to the remaining parties on the environmental mailing list.

A limited number of copies of the final EIS/EIR and proposed plan amendment are available from the FERC's Public Reference and Files Maintenance Branch identified above. Copies may also be obtained from Goodyear K. Walker, CSLC, at the address above. The final EIS/EIR and proposed plan amendment is also available for viewing on the CSLC Web site at the Internet address below.

Additional information about the proposed project is available from Goodyear K. Walker at the CSLC at (916) 574–1893, or on the CSLC Web site at *http://www.slc.ca.gov,* or from the FERC's Office of External Affairs at (202) 208–1088, or on the FERC Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call (202) 208–2222 for assistance). Access to the text of formal documents issued by the Commission with regard to these dockets, such as orders and notices, is also available on the FERC Web site using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Information concerning the proposed CDCA and Yuma District Plan amendments and the involvement of the BLM in the EIS/EIR and plan amendment process is available from Lynda Kastoll, BLM Project Manager, at (760) 337–4421.

The CSLC is expected to certify the final EIS/EIR and act on NBP's application at a regularly scheduled meeting in early 2002. Interested parties will be notified of the date, time, and place of the meeting. If you have any questions regarding the CSLC hearing, or wish to testify, please contact Goodyear K. Walker at the number above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–462 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amended Application for the St. Anthony Falls Project and Extension of Time for Comments, Recommendations, Terms and Conditions, and Prescriptions

January 11, 2002.

Take notice that the following hydroelectric application has been amended by the applicant as identified in the project description below. By notice dated November 11, 2001, the Commission requested Comments, Recommendations, Terms and Conditions, and Prescriptions, due within 60 days of the notice. In order to give parties time to comment on the revised Application, the due date for Comments, Recommendations, Terms and Conditions, and Prescriptions has been extended to 60 days from the date of this notice. Changes proposed by the Applicant include removal of the Lower Development from the Project, revision of proposal for facilities for public access and usage at the new Main Street and Hennepin Island Dams, a new park on Upper Hennepin Island, and a combination of canoe access site, shoreline fishing structure, and observation deck at the Lower Development. The Applicant no longer proposes moving the Pillsbury Substation, diverting flows for a waterfall in the east Bluff area, donation of Hennepin Islands or direct funding to the Minnesota Park and Recreation Board.

a. *Type of Application:* New Major License

b. *Project No.:* P–2056–016

c. *Date filed:* Application filed December 21, 1998; Application amended October 11, 2001, and November 2, 2001.

d. *Applicant:* Northern States Power Company (NSP)

e. *Name of Project:* St. Anthony Falls Project

f. *Location:* On the Mississippi River, near Minneapolis and St. Paul, Hennepin County, Minnesota. There are no federal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mark H. Holmberg, P.E., Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401; (612) 330–6568

i. *FERC Contact:* Any questions on this notice should be addressed to Monte TerHaar, E-mail: *monte.terhaar@ferc.fed.us*, or telephone (202) 219–2768.

j. *Deadline Date:* March 18, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments, protests and interventions 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 under the ''e-Filing'' link.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission

to serve a copy of that document on each person whose name appears on 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.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a draft and a final Environmental Assessment.

l. *Description of the Project:* The St. Anthony Falls Project currently consists of two developments on the Mississippi River, the Upper Development and the Lower Development.

Upper Main Dam Development

The Upper Main Dam development of the project consists of the Horseshoe dam spillway, main spillway, roll dams, Hennepin Island earthen dam, two abandoned wasteways, the Hennepin Island hydro entrance canal and powerhouse, the Main Street/Hennepin Island dam, and the Main Street plant. The U.S. Army Corps of Engineers (COE) Upper St. Anthony Lock is on the right (south) bank of the river adjacent to the Upper Dam development. The headrace canal for the Crown Mill Hydroelectric Project (FERC No. 11175) is being developed just upstream of the lock.

NSP has completed construction of a replacement, multiple-circular-cell sheetpile dam to replace the existing Main Street/GE Dam and adjacent intake structure. A similar cellular dam structure has been constructed at the Wasteway No. 2 Intake Gates.

Lower Development

The Lower Development consists of an upstream closure dam, a downstream closure dam, and left retaining wall which encompass approximately 3.53 acres of land owned by NSP. There are currently no hydropower facilities at the Lower Development. In November of 1987, the St. Anthony Falls Lower Dam Hydro Plant experienced an undermining failure. On August 19, 1988, the Commission issued an order authorizing complete demolition and removal of the lower facility. Demolition of the powerhouse was completed by the end of 1988. As of August 2001, all necessary remedial work necessary to ensure dam safety at the Lower Development has been completed to the Commission's satisfaction. In their application, and by a letter dated November 2, 2001, NSP has proposed to remove the lower development from the project.

NSP had proposed a number of recreational enhancements in its original application for license in 1998. These enhancement measures were developed in consultation with the Minnesota Department of Natural Resources, Minnesota Parks and Recreation Board, the City of Minneapolis, and the Mississippi Whitewater Development Corporation. However, NSP states that the consultative process has broken down without an agreement and hence, the NSP has revised its recreational/aesthetic mitigation and enhancement proposal as described below:

(1) Mitigation Measures at the Upper Development

- A straight-line cantilever along the face of the new dams providing an overhang to partially shade or cover the facade of the dam;
- Smooth, broom-swept concrete surface covering for the upstream edge (bridged sections) of the dam excluding the bicycle path;
- Surface covering of dam (excluding concrete slabs and bicycle path) with finely crushed limestone aggregate of compatible color with the concrete slabs;
- Earth fill between the steel sheet pile cells and the old (Main Street) powerhouse limited to reach but not cover the brick of the historic powerhouse; and
- Surface covering for the swale upstream of the powerhouse with finely crushed limestone aggregate of compatible color with the concrete slabs; planting swale areas upstream of the old GE Dam and between the new Hennepin Island Dam and the old wasteway headworks with native vegetation.

NSP has completed the last two items and expects to complete the others shortly.

(2) Other Measures at the Upper Development

- An eight-foot bicycle path of bituminous composition on the powerhouse side of the concrete slabs along the upstream face of the dam;
- A switchback ramp between the old powerhouse and the Main Street to provide bicycle/barrier-free access to the new dam; steps leading straight down the river bank on to the new dam from Main Street;
- Observation areas and benches at four locations on the dams;
- An overlook area on the new dam for interpretive displays;
- An interpretive sign for the Main Street Substation at the trashrack observation area;
- Railings, lights, and interpretive signs to generally match those on the Stone Arch Bridge.
- A pedestrian bridge linking the Main Street Dam to Hennepin Island; and
- New walkways, interpretive nodes, visual overlooks, information shelter, natural areas, landscaping, and other improvements on upper Hennepin Island.

(3) Mitigation Measures at the Lower Development

NSP proposes to provide new facilities for canoe access, shoreline fishing, and public observation at the restored Lower Dam site.

(4) Changes in NSP's Proposed Mitigation Measures

NSP does not propose to move the Pillsbury Substation or diverting water to re-create a waterfall in the East Bluff area from its current location. NSP's revised recreation mitigation plan does not include any funding to the Minnesota Park and Recreation Board for operation and maintenance of the East Bank Park Development, nor donation of Hennepin Island lands to the Minnesota Park and Recreation Board. Instead, NSP proposes to independently develop, operate, and maintain park facilities on the upper part of Hennepin Island and the former Lower Dam site.

Details of the enhancement and mitigation measures were filed with the Commission on October 11, 2001 and are available electronically for review at the Commission's website (www.ferc.gov). Copies may also be requested directly from NSP. The Commission will discuss this alternative in its Environmental Assessment.

m. *Locations of the application:* 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.

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.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see

Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

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.

All filings must (1) bear in all capital letters the title ''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 submitting the filing; 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. An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1230 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 EX01–3–000]

Electricity Market Design & Structure; Notice of Meetings and Conferences on Electric Market Matters

January 11, 2002.

As announced in a recent Commission Meeting, the Federal Energy Regulatory Commission (FERC) is planning a series of discussions on various electric market design issues.

Our Commissioners are especially interested in the views of state Commissioners and in discussing some of these issues with them. The National Association of Regulatory Utility Commissioners (NARUC) has scheduled its winter meetings for February 10th—13th, 2002. NARUC is allowing FERC to have time during its winter meetings to hold two sessions on issues of mutual concern. NARUC is holding its meetings at the Hyatt Regency Washington Hotel, 400 New Jersey Avenue, NW., Washington DC 20001.

The following two sessions on FERC-related issues are in the Hyatt's Regency A Room:

Date: Sunday, February 10, 2002.

Time: 10 a.m.—12 p.m.

Topic: Whether all wholesale and retail transmission services should be under the same rates, terms and conditions.

Date: Monday, February 11, 2002.

Time: 4 p.m.—5:45 p.m.

Topic: Whether the Federal Energy Regulatory Commission should require RTOs to administer a regional, long-term generation capacity obligation, and if so, the form and mechanism for that obligation.

These two sessions are open to everyone. There will be no charge for those attending these two sessions only.

The Commission is also co-sponsoring a conference with the U.S. Department of Energy (DOE) to raise awareness about the potential role of demand response programs in the evolution of efficient electric market operations. A series of panel discussions will address related topics. Some conference details are as follows:

Date: Thursday, February 14, 2002.

Time: 7:30 a.m. to 8:30 a.m.—Registration; Adjournment at 5:00 p.m.

Location: Washington DC Convention Center, 900 Ninth Street NW., Washington, DC 20001.

This conference is open to everyone, but registration and a fee ($75 until January 31st, and $125 thereafter) are required.

More information on the topics and presenters may be issued in a later notice.

The three sessions will be transcribed. The transcripts will be included as part of the record for the referenced proceedings and will be posted in the Commission's Records and Information Management System (RIMS) within 10 days of the events. More prompt copies of transcripts can be obtained sooner for a fee from the court reporter designated to handle the three sessions.

More information on the first two events, and procedures to register for the entire NARUC winter meetings (including information on registration, fees, and lodging) is at the following Web site: *www.naruc.org/Meetings/winter/2002/naruc__winter.pdf*.

Registration and lodging information on the Demand Response Conference is at the following Web site: *www.ferc.gov/Electric/RTO/Mrkt-Strct-comments/rm01–12-comments.htm*.

Additional questions about the program, not answered by information at these Web sites, should be directed to: Norma McOmber, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–1015, *norma.mcomber@ferc.fed.us*.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1234 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Request for Comments on Potential Changes to the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures

January 11, 2002.

The Office of Energy Projects (OEP) staff is in the process of reviewing the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures referred to at 18 CFR 157.206(b)(3)(iv) of the Commission's regulations to see if there are appropriate modifications to be made at this time. As promised in Order 609, the staff is asking for public input on potential modifications.

This process of obtaining public input began at the Post-Certificate Environmental Compliance Seminar conducted in Houston on December 12 and 13, 2001. Additional input will be

solicited at the subsequent sessions of this training course identified in our November 15, 2001 notice. However, in order to obtain the broadest public participation in this process, we are asking for comment outside of these training sessions as well.

We have posted a table on our Web site showing the changes that were identified for discussion at the December 12th session and we request your comments on whether each of the changes are appropriate, with discussion of your rationale. In addition, please describe any additional changes you believe might be appropriate. The table is at *http://www.ferc.gov/gas/pptable.pdf.*

To provide comments you may log on to the FERC Web site at *www.ferc.gov,* and follow the links to ''Gas Industry Seminars,'' ''Online Registration,'' and ''Participant Recommendations'' or go directly to *www.ferc-envtraining.com* and select ''Participant Recommendations.''

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1235 Filed 1–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–4]

Request for Proposals for an Improved Atmospheric Nitrogen Deposition Data Set for the Chesapeake Bay Program

The Environmental Protection Agency (EPA) is issuing a request for proposals (RFP) for organizations interested in providing the Chesapeake Bay Program (CBP) with improved estimates of daily wet nitrogen deposition loadings to the Chesapeake Bay and its watershed. Proposals must be postmarked no later than March 1, 2002. Funding will be provided to an organization under the authority of the Clean Water Act, Section 117.

The RFP is available at the following Web site: *http://www.gov/r3chespk/*. You may also request a copy by calling Julie Thomas at 410–267–9848 or by e-mail at *thomas.julie@epa.gov*. Proposals must be postmarked no later than March 1, 2002. Any late, incomplete or fax proposals will not be considered.

Diana Esher,

Acting Director, Chesapeake Bay Program Office.

[FR Doc. 02–1242 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–5]

Clear Air Act Advisory Committee Notice of Meeting

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Wednesday, March 6, 2002, from approximately 8:30 a.m. to 4 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis. Three of the CAAAC's four Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NRS/Toxics Integration Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Tuesday, March 5, 2002 from approximately 10 a.m. to 5 p.m. at the Renaissance Mayflower Hotel, the same location as the full Committee. The Energy, Clean Air and Climate Change Subcommittee will not meet at this time. The Linking Energy, Land Use, and Transportation, and Air Quality Concerns Subcommittee is scheduled to meet from 10 a.m. to 12 noon; the Economic Incentives and Regulatory Innovations Subcommittee is scheduled to meet from 12:30 p.m. to 3 p.m.; and the Permits/NSR/Toxics Subcommittee is scheduled to meet from 3 p.m. to 4 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION Concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; and (2) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *www.epa.gov/oar/caaac/.*

Dated: January 9, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–1241 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–7]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. The PM Centers Interim Review Panel of the Executive Committee (PM Centers Panel)—February 11–12, 2002

The PM Centers Interim Review Panel of the Executive Committee of the US EPA Science Advisory Board (SAB), will meet on Monday and Tuesday, February 11–12, 2002 in the EPA Science Advisory Board Conference Room (room 6013), USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The meeting will begin by 8:30 am on February 11 and adjourn no later than 5 pm on February 12, 2002.

Purpose of the Meeting—In 1995 EPA introduced a research grants program (Science To Achieve Results (STAR)) focused on targeted, investigator-initiated, peer-review-competed grants. Subsequent experience suggested that there could be substantial benefits gained by investing some resources in larger, more coordinated grants to ''research centers'' that would focus the combined efforts of a group of researchers on closely related problems. The Particulate Matter (PM) Centers were funded in 1999 for a five-year period and thus, are in the middle of their grants. Although two and a half years of the PM Centers program is not sufficient time to evaluate fully its merits, the Agency is seeking an interim assessment of the PM centers concept that will help the Agency as it formulates its future research funding plans. It is for this purpose of providing interim advice on the effectiveness of the PM centers concept as a research mechanism that the SAB Panel is being convened.

Charge to the Subcommittee—The Panel has been asked to address the following Charge questions:

Overall Objective

To assess the value-added nature of a PM Centers research program.

Overall Charge Question

Based on progress to date, should a PM Centers research program be undertaken beyond 2004? In which areas, to what extent, and for what reasons is a PM Centers program beneficial? Identify specific areas in which the program could be improved.

Specific Charge Questions

(a) Recognizing the PM Centers program is barely at its halfway point, what important research findings (or promising investigations) have been made that would not have occurred otherwise? What unique aspect(s) of a Centers program enabled such actions to be taken?

(b) To what extent has the direction or focus of research shifted as a result of the multi-disciplinary interactions within the Center (i.e., findings in one department influence researchers in another to change direction or emphasis)? To what extent have changes in research direction or emphasis been influenced by Science Advisory Committee reviews, interactions with other PM Centers, or interactions with the broader PM research community? Which factors have been most influential?

(c) How successful are Centers in communicating their findings to the public and specifically, to those who directly use their research? Is it clear that the work has been supported by the PM Centers program?

(d) How, if at all, does a PM research centers program facilitate agreement or consensus on protocols or procedures to enable more direct comparison of results among research institutions or centers?

(e) How, if at all, does a PM research centers program leverage or maximize use of resources through sharing expensive equipment, samples, data, etc.?

(f) How is the program perceived within and outside the research community? Does a research center have greater visibility, and if so, what is the impact?

Availability of Review Materials: The Agency is coordinating the preparation of background materials that will help to inform the review. To access these materials, please contact Ms. Stacey Katz (Phone: 202–564–8201, or e-mail *katz.stacey@epa.gov*) or Ms. Gail Robarge (Phone: 202–564–8301, or e-mail *robarge.gail@epa.gov)* in the EPA Office of Research and Development (ORD).

For Further Information—Members of the public wishing an Agenda or a roster of the Committee should contact Ms. Diana Pozun, Program Specialist, Research Strategies Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4544; fax at (202) 501–0582; or via e-mail at *pozun.diana@epa.gov.* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Barnes no later than noon Eastern Standard Time on February 4, 2002 [five business days before the meeting].

2. Research Strategies Advisory Committee (RSAC)—February 20–21, 2002

The Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB) will meet on Wednesday, February 20, 2002 and Thursday, February 21, 2002 from 8:30 am to 5:00 pm (Eastern Time). The meeting will be held in the EPA Science Advisory Board Conference Room (room 6013), USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004.

Purpose of the Meeting—In this meeting, the Research Strategies Advisory Committee plans to review the Science and Technology component of the President's Budget Request for the Fiscal Year 2003 EPA budget. The tentative charge questions are:

(a) Does the budget request provide adequate balance and attention to the core and problem driven research needed to provide satisfactory knowledge for current and future decisions EPA will be required to make?

(b) How can EPA better use measures of performance to identify the impact of its research and development program and the funds that Congress provides for that Program? (the intent of this question is to go beyond GPRA requirements and help address issues surrounding using the findings from GPRA evaluations, OIG audits, GAO reports, etc.)

(c) Is the EPA research and development program addressing the important issues needed to adequately protect human health and the environment in the US and globally? What important issues are not receiving adequate attention at the current level of resources provided for the R&D program and the S&T budget?

(d) Does the budget request reflect the priorities identified in the EPA and ORD Strategic Plans?

Availability of Review Materials: Materials that are the subject of this review are available from Mr. Mike Feldman of the Office of the Chief Financial Officer or from Ms. Amy Battaglia Office of Research and Development. Mr. Feldman can be reached on (202) 564–6951 or by e-mail at *feldman.mike@epa.gov* and Ms. Battaglia can be reached on (202) 564–6685 or via e-mail on *battaglia.amy@epa.gov.*

For Further Information—Members of the public wishing an Agenda or a roster of the Committee should contact Ms. Betty Fortune, Office Assistant, Research Strategies Advisory Committee, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4534; fax at (202) 501–0323; or via e-mail at *fortune.betty@epa.gov.* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Dr. John ''Jack'' R. Fowle III, Designated Federal Officer,

EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0582; or via e-mail at *fowle.jack@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Fowle no later than noon Eastern Standard Time on February 13, 2002.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in *The FY2000 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 11, 2002.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 02–1245 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–3]

Draft Recommendations for Implementing EPA's Public Involvement Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA seeks public comment on the 12-page document ''Draft Recommendations for Implementing EPA's Public Involvement Policy.'' The document recommends specific EPA actions to enhance adoption of the Agency's Public Involvement Policy by EPA staff and managers. EPA published its Draft 2000 Public Involvement Policy in the **Federal Register** in December, 2000 (65 FR 82335, Dec. 28, 2000) and is currently writing the final policy and response to comments, both of which will be released in the Spring of 2002. The recommended implementation actions include: creating a communication network and mechanisms that allow EPA staff to exchange public involvement information; creating an electronic database that includes public involvement training opportunities, case studies and other helpful resources; providing public involvement training to EPA staff and managers; developing evaluation measures and tools to measure the effectiveness of EPA's public involvement activities; and evaluating the Agency's adoption of the Public Involvement Policy over time. EPA seeks public comment on this document for 60 days following publication on EPA's web page and notice in the **Federal Register**. After reviewing public comments, EPA will begin implementing many of these recommended activities. The revised document will be issued along with the Final Public Involvement Policy in the Spring of 2002. The draft recommendations document and future updates will be posted on the Agency's Web site at *http://www.epa.gov/stakeholders.*

DATES: Comments will be accepted until March 18, 2002.

ADDRESSES: Submit comments to Patricia A. Bonner, United States Environmental Protection Agency, Office of Policy, Economics and Innovation (MC 1807), 1200 Pennsylvania Ave, NW., Washington, DC 20460, by facsimile at 202–260–4903 or by electronic mail to *bonner.patricia@epa.gov* or to *stakeholders@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia Bonner at 202–260–0599. To request a mailed copy, call Loretta Schumacher at 202–260–3096 or e-mail a request to *stakeholders@epa.gov.* The draft recommendations document and the Draft Public Involvement Policy may be viewed or downloaded from [*http://www.epa.gov/stakeholders*].

Thomas J. Gibson,

Associate Administrator, Office of Policy, Economics and Innovation.

[FR Doc. 02–1243 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51981; FRL–6819–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 1, 2001 to December 22, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received

under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51981 and the specific PMN number, must be received on or before February 19, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51981 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51981. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51981 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51981 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new Chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish

periodic status reports on the Chemicals under review and the receipt of notices of commencement to manufacture those Chemicals. This status report, which covers the period from December 1, 2001 to December 22, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0111	12/04/01	03/04/02	CBI	(G) Open, non-dispersive use	(G) Aromatic acid diesters
P–02–0112	12/04/01	03/04/02	Dow Corning Corporation	(S) Powder coating additive	(G) Amidosiloxane
P–02–0113	12/03/01	03/03/02	CBI	(G) Ingredients for use in consumer products: highly dispersive use	(G) Alkoxy alkyl ester
P–02–0114	12/03/01	03/03/02	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polymer of alkyl substituted propenoic acid and propenamide with alkyl acrylate
P–02–0115	12/04/01	03/04/02	Dow Corning Corporation	(S) Chemical intermediate	(G) N,n′-alkylenebis(alkenamide)
P–02–0116	12/04/01	03/04/02	Dow Corning Corporation	(S) Chemical intermediate	(G) N,n′-alkylenebis(alkenamide)
P–02–0117	12/03/01	03/03/02	CBI	(G) Open, non-dispersive use	(G) Aromatic alkanoate
P–02–0118	12/04/01	03/04/02	CBI	(S) Pressure sensitive adhesive	(G) Acrylic copolymer
P–02–0119	12/04/01	03/04/02	Shin-ETSU Microsi, Inc.	(S) Flame-ratardant for plastics, thermoplastics and resins	(G) Phosphazene
P–02–0120	12/04/01	03/04/02	CBI	(G) Emulsifier	(G) Polyalkyleneamine
P–02–0121	12/04/01	03/04/02	Hanse Chemie USA, Inc.	(S) Flexibilisation of epoxy resins	(S) Siloxanes and silicones, di-me, hydrogen-terminated, reaction products with bisphenol a diglycidyl ether and 10-undecenoic acid
P–02–0122	12/05/01	03/05/02	CBI	(S) Reactive dyestuff for coloring cellulosic fibers	(G) Sodium salt of a disubstituted diazo-amino-hydroxy-naphthalenedisulfonic acid
P–02–0123	12/06/01	03/06/02	CIBA Specialty Chem.Corp., Colors Division	(G) Textile dye	(G) Anthracenesulfonic acid, amino[[[[[[(alkenylsulfonyl)alkyl] substituted phenyl]amino]-substituted 1,3,5-triazin]amino]-alkyl-substituted phenyl]amino]-9,10-dihydro-9,10-dioxo-, disodium salt
P–02–0124	12/05/01	03/05/02	Hercules Incorporated	(G) A performance additive in sizing emulsions (i.e. promoter resins) used in papermaking process	(G) Aminoacrylic polymer
P–02–0125	12/05/01	03/05/02	Hercules Incorporated	(G) Destructive use (chemical intermediate)	(G) Dialkylamine hydrochloride salt
P–02–0126	12/05/01	03/05/02	Gateway Additive Company	(S) Cutting oils; industrial lubricants; metalworking fluids, soluble oil	(G) Polymer ester of mono and dibasic acids
P–02–0127	12/06/01	03/06/02	International Flavors and Fragrances, Inc.	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(S) 3-mercaptohexyl acetate
P–02–0128	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Polyester type polyurethane resin
P–02–0129	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Organopolysiloxane containing carboxylic acid
P–02–0130	12/07/01	03/07/02	CBI	(G) Component in industrial product used in consumer products, dispersive use	(S) 4-formylphenylboronic acid*
P–02–0131	12/06/01	03/06/02	CBI	(G) Resin (open, non-dispersive use)	(G) Methacrylate and maleimide copolymer
P–02–0132	12/07/01	03/07/02	CBI	(G) Chemical intermediate	(G) Benzenediacetic acid derivative
P–02–0133	12/07/01	03/07/02	CBI	(G) Chemical intermediate	(G) Benzofuranone derivative

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0134	12/07/01	03/07/02	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties	(G) Trineoalkoxy amino zirconate
P–02–0135	12/07/01	03/07/02	BASF Corporation	(S) Aprotic solvent	(S) 2(1h)-pyrimidinone, tetrahydro-1,3-dimethyl-
P–02–0136	12/07/01	03/07/02	CBI	(S) Film coating	(G) Polyester polyurethane
P–02–0137	12/10/01	03/10/02	CBI	(G) Open, non-dispersive (plastic)	(G) Modified abs
P–02–0138	12/07/01	03/07/02	CBI	(G) This substance in combination with other proprietary additives result in a mixture of components which collectively have unique antistatic properties.	(G) Trineoalkoxy sulfonyl zirconate
P–02–0139	12/10/01	03/10/02	CBI	(S) Aqueous dispersion of polymer for leather finishing	(G) Polymer of substituted propenoic acid, propenamide and propenoic esters
P–02–0140	12/10/01	03/10/02	CBI	(G) Resin coating	(G) Acrylic copolymer polyurethane dispersion
P–02–0141	12/10/01	03/10/02	CBI	(G) Petroleum lubricant additive	(G) Polyalkenylbenzene sulfonate
P–02–0142	12/10/01	03/10/02	CBI	(G) Resin coating	(G) Urethane acrylate
P–02–0143	12/10/01	03/10/02	UBE America Inc.	(S) Raw material of polyurethane	(S) 1,3-dioxolan-2-one, polymer with 1,4-cyclohexanedimethanol and 1,6-hexanediol
P–02–0144	12/11/01	03/11/02	CBI	(G) Plastics additive	(G) Chromophore substituted polyoxyalkylene
P–02–0145	12/11/01	03/11/02	CBI	(G) Plastics additive	(G) Chromophore substituted polyoxyalkylene
P–02–0146	12/11/01	03/11/02	Arteva Specialties S.A.R.L. d/b/a Kosa	(S) Structural material for production of textile fibers	(G) Modified polyester
P–02–0147	12/11/01	03/11/02	CBI	(G) Open, non-dispersive use.	(G) Acrylic resin
P–02–0148	12/11/01	03/11/02	CBI	(G) Open, non-dispersive use.	(G) Polyester resin
P–02–0149	12/11/01	03/11/02	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(G) Alkyl octanal
P–02–0150	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenoic acid, sodium salt
P–02–0151	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid and 2-propenoic acid, sodium salt
P–02–0152	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-propenamide and 2-propenoic acid, sodium salt
P–02–0153	12/12/01	03/12/02	CBI	(G) Flocculant	(G) N-substituted-2-methyl-2-propenamide, polymer with 2-methyl-2-propenoic acid,2-propenamide and 2-propenoic acid, sodium salt
P–02–0154	12/11/01	03/11/02	Arch Chemicals, Inc.	(S) Component in a photoresist formulation to be used in the manufacture of semiconductor and related devices.	(G) Derivatized ethoxylated polystyrene resin
P–02–0155	12/11/01	03/11/02	CBI	(G) Acrylic polymer for use in a coating application	(G) Copolymer of alkyl acrylates and alkyl methacrylates
P–02–0156	12/12/01	03/12/02	CBI	(G) Additive in composites	(G) Metallic dimethacrylate
P–02–0157	12/13/01	03/13/02	CBI	(G) Machine seals	(G) Polyurethane-poly carbonate polymer
P–02–0158	12/13/01	03/13/02	CBI	(G) Open non-dispersive use	(G) Polyacrylic resin, based on methyl methacrylate
P–02–0159	12/13/01	03/13/02	GE Silicones	(G) Release additive	(G) Silane hydrolyzate
P–02–0160	12/13/01	03/13/02	CBI	(S) Agricultural dispersant	(G) Aklylated naphthalenesulfonate-formaldehyde condensate, sodium salt
P–02–0161	12/14/01	03/14/02	CBI	(G) Flame-retardant	(G) Copolymer

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0162	12/13/01	03/13/02	CBI	(G) Paper sizing agent	(G) Cyclohexene-carboxylic acid, [(di-propenylamino]carbonyl]-, reaction products with pentafluoroiodoethane-tetrafluoro-ethylene telomer
P–02–0163	12/13/01	03/13/02	CMP Coatings, Inc.	(S) Binder polymer in paints	(G) Acrylate copolymer
P–02–0164	12/14/01	03/14/02	Amfine chemical Corporation	(G) Thickening agent	(G) Polyalkylene glycol, alkyl ether, reaction products with diisocyanatoalkane and polyalkylene glycol
P–02–0165	12/13/01	03/13/02	Image Polymers Company	(S) Toner binder	(G) Urethane-modified polyester resin
P–02–0166	12/14/01	03/14/02	CBI	(G) Open non-dispersive(resin)	(G) Amino polyester
P–02–0167	12/14/01	03/14/02	Valence Technology, Inc.	(G) Electrode material	(G) Lithium metal phosphate
P–02–0168	12/18/01	03/18/02	CBI	(G) Binder resin	(G) Acrylic polyol
P–02–0169	12/17/01	03/17/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–0170	12/17/01	03/17/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–0171	12/18/01	03/18/02	CBI	(S) Flame retardant in polyamides, epoxy, or polyester	(G) Organophosphorous salt
P–02–0172	12/18/01	03/18/02	CBI	(G) Adhesive component	(G) Aromatic polyester polyol
P–02–0173	12/19/01	03/19/02	Quest International Fragrances Co.	(S) Fragrance ingredient	(S) N-ethyl-n-(3-methylphenyl) propionamide*
P–02–0174	12/19/01	03/19/02	CBI	(G) Mold release agent	(G) 1,2,3-propanetriol, homopolymer, derivative
P–02–0175	12/20/01	03/20/02	CBI	(G) Open, non-dispersive (resin)	(G) Amine-accelerated, unsaturated polyester resin
P–02–0176	12/21/01	03/21/02	Lithchem, International	(G) Contained use in sealed battery components	(G) Dialkyl carbonate; carbonate diester
P–02–0177	12/21/01	03/21/02	CIBA Specialty Chemicals Corporation	(G) Textile dye	(G) Naphthalene disulfonicacid,azo substituted phenyl disodium salt, reaction products with halo triazin amino substituted phenyl sulfonyl compound
P–02–0178	12/21/01	03/21/02	Xerox Corporation	(G) Destructive use (site limited intermediate)	(G) Alkyl aryl phthalonitrile ether
P–02–0180	12/21/01	03/21/02	CBI	(S) Surfactant for use in lubricants	(S) Alcohols, $C_{9–11}$, ethers with polyethylene glycol mono-me ether
P–02–0181	12/21/01	03/21/02	CBI	(G) Component of coating with open use	(G) Epoxy functional styrenated methacrylate
P–02–0185	12/21/01	03/21/02	CBI	(G) Ink additive	(G) Aluminum chelate compound
P–02–0186	12/21/01	03/21/02	CBI	(G) Ink additive	(G) Aluminum chelate compound
P–02–0190	12/21/01	03/21/02	Prc-desoto international, a ppg industries Company	(S) Polymer for adhesives and sealants; intermediate for production of blend polymer	(G) Mercaptan terminated polyether polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 3 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–02–0004	12/06/01	01/20/02	CBI	(G) Intermediate	(G) Disubstituted heteropolycyclic carboxylic acid, alkyl ester
T–02–0005	12/06/01	01/20/02	CBI	(G) Intermediate	(G) Halogenated alkanesulfonic acid ester
T–02–0006	12/06/01	01/20/02	CBI	(G) Coating component	(G) Ester of a disubstituted heteropolycyclic carboxylic acid

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 23 NOTICES OF COMMENCEMENT FROM: 12/01/01 TO 12/22/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0428	12/03/01	10/16/01	(G) Hydrolyzed alkoxysilane
P–01–0069	12/18/01	11/19/01	(G) Substitute naphtalene derivatives
P–01–0160	12/04/01	10/24/01	(G) Polymer dispersion of aromatic isocyanate, aliphatic polyols, and aliphatic amines
P–01–0190	12/11/01	10/19/01	(G) Polyester acrylate
P–01–0339	12/06/01	08/25/01	(S) 1,3-benzenedicarboxylic acid, polymer with 1,3-diisocyanatomethylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid and alpha,alpha'-[(1-methylethylidene)di-4,1-phenylene]bis[omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)]], benzoate
P–01–0425	12/04/01	11/19/01	(G) Substituted zirconate ester
P–01–0460	12/20/01	11/12/01	(G) Chromate, bis[[[substituted [[[hydroxynaphthalenyl)azo]phenyl]sulfonyl] amino]heterocycle]azo]-(hydroxynitrobenzene sulfonato)], - mixed salts
P–01–0537	12/20/01	11/25/01	(G) Epoxy novolac acrylate carboxylate
P–01–0538	12/11/01	10/31/01	(G) Epoxy novolac acrylate
P–01–0539	12/14/01	11/18/01	(G) Epoxy novolac acrylate carboxylate
P–01–0575	12/18/01	12/14/01	(G) Arylazo substituted sulfonated naphthalene compound
P–01–0632	12/10/01	12/04/01	(G) Epoxy isocyanate copolymer
P–01–0650	12/18/01	12/04/01	(G) Epoxy acrylate
P–01–0662	12/05/01	11/05/01	(G) Acrylate polymer
P–01–0684	12/18/01	12/07/01	(G) Phenolic sulfone reaction products
P–01–0716	12/06/01	11/09/01	(G) Polyurea
P–01–0717	12/19/01	11/08/01	(S) Poly(oxy-1,2-ethanediyl), alpha-sulfo-omega-(2-propenyloxy)-, ammonium salt
P–01–0726	12/07/01	10/29/01	(G) Fluoroalkyl substituted siloxanes
P–01–0734	12/06/01	11/15/01	(G) Polyamide
P–01–0775	12/05/01	11/21/01	(G) Organic zirconium compound
P–01–0876	12/17/01	12/07/01	(G) Imidazole phosphate salt
P–01–0886	12/18/01	12/13/01	(G) Polyester acrylate
P–96–0662	12/11/01	10/23/01	(G) Hydroxy acrylic resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 4, 2002.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–1248 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2524]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 9, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 1, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotment (MM Docket No. 00–226).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1214 Filed 1–16–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2525]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 10, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by February 1, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of FM Table of Allotment (MM Docket No.00–87).

Number of Petitions Filed: 1.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1215 Filed 1–16–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011785.

Title: COSCON/KL/YMUK Asia/U.S. East and Gulf Coast/Mediterranean Vessel Sharing Agreement.

Parties: COSCO Container Lines Company, Ltd., Yangming (U.K.), Ltd., Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement would authorize the parties to charter

container space to each other and rationalize port calls and sailings in the trade to and from ports in Japan, China, the U.S. East and Gulf Coasts, and Mediterranean ports in the Gibraltar/Port Said range. This agreement combines and replaces two existing vessel sharing agreements among the parties into a single east-west pendulum service.

Agreement No. 011786.

Title: Zim/Great Western Agreement.

Parties: Zim Israel Navigation Co. Ltd, Great Western Agreement.

Synopsis: The proposed agreement authorizes the parties to cross-charter and exchange space on their vessels that operate in the trade between Long Beach, California, on the one hand, and Hong Kong, South Korea, and the People's Republic of China, on the other hand. It also authorizes Zim to time charter one vessel to Great Western. The parties request expedited review.

Agreement No.: 011787.

Title: NSCSA/NYK Middle East Space Charter Agreement.

Parties: National Shipping Company of Saudi Arabia, Nippon Yusen Kaisha.

Synopsis: The proposed agreement would permit the parties to charter space to one another on their respective ro-ro vessels on an ''as needed, as available basis'' in the trade between U.S. Atlantic and Gulf Coasts and ports in the Arabian Gulf, Red Sea, Gulf of Aden, and Gulf of Oman.

Dated: January 11, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1168 Filed 1–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Sea-Bridge International, Inc., 13 John Paul Drive, Hamilton Square, NJ 08690.*Officers:* Donald Michael Guerraggi, President (Qualifying Individual), Shari A. Guerrazzi, Vice President.

Dated: January 11, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–1167 Filed 1–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First National Bank of Wynne ESOP, Wynne, Arkansas; to retain voting shares of First National Corporation of Wynne, Wynne, Arkansas, and thereby indirectly retain voting shares of First National Bank of Wynne, Wynne, Arkansas.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Catherine E. and Kim A. Jackson, both of Waverly, Minnesota; to acquire voting shares of Graham Shares of Waverly, Inc., Waverly, Minnesota, and thereby indirectly acquire voting shares of Citizens State Bank of Waverly, Waverly, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1174 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 02-567) published on pages 1357 and 1358 of the issue for Thursday, January 10, 2002.

Under the Federal Reserve Bank of Chicago heading, the entry for Marshall & Ilsley Corporation, Milwaukee, Wisconsin, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to merge with Century Bancshares, Inc., Eden Prairie, Minnesota, and thereby indirectly acquire 100 percent of the voting shares of Century Bank, National Association, Eden Prairie, Minnesota.

Comments on this application must be received by February 4, 2002.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1172 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Merchants Corporation, Muncie, Indiana; to merge with Lafayette Bancorporation, Lafayette, Indiana, and thereby indirectly acquire voting shares of Lafayette Bank and Trust Company, Lafayette, Indiana.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Riverdale Bancshares, Inc., Riverdale, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Riverdale, Riverdale, Nebraska.

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1173 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo- und Vereinsbank AG, Munich, Germany, to directly and indirectly engage through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the ''First Integrion Order'') and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the ''Second Intgrion Order: and together with the First Integrion Order, the ''Integrion Orders''). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, January 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–1171 Filed 1–16–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Proposed Project 1. Evaluation of the Cash and Counseling Demonstration—0990–0223—Extension—Cash and Counseling is a consumer directed care model for individuals in need of personal assistance services. A demonstration project utilizing this model is being undertaken. The Office of the Assistant Secretary for Planning and Evaluation (ASPE), in partnership with the Robert Wood Johnson Foundation, is engaging in information collection for the purpose of evaluating this demonstration project. Controlled experimental design methodology is being used to test the effects of the experimental intervention: cash payments in lieu of arranged services for Medicaid covered beneficiaries: *Respondents:* Individuals or Households.

BURDEN INFORMATION FOR CLIENT INTERVIEWS (0990–0223)

Instrument	Annual number of respondents	Hours per response	Burden hours
Baseline Survey	1,020	.38	388
4/6 Month Survey	1,049	.33	465
9 Month Survey	3,629	.70	2,540
Participation Survey	1,292	.08	103
Total			3,496

OMB Desk Officer: Allision Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

Human Resources and Housing Branch,Office of Management and Budget,New Executive Office Building, Room 10235,725 17th Street NW.,Washington, DC 20503.

Comments may also be sent to Cynthia Agens Baurer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: January 3, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–1266 Filed 1–16–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Applicant Background Survey—0990–0208—This form will be used to ask applicants for employment how they learned about a vacancy to ensure that recruitment sources yield qualified women and minority applicants, as well as applicants with disabilities in compliance with EEOC management directives. *Respondents:* Individuals, *Annual Number of Respondents:* 30,000; *Average Burden per Response:* 2 minutes; *Total Annual Burden:* 1,000 hours; and *OMB Desk Officer:* Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: January 2, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–1267 Filed 1–16–02; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Bioethics

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting location and time change.

SUMMARY: The President's Council on Bioethics will hold its first meeting to discuss its agenda and future activities. This notice is to provide the exact location of the meeting and notice of a time change.

DATES: Meetings will be held on Thursday, January 17, 2002, from 8:30 a.m. to 6 p.m., and Friday, January 18, 2002, from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will take place in Washington, DC at the L'Enfant Plaza Loews Hotel in Ballrooms C & D, 480 L'Enfant Plaza, SW, Washington, DC 20024. The phone number is (202) 484–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McMahon, President's Council on Bioethics, Sixth Floor, 1801 Pennsylvania Avenue, NW., Washington, DC 20036, (202) 296–4694.

SUPPLEMENTARY INFORMATION: The agenda of the meeting will include discussion of the future activities of the President's Council on Bioethics, a Presidential advisory committee established by executive order to, among other things, conduct fundamental inquiry into the moral and human meaning of developments in biomedical science and technology. The meeting will include a period for comments from the public and any required administrative discussions and executive sessions. Due to unforeseen circumstances, this notice is published less than 15 calendar days prior to the Council's meeting date (see 41 CFR 102–3.150).

Dated: January 12, 2002.

Dean Clancy,

Executive Director, President's Council on Bioethics.

[FR Doc. 02–1169 Filed 1–16–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Project

Title: Temporary Assistance for Needy Families (TANF) State Plan Guidance.

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Administrative Officer. Its submittal triggers the State's family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State TANF plan	54	1	30	1,620
Title Amendments	54	1	3	162

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated total annual burden hours				1782

In compliance with the requirements of section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 10, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1237 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Trafficking Victims Certification and Reporting System.

OMB No. New.

Description: HHS has three specific areas of responsibility under the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386) that require new information. These are: (1) Issuing a letter certifying victims as eligible to apply for public benefits, (2) Expanding benefits, and (3) reporting to Congress on the number of people who receive benefits and services. Other requirements may result from the activities of an Interagency Task Force of which HHS is a member.

Information concerning victims of a severe form of trafficking is needed to certify those individuals as eligible to apply for public benefits and to help them secure subsistence while they wait to assist the Attorney General in the prosecution of a case against the trafficker. Updated information on client location is critical to statutory intent to ensure the victim's ability to meet basic needs while in the U.S. to cooperate in the prosecution of a trafficker. Current information on the number of victims receiving benefits is required to be annually reported to the U.S. Congress by the Secretary. Such information is also essential to program management and budget planning.

Respondents: Respondents are primarily state and county public assistance eligibility workers and the DOJ. DOL, DOS, other federal agencies, other law enforcement agencies, victims of trafficking and voluntary agency staff could contribute information as well.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DOJ Request for Victim letter of Certification.	One per request; estimated 200 requests annually.	1	Thirty minutes	100 hours.
Database and telephone script.	52 (+/-) state refugee coordinators or district eligibility workers.	Two for each client. Initial call at intake, plus second call for update on benefits being received	6000 minutes (4 minutes x 750 clients x 2 calls).	100 hours (6000 minutes divided by 60).
Trafficking Certification Statistics.	One ORR staffer compiles.	One for every client	Thirty seconds per client.	6.2 hours.
Estimated total annula burden hours.	.....		.....	206.2

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 7, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1239 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Financial Report for Tribes (ACF–696T).

OMB No.: 0970–0195.

Description: The Child Care and Development Fund (CCDF) annual financial reporting form (ACF–696T) provides a mechanism for Indian Tribes to report expenditures under the CCDF program. The CCDF program provides funds to Tribes, as well as States and Territories, to assist low-income families in obtaining child care so that they can work or attend training/education, and to improve the quality of care. Information collected via the ACF–696T allows the Administration for Children and Families (ACF) to monitor expenditures and to estimate outlays and may be used to prepare ACF budget submissions to Congress. This information collection is a revised version of the currently-used ACF–696T for which Office of Management and Budget (OMB) approval expires on February 28, 2002.

Respondents: Indian Tribes and Tribal Organizations that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T	232	1	8	1856

Estimated Total Annual Burden Hours: 1856.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for ACF.

Dated: January 7, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–1238 Filed 1–16–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA Food Labeling and Allergen Declaration; Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 21, 2001 (66 FR 65976). The notice announced a public workshop entitled ''FDA Food Labeling and Allergen Declaration; Public Workshop'' intended to provide information about FDA food regulations, food labeling allergen declaration, good manufacturing practices, and other related matters to the regulated industry, particularly small businesses and start-ups. The notice was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: David Arvelo, Food and Drug Administration, 7920 Elmbrook Dr., Suite 102, Dallas, TX 75247, 214–655–8100, ext. 133.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–31572, appearing on pages 65976 at 65977 in the **Federal Register** of Friday, December 21, 2001, the following correction is made:

1. On page 65977, in the first column, the ''Transcripts'' portion of the notice is removed.

Dated: January 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–1280 Filed 1–14–02; 3:50 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material; and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program and Small Grant Program for Cancer, Epidemiology.

Date: February 21–22, 2002.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1194 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Human Factors in Breast Cancer Detection and Diagnosis.

Date: January 30, 2002.

Time: 12 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 6116 Executive Blvd., Room 8129, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1195 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Spores in Prostate Cancer.

Date: January 21–23, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Riverwalk, 217 N. St. Mary's, San Antonio, TX 78205.

Contact Person: Brian E. Wojcik, Phd., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

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.

Any interested persons may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 11, 2002.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1199 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 11–12, 2002.

Open: February 11, 2002, 8:30 AM to 5:00 PM.

Agenda: Discussion of program policies and issues.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.

Closed: February 12, 2002, 9:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexandria Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1188 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 20–21, 2002.

Open: February 20, 2002, 9:00 AM to 4:00 PM.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Closed: February 21, 2002, 9:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD., Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1191 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.

Date: February 25–27, 2002.

Time: 8:30 AM to 1: 00 PM.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton, Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute of Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

Date: February 25–26, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street NW., Washington, DC 20037–1417.

Contact Person: Khursheed Asghar, PHD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institutes on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: February 26–27, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Ave., NW., Washington, DC 20037.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Sciences Research Subcommittee.

Date: February 26–27, 2002.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Marina L. Volkov, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on

Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institutes on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 12–14, 2002.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 13, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Mark Swieter, PHD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 13, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Khursheed Asghar, PHD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1192 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 02–34 Review of T32 Grants.

Date: February 20, 2002.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, Phd, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1193 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 5–6, 2002.

Time: 9 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, N.W., Washington, DC 20036–3305.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 14, 2002.

Time: 3:30 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, dsommers@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1196 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, RFP 02–01—High Throughput Genotyping for Locating Human Disease Genes.

Date: January 29, 2002.

Time: 12:30 PM to 2 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS—East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

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 Environmental Health Sciences Special Emphasis Panel, RFP 01–14—National Center for Toxicogenomics (NCT) Proteomics Resource.

Date: January 31–February 1, 2002.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: January 11, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1197 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 13–14, 2002.

Open: February 13, 2002, 8:30 AM to 12 PM.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 14, 2002, 9:45 AM to 10:15 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: February 14, 2002, 10:15 AM to 12 PM.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 13–14, 2002.

Open: February 13, 2002, 1:30 PM to 3:15 PM.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 13, 2002, 3:15 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Open: February 14, 2002, 8 AM to 8:30 AM.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Closed: February 14, 2002, 8:30 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conf. Rm. 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities,

National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–504–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: February 13–14, 2002.

Open: February 13, 2002, 1:30 PM to adjournment.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

Closed: February 14, 2002, 8 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–504–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases asnd Nutrition Subcommittee.

Date: February 13–14, 2002.

Open: February 13, 2002, 1:30 PM to 2:30 PM.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A51, Bethesda, MD 20892.

Closed: February 13, 2002, 2:30 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A51, Bethesda, MD 20892.

Open: February 14, 2002, 8 AM to 9:30 AM.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A51, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 631, MSC 5452, Bethesda, MD 20892–5452, 301–504–8834, *hammondr@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 11, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1198 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 17, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1340, *rweise@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 18, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 9, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1200 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 6–7, 2002.

Closed: February 6, 2002, 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: February 7, 2002, 8:30 a.m. to 3:30 p.m.

Agenda: Program documents.

Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.

Contact Person: Kenneth R. Warren, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, *kwarren@niaaa.nih.gov*.

Information is also available on the Institute's/Center's homepage: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1202 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel (Telephone Conference MMR J S).

Date: January 29, 2002.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine Division of Extramural Programs 6705 Rockledge Drive Suite 301 Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Merlyn M. Rodrigues Medical Officer/SRA.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1203 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 17, 2002.

Time: 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contract Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

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: Center for Scientific Review Special Emphasis Panel.

Date: January 18, 2002.

Time: 3 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93,892, 93.893, National Institutues of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1189 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

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: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 3:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

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: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 4:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 10, 2002.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1190 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 14, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*

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: Center for Scientific Review Special Emphasis Panel

Date: January 18, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Daniel McPherson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1175 *mcphersod@csr.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 9, 2002.

Anna Snouffer,

Deputy Director, Office of the Federal Advisory Committee Policy.

[FR Doc. 02–1201 Filed 1–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group (CAG), Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior (Secretary), will hold a public meeting. The purpose of the CAG is to provide technical advice and counsel to the Secretary and the State of Washington on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Wednesday, January 23, 2002, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington, 98901; (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review water marketing opportunities in the Yakima River Basin and develop recommendations.

Dated: December 19, 2001.

James A. Esget,

Program Manager.

[FR Doc. 02–485 Filed 1–16–02; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–427 (Preliminary)]

Film and Television Productions From Canada

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition in countervailing duty investigation.

SUMMARY: On January 11, 2002, the Department of Commerce and the Commission received a letter from petitioners in the subject investigation (Film and Television Action Committee,

Studio City, CA; the Screen Actors Guild, Los Angeles, CA; Studio Utility Employees Local 724 of the Laborers International Union, Hollywood, CA; Local 355 of the International Brotherhood of Teamsters (Teamsters), Baltimore, MD; Teamsters Local 391, Greensboro, NC; Teamsters Local 399, North Hollywood, CA; Teamsters Local 509, Cayce SC; Teamsters Local 592, Richmond, VA; and the Maryland Production Alliance, Baltimore, MD) withdrawing the petition. Commerce has not initiated an investigation as provided for in section 702(c) of the Tariff Act of 1930 (19 U.S.C. 1671a(c)). Accordingly, the Commission gives notice that its countervailing duty investigation concerning film and television productions from Canada (investigation No. 701–TA–427 (Preliminary)) is discontinued.

EFFECTIVE DATE: January 11, 2002.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: January 11, 2002.
By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1224 Filed 1–16–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–740 (Review)]

Sodium Azide From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in December 2001 to determine whether termination of the suspended antidumping duty investigation on sodium azide from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On January 11, 2002, the Department of Commerce published notice that it was terminating the suspended investigation effective January 7, 2002 ''[b]ecause no domestic interested party responded to the notice of initiation by the applicable deadline'' (67 FR 1438–39). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the subject review is terminated.

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: January 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1225 Filed 1–16–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-to-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 28, 2001, a proposed consent decree in *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* Case No. 2:01 CV–1050 ST, was lodged with the United States District Court for the District of Utah.

This consent decree represents a settlement of claims brought against Texaco Exploration and Production Inc. (''Texaco'') and Envirotech Inc. under section 113(b) of the Clean Air Act (''the CAA''), 42 U.S.C. 7413(b), and section 325(b)(3) of the Emergency Planning and Community Right-to-know Act (''EPCRA''), 42 U.S.C. 11045(b)(3), in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that Texaco violated the CAA and the New Source Performance Standards, 40 CFR part 60, subparts A and KKK, at its Aneth gas plant by filing to monitor its equipment for VOC leaks, maintain records, submit reports, test its flare, and use a thermocouple to monitor its flare's pilot flame. The complaint also alleges that Texaco and Envirotech violated the CAA and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M, during the removal and disposal of asbestos-containing material at the Aneth gas plant. Finally, the complaint alleges that Texaco violated section 304 of EPCRA, 42 U.S.C. 11004, by twice failing to report the release of more than 500 pounds of sulfur dioxide from its oil and gas production field in Aneth, Utah.

Under the proposed settlement, Texaco will submit a certification that its affected facility is not in compliance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 60, subpart KKK. In addition, Texaco will pay a civil penalty of $243,725 and provide up to $51,275 in emergency response equipment and hazardous materials training to a local fire department in Montezuma Creek, Utah, as a supplemental environmental project. Envirotech will pay a civil penalty of $10,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* DOJ Ref. 90–5–2–1–06466. A copy of all comments should also be sent to Robert D. Mullaney, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, CA 94105.

The Consent Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California. A copy of the

Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* Case No. 2:01 CV–1050 ST (D. Utah), DOJ Ref. 90–5–2–1–06466, and enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–01176 Filed 1–16–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-To-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 28, 2001, a proposed consent decree in *United States v. Texaco Exploration and Production Inc. and Envirotech Inc.,* Case No. 2:01 CV–1050 ST, was lodged with the United States District Court for the District of Utah.

This consent decree represents a settlement of claims brought against Texaco Exploration and Production Inc. (''Texaco'') and Envirotech Inc. under section 113(b) of the Clean Air Act (''the CAA''), 42 U.S.C. 7413(b), and section 325(b)(3) of the Emergency Planning and Community Right-to-Know Act (''EPCRA''), 42 U.S.C. 11045(b)(3), in a civil complaint filed concurrently with the lodging of the consent decree. The complaint alleges that Texaco violated the CAA and the New Source Performance Standards, 40 CFR part 60, subparts A and KKK, at its Aneth gas plant by failing to monitor its equipment for VOC leaks, maintain records, submit reports, test its flare, and use a thermocouple to monitor its flare's pilot flame. The complaint also alleges that Texaco and Envirotect violated the CAA and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M, during the removal and disposal of asbestos-containing material at the Aneth gas plant. Finally, the complaint alleges that Texaco violated section 304 of EPCRA, 42 U.S.C. 11004, by twice failing to report the release of more than 500 pounds of sulfur dioxide from its oil and gas production field in Aneth, Utah.

Under the proposed settlement, Texaco will submit a certification that its affected facility is now in compliance with the monitoring, recordkeeping, and reporting requirements of 40 CFR part 60, subpart KKK. In addition, Texaco will pay a civil penalty of $243,725 and provide up to $51,275 in emergency response equipment and hazardous materials training to a local fire department in Montezuma Creek, Utah, as a supplemental environmental project. Envirotech will pay a civil penalty of $10,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments that are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, and sent: (1) C/o Robert D. Mullaney, U.S. Department of Justice, 301 Howard St., Suite 1050, San Francisco, CA 94105; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* DOJ Ref. 90–5–2–1–06466.

The proposed consent decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury,'' in the amount of $6.75 to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Texaco Exploration and Production Inc. and Envirotech Inc.,* DOJ Ref. 90–5–2–1–06466.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1177 Filed 1–16–02; 8:45 am]

BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–80 and DPR–82, for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (Diablo Canyon) currently held by Pacific Gas and Electric Company (PG&E), as owner and licensed operator of Diablo Canyon. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer, and amending the antitrust conditions in licenses as discussed below.

According to an application for approval filed by PG&E, the transfer of the licenses would be to a new generating company named Electric Generation LLC (Gen), which would operate the facility, and to a new wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear), which would hold title to Diablo Canyon and lease it to Gen. PG&E is requesting approval of these transfers in connection with a comprehensive Plan of Reorganization (Plan) for PG&E filed under Chapter 11 of the United States Bankruptcy Code.

No physical changes to Diablo Canyon or operational changes are being proposed in the application.

The proposed conforming administrative amendments generally would replace references to PG&E in the licenses with references to Gen and Nuclear, as appropriate, to reflect the proposed transfer. With specific regard to the antitrust conditions in the licenses, the application proposes changes such that Gen will be inserted in the conditions and thus become

subject to complying with them, and E Trans LLC, a new company that will be affiliated with Gen upon implementation of the Plan and that will acquire the electric transmission assets of PG&E but not have any interest in Diablo Canyon, will be also be inserted in the conditions and thus become subject to complying with them. In addition, the application proposes that PG&E will remain designated in the conditions for the limited purpose of compliance with the conditions, notwithstanding the divesting of its interest in Diablo Canyon, while Nuclear will not be named in the conditions.

Notwithstanding the proposed changes to the antitrust conditions proffered as part of the amendments to conform the licenses to reflect their transfer from PG&E to Gen and Nuclear, the Commission is considering specifically whether to approve either all of the proposed changes to the conditions, or only some, but not all, of the proposed changes, as may be appropriate and consistent with the Commission's decision in Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441, 466 (1999). In particular, the Commission is considering approving only those changes that would accurately reflect Gen and Nuclear as the only proposed entities to operate and own Diablo Canyon.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 6, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Richard F. Locke, Esq., Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, California 94105 (e-mail address *rfl6@pge.com*), and to David A. Repka, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005 (e-mail address *drepka@winston.com*); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *ogclt@nrc.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 19, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

Further details with respect to this action, see the application dated November 30, 2001, available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 10th day of January 2002.

For the Nuclear Regulatory Commission.

Girija S. Shukla,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1211 Filed 1–16–02; 8:45 am]

BILLING CODE 7590–01–P

SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed

amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice additionally sets forth a number of issues for comment, including a request for comment set forth in the **SUPPLEMENTARY INFORMATION** portion of this notice regarding retroactive application of proposed amendments.

The proposed amendments and issues for comment contained in this notice are as follows: (1) Proposed amendment and issues for comment in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56, and the Commission's assessment of the guidelines' treatment of offenses involving terrorism; (2) proposed amendments to a number of guidelines covering controlled substances offenses, including enhancements and downward adjustments to account more adequately for aggravating and mitigating conduct sometimes associated with drug trafficking offenses, and issues for comment, including issues pertaining to offenses involving cocaine base (''crack cocaine''); (3) proposed amendment to provide increased sentencing alternatives in Zone B of the Sentencing Table; and (4) proposed amendment that corrects a technical error made in the November 27, 2001, **Federal Register** notice (66 F.R. 59295) pertaining to the proposed amendment to § 3E1.1 (Acceptance of Responsibility). In addition to the issues for comment that are contained within these proposed amendments, this notice sets forth a separate issue for comment regarding whether to expand § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) to include discharged terms of imprisonment.

DATES: *Written Public Comment.*—Written public comment regarding the amendments set forth in this notice, including public comment regarding retroactive application of any of these proposed amendments, should be received by the Commission not later than March 19, 2002. Written public comment regarding retroactivity of proposed amendments set forth in the November 27, 2001, **Federal Register** notice (See 66 F.R. 59295) should be received by the Commission not later than March 4, 2002.

Public Hearings.—The Commission plans to hold three public hearings on its proposed amendments, one on each of the following days: February 25, 2002; February 26, 2002; and March 19, 2002. The tentative times for the hearings are as follows: 3:00 to 5:00 p.m. on February 25, 2002; 9:30 to 11:30 a.m. on February 26, 2002; and 3:00 to 5:00 p.m. on March 19, 2002. Witnesses at the first two hearings will be invited to testify by the Commission on issues specified by the Commission prior to the hearings. A person who wishes to testify at the third hearing, the subject of which may include any of the proposed amendments, should notify Michael Courlander, at (202) 502–4500, not later than March 9, 2002. Written testimony must be received by the Commission not later than March 9, 2002. Timely submission of written testimony is required for testifying at the public hearing. The Commission requests that, to the extent practicable, commentators submit an electronic version of the comment and of the testimony for the relevant public hearing. The Commission also reserves the right to select persons to testify at any of the hearings and to structure the hearings as the Commission considers appropriate and the schedule permits.

Further information regarding the public hearings, including the location, time, and scope of the hearings, will be provided by the Commission on its website at www.ussc.gov.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions for how the Commission should respond to those issues.

The Commission also requests public comment regarding whether any of the proposed amendments contained in this notice, and the **Federal Register** notice of November 27, 2001, (66 FR 59295), that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 3.4, 4.3, 4.4.

Diana E. Murphy,

Chair.

1. Terrorism

Synopsis of Proposed Amendment

Overview: On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56. Among other things, the Act created a number of new terrorism, money laundering, and currency offenses, and increased the statutory maximum penalties for certain pre-existing offenses. In light of this legislation, the Commission is assessing the Guidelines' treatment of terrorism offenses, and certain money laundering and currency offenses as they may be related to terrorism.

This amendment cycle, the Commission is interested in considering amending the guidelines as they pertain to these newly created offenses and those offenses modified by the Act. Additionally, the Commission is requesting comment regarding the efficacy of guideline 3A1.4, the sentencing enhancement for terrorism. The proposed amendment provides a definition for terrorism for certain money laundering and immigration offenses. In addition, the proposed amendment contains a number of modifications to existing guidelines, the statutory index, the terrorism

adjustment, and provides issues for comment.

Synopsis of Proposed Amendment: This is a multi-part amendment proposed in response to the USA PATRIOT Act of 2001 (the Act) and the Commission's assessment of the guidelines' treatment of offenses involving terrorism. Parts (A) through (E) address offenses that involve, or potentially involve, terrorism. Providing guideline treatment for these offenses in Chapter Two (Offense Conduct) is important, in part, to ensure applicability of the Chapter Three adjustment for terrorism, § 3A1.4. Specifically, Parts (A) through (E) of this amendment provide guideline treatment (or issues for comment) for the following: (A) New predicate offenses to federal crimes of terrorism; (B) other predicate offenses to federal crimes of terrorism that are not currently referenced in the Statutory Index; (C) increases in statutory maximum penalties for predicate offenses to federal crimes of terrorism that currently are referenced in the Statutory Index; (D) penalties for terrorism conspiracies; and (E) issues related to the terrorism adjustment in § 3A1.4.

Part (F) of this amendment addresses money laundering provisions of the Act. Part (G) addresses currency and counterfeiting provisions of the Act. Part (H) addresses miscellaneous issues.

Part (A): New Predicate Offenses to Federal Crimes of Terrorism

Synopsis of Proposed Amendment: This amendment amends Chapter Two, Part A, Subpart 5 (Air Piracy) to include offenses against mass transportation systems under 18 U.S.C. 1993 within the scope of that Subpart and provides references in the Statutory Index to a number of guidelines. Section 1993, added by section 801 of the Act, prohibits (1) willfully wrecking, derailing, setting fire to, or disabling a mass transportation system; (2) willfully or recklessly placing any biological agent or toxin for use as a weapon or destructive device on or near a mass transportation system vehicle or ferry; (3) willfully or recklessly setting fire to, or placing any biological agent or toxin for use as a weapon or destructive device in or near a mass transportation system garage, terminal, structure, supply, or facility; (4) willfully removing appurtenances from, damaging, or otherwise impairing the operation of a mass transportation signal system without authorization; (5) willfully or recklessly interfering with, disabling, or incapacitating any dispatcher, driver, captain, or person employed in dispatching, operating, or maintaining a mass transportation system; (6) committing an act, including the use of a dangerous weapon, with intent to cause death or serious bodily injury to an employee or passenger of a mass transportation system; (7) conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt to do any act prohibited by this section; and (8) attempting, threatening, or conspiring to do any of the above acts. The maximum term of imprisonment is 20 years, or life imprisonment if the offense results in death.

The amendment also includes several issues for comment, including an issue regarding how hoaxes should be treated and an issue regarding how the guidelines should treat offenses involving the conveying of false information and threats under 18 U.S.C. 1993(a)(7) and (8) and under 49 U.S.C. 46507. Section 46507 prohibits (i) conveying or causing to be conveyed false information, knowing the information to be false, concerning an air piracy and similar offenses under title 49, United States Code, and (ii) threatening to commit air piracy or similar offenses under title 49, United States Code, having the apparent determination and will to carry out the threat. The maximum term of imprisonment is 5 years. Currently, section 46507 offenses are not listed in the Statutory Index.

This amendment also references the new offense at 49 U.S.C. 46503 to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant). That offense, created by section 114 of the Aviation and Transportation Security Act, prohibits an individual in an area within a commercial service airport in the United States from assaulting a Federal, airport, or air carrier employee who has security duties within the airport, thereby interfering with the performance of the employee's duties or lessening the ability of that employee from performing those duties. The maximum term of imprisonment is 10 years, or, if the individual used a dangerous weapon in committing the assault or interference, any term of years or life.

The amendment expands the guideline covering nuclear, biological, and chemical weapons, § 2M6.1, to cover new offenses created by section 817 of the Act involving possession of biological agents, toxins, and delivery systems. Specifically, section 817 added a new offense at 18 U.S.C. 175(b), which prohibits a person from knowingly possessing any biological agent, toxin, or delivery system of a type or in a quantity that, under the circumstances, is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The maximum term of imprisonment is 10 years. Section 817 also added a new offense at 18 U.S.C. 175b, which prohibits certain classes of individuals from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any biological agent or toxin, or receiving any biological agent or toxin that has been shipped or transported in interstate or foreign commerce, if the biological agent or toxin is listed as a select agent in applicable federal regulations. The maximum term of imprisonment is 10 years.

The amendment also proposes to amend the Statutory Index to reference 18 U.S.C. 2339 to §§ 2X2.1 (Aiding and Abetting) and 2X3.1 (Accessory After the Fact). This offense prohibits harboring or concealing any person who the defendant knows, or has reasonable grounds to believe, has committed or is about to commit, one of several enumerated offenses. The maximum statutory term of imprisonment is 10 years.

Proposed Amendment (Part (A)):

The title to Chapter Two, Part A, Subpart 5 is amended by adding '', Offenses Against Mass Transportation Systems'' after ''Air Piracy''.

Section 2A5.2 is amended in the title by adding ''; Interference with Dispatch, Operation, or Maintenance of Mass Transportation Vehicle or Ferry'' after ''Attendant''.

Section 2A5.2 is amended by striking subsections (a)(1) and (a)(2) and inserting the following:

''(1) 30, if the offense involved intentionally endangering the safety of: (A) An aircraft; (B) a mass transportation vehicle or a ferry; or (C) any person in, upon, or near an aircraft, a mass transportation vehicle, or a ferry, with the intent to endanger the safety of an aircraft, a mass transportation vehicle, or a ferry, during the course of its operation;

(2) 18, if the offense involved recklessly endangering the safety of: (A) an aircraft; (B) a mass transportation vehicle or a ferry; or (C) any person in, upon, or near an aircraft, a mass transportation vehicle, or a ferry, with the intent to endanger the safety of an aircraft, a mass transportation vehicle, or a ferry, during the course of its operation;''.

The Commentary to § 2A5.2 captioned ''Statutory Provisions'' is amended by inserting ''18 U.S.C. 1993(a)(4), (5), (6);''

before ''49 U.S.C. 46308''; and by inserting ''46503,'' before ''46504''.

The Commentary to § 2A5.2 is amended by inserting before ''Background'' the following:

''Application Note

1. Definition.—For purposes of this guideline, 'mass transportation' has the meaning given that term in 49 U.S.C. 5302(a)(7).''.

The Commentary to § 2A5.2 captioned ''Background'' is amended in the first sentence by striking ''the aircraft and passengers'' and inserting ''an aircraft, a mass transportation vehicle, or a ferry, or any person in, upon, or near an aircraft, a mass transportation system, or a ferry''.

Issues for Comment: The Commission requests comment regarding whether § 2A5.2 should be amended to provide an enhancement or a cross-reference to the homicide guidelines if death results, and also whether a specific offense characteristic should be added if the offense endangered or harmed multiple victims. In order to take into account aggravating conduct under 49 U.S.C. 46503, should § 2A5.2 provide an enhancement for assaulting airport security personnel? Alternatively, should there be a more general enhancement in that guideline for jeopardizing the security of an airport facility, mass transportation vehicle, or ferry? Should the Commission limit application of such an enhancement so that it does not apply to assaults that do not jeopardize the overall safety or security of an airplane, mass transportation vehicle, or ferry?

The Commission also requests comment regarding how the guidelines should treat offenses involving the conveying of false information and threats under 18 U.S.C. 1993(a)(7) and (8) and under 49 U.S.C. 46507. Section 1993(a)(7) and (8) prohibit conveying or causing to be conveyed false information, knowing the information to be false, concerning an attempt to do any act prohibited by this section, and attempting, threatening, or conspiring to do any of the above acts. Section 46507 prohibits (i) conveying or causing to be conveyed false information, knowing the information to be false, concerning an air piracy and similar offenses under title 49, United States Code, and (ii) threatening to commit air piracy or similar offenses under title 49, United States Code, having the apparent determination and will to carry out the threat. Currently, section 46507 offenses are not listed in the Statutory Index. Should the offense levels for such cases be the same as the offense levels that would pertain if the threatened offense (or the offense about which false information had been conveyed) had actually been committed, or should the guidelines provide a reduction in offense level for such cases?

The Commission also requests comment regarding whether any of the base offense levels in § 2A5.2 should be increased to cover offenses under 18 U.S.C. 1993 and 49 U.S.C. 46503.

The Commission generally requests comment on how the guidelines should treat hoaxes concerning attempts to commit any act of terrorism. Should a hoax be treated the same as the underlying offense which was the object of the hoax?

Subsection 2M6.1(a)(2) is amended by striking ''or''.

Subsection 2M6.1(a)(3) is amended by striking the period at the end and inserting ''; or''.

Subsection 2M6.1(a) is amended by adding at the end the following:

''(4) [14–22], if the defendant (A) was a restricted person at the time the defendant committed the instant offense; or (B) is convicted under 18 U.S.C. 175(b) or 175b.''.

The Commentary to § 2M6.1 captioned ''Statutory Provisions'' is amended by inserting ''175b,'' after ''175,''.

The Commentary to § 2M6.1 captioned ''Application Notes'' is amended in Note 1 by inserting after ''18 U.S.C. 831(f)(1).'' the following:

''Restricted person'' has the meaning given that term in 18 U.S.C. 175b(b)(2).''.

Issue for Comment: The Commission requests comment regarding whether the specific offense characteristics in § 2M6.1(b)(1) and (b)(3) should be applicable to offenses under 18 U.S.C. 175b and 175(b).

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 175'' the following new line:

''18 U.S.C. § 175b 2M6.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. § 1992'' the following new lines:

''18 U.S.C. 1993(a)(1) 2K1.4
18 U.S.C. 1993(a)(2) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(3) 2K1.4, 2M6.1
18 U.S.C. 1993(a)(4) 2A5.2, 2B1.1
18 U.S.C. 1993(a)(5) 2A5.2
18 U.S.C. 1993(a)(6) 2A2.1, 2A2.2, 2A5.2''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 2332a'' the following new line:

''18 U.S.C. 2339 2X2.1, 2X3.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''49 U.S.C. 46502(a), (b)'' the following new line:

''49 U.S.C. 46503 § 2A5.2''.

Part (B): Pre-existing Predicate Offenses to Federal Crimes of Terrorism Not Covered by the Guidelines

Synopsis of Proposed Amendment: A number of offenses that currently are enumerated in 18 U.S.C. 2332b(g)(5) as federal crimes of terrorism are not listed in the Statutory Index (Appendix A). This means that the court needs to look for an analogous Chapter Two guideline for these offenses. The amendment proposes a number of Statutory Index references, as well as modifications to various Chapter Two guidelines, for these offenses.

Specifically, 18 U.S.C. 2332b(a)(1), prohibits, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. The maximum statutory penalty for such offenses is life imprisonment. The amendment proposes to reference these offenses to §§ 2A1.1, 2A1.2, 2A1.3, 2A1.4, and 2A2.2, as § 2332b offenses are by definition offenses against the person and therefore are analogous to offenses currently referenced to those guidelines.

The amendment also provides an issue for comment on how the Commission should treat threat cases under 18 U.S.C. 2332b(a)(2), which prohibits threats to commit an offense under 18 U.S.C. 2332b(a)(1). Those offenses prohibit, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. (The amendment also proposes to reference 18 U.S.C. 2332b(a)(2) to §§ 2A1.5 and 2A2.1, to the extent attempt or conspiracy to commit murder is involved.). The maximum term of imprisonment for threats to commit an offense under 18 U.S.C. 2332b(a)(1) is ten years.

This amendment also creates a new guideline, at 2M6.3 (Providing Material Support to Terrorists and Foreign Terrorist Organizations), for the following two offenses:

(1) 18 U.S.C. 2339A, which prohibits the provision of material support or resources to terrorists, knowing or intending that they will be used in the preparation for, or in carrying out, specified crimes (i.e., those designated as predicate offenses for ''federal crimes

of terrorism'') or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation. The maximum term of imprisonment is 15 years.

(2) 18 U.S.C. 2339B, which prohibits the provision of material support or resources to a foreign terrorist organization. The maximum term of imprisonment is 15 years.

An issue for comment is included on how the new guideline proposed to be added at § 2M6.3 should cover the wide variety of conduct encompassed by the offenses at 18 U.S.C. 2339A and 2339B, and whether there exists sufficiently analogous guidelines for these offenses. Further, the Commission requests comment on whether 18 U.S.C. 2339A and 2339B offenses should be referenced to the same or different guidelines. For example, should § 2339A be referenced to § 2X2.1 (Aiding and Abetting) in a case in which the offense occurred prior to the underlying terrorism offense, and be referenced to § 2X3.1 (Accessory After the Fact) in a case in which the offense occurred after the underlying terrorism offense. Should § 2339B be referenced to § 2M5.1?

The amendment also proposes to reference torture offenses under 18 U.S.C. 2340A to §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A2.2 (Aggravated Assault), and 2A4.1 (Kidnapping, Abduction, Unlawful Restraint). The statutory maximum penalty for this offense is 20 years imprisonment, or life imprisonment if death results. ''Torture'' is defined in 18 U.S.C. 2340(1) as ''an act committed by a person under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control''. Although this offense has not been listed in the Statutory Index for some time, reference in the Statutory Index is recommended at this time because the offense is now a predicate offense that may qualify as a ''federal crime of terrorism''.

The amendment also proposes to reference 49 U.S.C. 60123(b) (damaging or destroying an interstate gas or hazardous liquid pipeline facility) to §§ 2B1.1 (Theft, Property Destruction, and Fraud), 2K1.4 (Arson; Property Damage by Use of Explosives), 2M2.1 Destruction of, or Production of Defective, War Material, Premises, or Utilities), and 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities). The maximum penalty is 20 years, or life imprisonment if the offense resulted in the death of any person. Although this offense has not been listed in the Statutory Index for some time, reference in the Statutory Index is recommended at this time because the offense is now a predicate offense that may qualify as a ''federal crime of terrorism''. An issue for comment is included regarding which, if any, of the guidelines listed above are appropriate for these offenses.

Proposed Amendment (Part B):

Chapter Two, Part M, Subpart 6 is amended in the heading by adding at the end ''; Providing Material Support to Terrorists''.

Chapter Two, Part M, Subpart 6, is amended by adding at the end the following:

''§ 2M6.3. Providing Material Support or Resources to Terrorists or Designated Foreign Terrorist Organizations

(a) Base Offense Level: [26][32]

Commentary

Statutory Provisions: 18 U.S.C. 2339A, 2339B.

Application Note:

1. Application of Terrorism Adjustment.—An offense covered by this guideline is not precluded from (A) application of the adjustment in § 3A1.4 (Terrorism), or (B) if the adjustment does not apply, an upward departure under Application Note 3 of § 3A1.4.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 2332a'' the following new lines:

''18 U.S.C. 2332b(a)(1) 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.2

18 U.S.C. 2332b(a)(2) 2A1.5, 2A2.1, 2M6.3

18 U.S.C. 2339A 2M6.3

18 U.S.C. 2339B 2M6.3

18 U.S.C. 2340A 2A1.1, 2A1.2, 2A2.2, 2A4.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''49 U.S.C. 46506'' the following new line:

''49 U.S.C. 60123(b) 2B1.1, 2K1.4, 2M2.1, 2M2.3''.

Issues for Comment: The Commission requests comment on the appropriate treatment in the guidelines for threat cases under 18 U.S.C. 2332b(a)(2), which prohibits threats to commit an offense under 18 U.S.C. 2332b(a)(1). Those offenses prohibit, as part of conduct transcending national boundaries and in certain enumerated circumstances, killing, maiming, committing an aggravated assault, or creating a substantial risk of serious bodily injury by destroying or damaging real or personal property. (The amendment also proposes to reference 18 U.S.C. 2332b(a)(2) to §§ 2A1.5 and 2A2.1, to the extent attempt or conspiracy to commit murder is involved.) The maximum term of imprisonment for threats to commit an offense under 18 U.S.C. 2332b(a)(1) is ten years. Should the offense levels for such threat cases be the same as the offense levels that would pertain if the threatened offense had actually been committed, or should the guidelines provide a reduction in offense levels for such cases? Would a reference to § 2A6.1 (Threatening or Harassing Communications) be appropriate? If so, how should that guideline be amended in order to account for the seriousness of threats under 18 U.S.C. 2332b (e.g., should the base offense level be increased for such offenses)?

The maximum term of imprisonment for providing material support to terrorists under 18 U.S.C. 2339A(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate. Should there be alternative base offense levels and/or specific offense characteristics in the new guideline to provide enhanced punishment for the most serious cases covered by the guideline (e.g., should there be a cross reference to Chapter Two, Part A guidelines if death resulted)? What are the most serious cases? For example, should there be an enhancement for providing material support to a designated foreign terrorist organization? Is, for example, providing lodging to a defendant after the commission of a terrorist offense in order to allow that defendant to escape prosecution less serious than providing weapons to a defendant to enable the defendant to carry out a terrorist offense, or should those two cases be treated the same under the guidelines?

Part (C): Increases to Statutory Maximum Penalties For Predicate Offenses Covered by the Guidelines

Synopsis of Proposed Amendment: Section 810 of the Act increased statutory maximum terms of imprisonment for several offenses. An issue for comment follows regarding whether guideline penalties should be increased in response.

Issue for Comment: The Commission requests comment regarding whether guideline penalties should be increased for any of the following offenses for which statutory maximum terms of

imprisonment were increased by section 810 of the Act. Specifically:

(1) The maximum statutory term of imprisonment for arson of a dwelling under 18 U.S.C. 81 was increased from 20 years to any term of years or life. That offense is covered by § 2K1.4 (Arson; Property Damage by Use of Explosives).

(2) The maximum statutory term of imprisonment for destruction of an energy facility under 18 U.S.C. 1366 was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2B1.1 (Theft, Property Destruction, and Fraud).

(3) The maximum term of imprisonment for providing material support to terrorists under 18 U.S.C. 2339A(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate.

(4) The maximum term of imprisonment for providing material support to designated foreign terrorist organizations under 18 U.S.C. 2339B(a)(a) was increased from 10 years to 15 years, or for any term of years or life if the offense resulted in the death of any person. This amendment proposes a new guideline, § 2M6.3, to cover such offenses. Accordingly, the Commission requests comment regarding whether the offense levels provided for that offense in the proposed new guideline are appropriate.

(5) The maximum statutory term of imprisonment for destruction of national defense materials under 18 U.S.C. 2155(a) was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities).

(6) The maximum statutory term of imprisonment for sabotage of nuclear facilities or fuel under 42 U.S.C. 2284 was increased from 10 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by §§ 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities) and 2M2.3.

(7) The maximum statutory term of imprisonment for willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505 was increased from 15 years to 20 years, or for any term of years or life if the offense resulted in the death of any person. That offense is covered by § 2K1.5 (Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft).

(8) The maximum statutory term of imprisonment for damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123 was increased from 15 years to 20 years, or for any term of years or life if the offense resulted in the death of any person.

Part (D): Penalties for Terrorist Conspiracies

Synopsis of Proposed Amendment: Section 811 of the Act amended the following offenses to provide that a conspiracy to commit any of those offenses shall subject the offender to the same penalties prescribed for the offense, commission of which was the object of the conspiracy: (1) Arson under 18 U.S.C. 81; (2) killings in federal facilities under 18 U.S.C. 930(c); (3) willful or malicious injury to or destruction of communications lines, stations, or systems under 18 U.S.C. 1362; (4) destruction of buildings or property within the maritime of territorial jurisdiction of the United States under 18 U.S.C. 1363; (5) wrecking trains under 18 U.S.C. 1992; (6) providing material support to terrorists under 18 U.S.C. 2339A; (7) torture under 18 U.S.C. 2340A; (8) sabotage of nuclear facilities or fuel under 42 U.S.C. 2284; (9) interference with flight crew members and attendants under 49 U.S.C. 46504; (10) willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505; and (11) damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123(b).

An issue for comment follows regarding whether the Commission should amend § 2X1.1 (Attempt, Solicitation, or Conspiracy) to provide that conspiracies to commit any of these offenses are expressly covered by the applicable Chapter Two offense guidelines.

Issue for Comment: The Commission requests comment regarding the appropriate treatment under the guidelines for conspiracies to commit certain terrorist offenses. Specifically, section 811 of the Act amended the following offenses to provide that a conspiracy to commit any of those offenses shall subject the offender to the same penalties prescribed for the offense, commission of which was the object of the conspiracy: (1) arson under 18 U.S.C. 81; (2) killings in federal facilities under 18 U.S.C. 930(c); (3) willful or malicious injury to or destruction of communications lines, stations, or systems under 18 U.S.C. 1362; (4) destruction of buildings or property within the maritime of territorial jurisdiction of the United States under 18 U.S.C. 1363; (5) wrecking trains under 18 U.S.C. 1992; (6) providing material support to terrorists under 18 U.S.C. 2339A; (7) torture under 18 U.S.C. 2340A; (8) sabotage of nuclear facilities or fuel under 42 U.S.C. 2284; (9) interference with flight crew members and attendants under 49 U.S.C. 46504; (10) willfully or recklessly carrying a weapon or explosive on an aircraft under 49 U.S.C. 46505; and (11) damaging or destroying an interstate gas or hazardous liquid pipeline facility under 49 U.S.C. 60123(b).

Should the Commission amend § 2X1.1 (Attempt, Solicitation, or Conspiracy) and the heading of each applicable Chapter Two Offense guideline to provide that conspiracies to commit any of these offenses are expressly covered by the applicable Chapter Two offense guideline? Should there be a special instruction in § 2X1.1 (Attempt, Solicitation, or Conspiracy) to treat these offenses the same as the substantive offense which was the object of the conspiracy if the offense involved terrorism?

Part (E): Terrorism Adjustment in § 3A1.4

Synopsis of Proposed Amendment: This amendment adds an invited structured upward departure in § 3A1.4 (Terrorism) for offenses that involve domestic terrorism or international terrorism but do not otherwise qualify as offenses that involved or were intended promote ''federal crimes of terrorism'' for purposes of the terrorism adjustment in § 3A1.4. An issue for comment also follows regarding whether terrorist offenses should be sentenced at or near the statutory maximum for the offense of conviction.

Proposed Amendment (Part (E):

The Commentary to § 3A1.4 is amended by striking Application Note 1 in its entirety and inserting the following:

''1. Federal Crime of Terrorism Defined—For purposes of this guideline, 'federal crime of terrorism' has the meaning given that term in 18 U.S.C. 2332b(g)(5). Accordingly, in order for the adjustment under this guideline to apply, the offense (A) must be a felony that involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B);

and (B) pursuant to 18 U.S.C. 2332b(g)(5)(A), must have been calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct.''.

The Commentary to § 3A1.4 is amended in Note 2 by inserting ''Computation of Criminal History Category.—'' before ''Under''.

The Commentary to § 3A1.4 is amended by adding at the end the following:

''3. Upward Departure Provision.—By the terms of the directive to the Commission in section 730 of Pub. L. 104–132, the adjustment provided by this guideline applies only to Federal crimes of terrorism. However, there may be cases that involve international terrorism (as defined in 18 U.S.C. 2331(1)) or domestic terrorism (as defined in 18 U.S.C. 2331(5)) but to which the adjustment under this guideline technically does not apply. For example, there may be cases in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B) but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. In such cases an upward departure would be warranted, except that the resulting sentence may not exceed the top of the guideline range that would result if the adjustment under this guideline had been applied.''.

Issues for Comment: The Commission generally requests comment on whether the current terrorism enhancement at § 3A1.4 addresses the sentencing of terrorists appropriately. Should the Commission amend § 3A1.4 to clarify that the adjustment may apply in the case of offenses that occurred after the commission of the federal crime of terrorism, e.g., a case in which the defendant, in violation of 18 U.S.C. 2339A, concealed an individual who had committed a federal crime of terrorism.

As an alternative to the upward departure provision in proposed Application Note 3 of § 3A1.4, should the Commission provide an additional enhancement for terrorism offenses to which the current adjustment does not apply? If so, should this additional enhancement be the same as, or less severe than the current adjustment at § 3A1.4?

Part (F): Money Laundering Offenses

Synopsis of Proposed Amendment: This amendment amends § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports) to incorporate the following new money laundering provisions created by the Act. The amendment proposes to reference these provisions to the structuring guideline and proposes a number of changes to that guideline in order to more fully incorporate the new offenses. Specifically:

(1) 31 U.S.C. 5318A(b), created by section 311 of the Act, authorizes the Secretary of the Treasury to (i) require domestic financial institutions to maintain records, file reports, or both, concerning transactions with financial institutions or jurisdictions outside the United States if the Secretary finds that such transactions are of ''primary money laundering concern''; (ii) require domestic financial institutions to provide identifying information about payable-through accounts on such transactions that are of ''primary money laundering concern''; and (iii) prohibit domestic financial institutions from opening or maintaining a payable-through account on behalf of a foreign banking institution, if any such transactions could be conducted. The applicable penalty provision, 31 U.S.C. 5322, provides for a maximum term of imprisonment of 5 years, or ten years if the defendant engaged in a pattern of unlawful activity.

(2) 31 U.S.C. 5318(i), added by section 312 of the Act, requires financial institutions that established or maintains a private banking account or correspondent account in the United States for a non-United States person, to establish due diligence policies, procedures, and controls that are reasonably designed to detect and report money laundering through those accounts, and a new subsection (h), which prohibits financial institutions from establishing or maintaining a correspondent account for a foreign bank that does not have a physical presence in any country. The applicable penalty provision, 31 U.S.C. 5322, provides for a maximum term of imprisonment of 5 years, or ten years if the defendant engaged in a pattern of unlawful activity.

The amendment revises the definition of ''value of the funds'' for purposes of calculating the base offense level in § 2S1.3(a) in order to incorporate these offenses into the guideline.

The amendment also adds an enhancement if the defendant committed the offense as part of a pattern of unlawful activity. This enhancement takes into account the enhanced penalty provisions (imprisonment of not more than ten years) under 31 U.S.C. 5322(b) for such conduct if the pattern of unlawful activity involved more than $100,000 in a 12-month period.

An issue for comment follows regarding how the Commission should treat these offenses.

(3) 31 U.S.C. 5331, added by section 365 of the Act, which requires nonfinancial trades or businesses to report the receipt of more than $10,000 in coins and currency in one transaction or two or more related transactions. The maximum term of imprisonment is five years, or ten years if the defendant engaged in a pattern of unlawful activity.

(4) 31 U.S.C. 5332, added by section 371 of the Act, prohibits concealing on one's person or any conveyance more than $10,000 in currency or other monetary instruments in order to evade currency reporting requirements (i.e., bulk cash smuggling). The maximum term of imprisonment is not more than five years. An issue for comment follows regarding whether an enhancement for bulk cash smuggling should be added to the guidelines.

In addition, section 315 of the Act expanded the predicate offenses under 18 U.S.C. 1956 to include public corruption. An issue for comment follows regarding whether the money laundering guideline, § 2S1.1, should be amended to add public corruption offenses to the list of offenses that qualify for the 6-level enhancement in subsection (b)(1) because of the seriousness of these offenses.

The amendment also proposes to add a definition of ''terrorism'' for purposes of the 6-level enhancement in § 2S1.1(b)(1). The definition of terrorism is added for consistency of application within the guidelines.

Proposed Amendment (Part (F))

The Commentary to § 2S1.1 captioned ''Application Notes'' is amended in Note 1 by adding at the end the following new paragraph:

'''Terrorism'' means domestic terrorism (as defined in 18 U.S.C. 2331(5)), a federal crime of terrorism (as defined in 18 U.S.C. 2332b(g)(5)), or

international terrorism (as defined in 18 U.S.C. 2331(1)).''.

Section 2S1.3 is amended in the title by adding at the end ''; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts''.

Section 2S1.3(b) is amended by redesignating subdivision (2) as subdivision (3); and by inserting after subdivision (1) the following:

''(2) If the defendant committed the offense as part of a pattern of unlawful activity [involving more than $100,000 in a 12-month period], increase by 2 levels.''.

The Commentary to § 2S1.3 captioned ''Statutory Provisions'' is amended by inserting ''5318, 5318A(b),'' after ''5316,''; and by inserting '', 5331, 5332'' after ''5326''.

The Commentary to § 2S1.3 captioned ''Application Note'' is amended by striking the text of Note 1 and inserting the following:

''Definition of 'Value of the Funds'.—

(A) In General.—Except as provided in subdivision (B), the 'value of the funds' for purposes of subsection (a) means the amount of the funds involved in the structuring or reporting conduct.

(B) Exceptions.—If the offense involved a correspondent account or payable-through account prohibited or restricted under 31 U.S.C. 5318A(b)(5), the 'value of the funds' means the total amount of funds routed through that account on behalf of a foreign jurisdiction, foreign financial institution, or class of transaction that the Secretary of the Treasury found to be of primary money laundering concern.

If the offense involved a correspondent account for or on behalf of a foreign bank that does not have a physical presence in any country, in violation of 31 U.S.C. 5318, the 'value of the funds' means the total amount of funds routed through that account on behalf of that foreign bank.

The terms ''correspondent account'' and ''payable-through account'' have the meaning given those terms in 31 U.S.C. 5318A(e)(1).''.

The Commentary to § 2S1.3 captioned ''Application Note'' is amended in the heading by striking ''Note'' and inserting ''Notes''; and by adding at the end the following new note:

''2. Enhancement for Pattern of Unlawful Activity.—For purposes of subsection (b)(2), a pattern of unlawful activity means [at least two separate and unrelated occasions of unlawful activity] [unlawful activity involving a total amount of more than $100,000 in a 12-month period], without regard to whether any such occasion occurred during the course of the offense or resulted in a conviction for the conduct that occurred on that occasion.''.

The Commentary to § 2S1.3 captioned ''Background'' is amended in the first sentence by striking ''The'' and inserting ''Some of the'' and by adding at the end the following new paragraph:

''Other offenses covered by this guideline, under 31 U.S.C. 5318 and 5318A, relate to records, reporting and identification requirements, and prohibited accounts involving certain foreign jurisdictions, foreign institutions, foreign banks, and other account holders.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''31 U.S.C. 5316'' the following new lines:

''31 U.S.C. 5318 2S1.3
31 U.S.C. 5318A(b) 2S1.3''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''31 U.S.C. 5326'' the following new lines:

''31 U.S.C. 5331 2S1.3
31 U.S.C. 5332 2S1.3''.

Issues for Comment: Offenses under 31 U.S.C. 5318A(b)(5) prohibit domestic financial institutions from opening or maintaining a payable-through account on or behalf of a foreign banking institution, if any such transactions could be conducted. Offenses under 31 U.S.C. 5318(j) prohibit financial institutions from establishing or maintaining a correspondent account for a foreign bank that does not have a physical presence in any country. How should the guidelines treat such offenses? Specifically, should such offenses be referenced to § 2S1.3? If so, does § 2S1.3 adequately account for all the conduct prohibited by these offenses? For example, for purposes of computing the base offense level under subsection (a), should the definition of the ''value of the funds'' be revised to include the total amount of the funds maintained in a payable-through account or in a prohibited correspondent account for a foreign bank, or would such a calculation overestimate the seriousness of the offense? Is there a more appropriate method to determine the value of the funds in such cases?

Offenses under 31 U.S.C. 5332, added by section 371 of the Act, prohibit concealing on one's person or any conveyance more than $10,000 in currency or other monetary instruments in order to evade currency reporting requirements (i.e., bulk cash smuggling). Congress has indicated that these offenses are more serious than failing to file a customs report, even though the statutory maximum terms of imprisonment are the same for both of these offenses. See H. Rept. 107–250. The Commission requests comment on whether an enhancement should be added to § 2S1.3 (Structuring Transactions to Evade Reporting Requirements) if the offense involved bulk cash smuggling.

In addition, section 315 of the Act expanded the predicate offenses under 18 U.S.C. 1956 to include foreign public corruption. The Commission requests comment regarding whether the money laundering guideline, § 2S1.1, should be amended to add all forms of public corruption offenses to the list of offenses that qualify for the 6-level enhancement in subsection (b)(1) because of the seriousness of these offenses.

Part (G): Currency and Counterfeiting Offenses

Synopsis of Proposed Amendment: Sections 374 and 375 of the Act increase the statutory maximum terms of imprisonment for a number of offenses involving counterfeiting domestic and foreign currency and obligations. The Act increased the statutory maximum terms of imprisonment to 20 years or 25 years for all counterfeiting offenses that had a statutory maximum term of imprisonment of 10 years or 15 years. Penalties for counterfeiting foreign bearer obligations that had a maximum term of imprisonment of one, three, and five years were increased to ten years or, in some cases, 20 or 25 years. In response, an issue for comment is provided regarding whether guideline penalties should be increased in light of the increased statutory maximum penalties.

Issue for Comment: Section 374 of the Act changed or otherwise increased the statutory maximum penalties for counterfeiting domestic currency obligations as follows: the statutory maximum penalty for violations of 18 U.S.C. 470 (counterfeit acts committed outside the United States) was changed from 20 years to the punishment ''provided for the like offense within the United States;'' the statutory maximum penalty for violations of 18 U.S.C. 471 (obligations or securities of the United States) was increased from 15 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 472 (uttering counterfeit obligations or securities) was increased from 15 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 473 (dealing in counterfeit obligations or securities) was increased from 10 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 476 (taking impressions of tools used for obligations or securities) was increased

from 10 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 477 (possessing or selling impressions of tools used for obligations or securities) was increased from 10 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 484 (connecting different parts of different notes) was increased from 5 years to 10 years; and the statutory maximum penalty for violations of 18 U.S.C. 493 (bonds and obligations of certain lending agencies) was increased from 5 years to 10 years. The Commission requests comment regarding whether the guideline penalties for these offenses should be increased in light of the increased statutory maximum penalties.

Section 375 of the Act increased the statutory maximum penalties for counterfeiting foreign currency obligations as follows: the statutory maximum penalty for violations of 18 U.S.C. 478 (foreign obligations or securities) was increased from 5 years to 10 years; the statutory maximum penalty for violations of 18 U.S.C. 479 (uttering foreign obligations) was increased from 3 years to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 480 (possessing foreign counterfeit obligations) was increased from 1 year to 20 years; the statutory maximum penalty for violations of 18 U.S.C. 481 (plates, stones, or analog, digital, or electronic images for counterfeiting foreign obligations or securities) was increased from 5 years to 25 years; the statutory maximum penalty for violations of 18 U.S.C. 482 (foreign bank notes) was increased from 2 years to 20 years; and finally, the statutory maximum penalty for violations of 18 U.S.C. 483 (uttering foreign counterfeit bank notes) was increased from 1 year to 20 years. The Commission requests comment regarding whether the guideline penalties for these offenses should be increased in light of the increased statutory maximum penalties.

Currently, offenses under 18 U.S.C. 478, 479, 480, 481, 482, and 483 are referenced to § 2B1.1. Should these offenses also be referenced to § 2B5.1, and should that guideline be reworked in order to cover the counterfeiting of foreign obligations?

Additionally, the guidelines provide in §§ 2B1.1(b)(8)(B) a two-level enhancement, with a minimum offense level of level 12, if a substantial portion of a fraudulent scheme was committed from outside the United States. Should this enhancement be amended to provide an alternative prong if the offense was intended to promote terrorism?

Finally, the guidelines provide in § 2B5.1(b)(5) a two-level enhancement if any part of the offense was committed outside the United States. Should this enhancement be amended to provide an alternative prong if the offense was intended to promote terrorism? Should an additional enhancement be provided if the offense was intended to promote terrorism, and if so, what should be the extent of the enhancement?

Part (H): Miscellaneous Amendments

Synopsis of Proposed Amendment: This part of the amendment proposes to address eight miscellaneous issues related to terrorism:

(1) It provides a definition of terrorism for purposes of the prior conviction enhancement in the illegal reentry guideline, § 2L1.2. For consistency, the definition is the same definition proposed to be added to the money laundering guideline and to the Chapter Three terrorism adjustment.

(2) It provides two options for amending the obstruction of justice guideline, § 3C1.1, in response to section 319(d) of the Act. Section 319(d) amends the Controlled Substances Act at 21 U.S.C. 853(e) to require a defendant to repatriate any property that may be seized and forfeited and to deposit that property in the registry of the Court or with the U.S. Marshal. That section also states that the failure to comply with a protective order and an order to repatriate property ''may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.''

(3) It amends the guideline on terms of supervised release, § 5D1.2, in response to section 812 of the Act, which authorizes a term of supervised release of any term of years or life for a defendant convicted of a federal crime of terrorism the commission of which resulted in, or created a substantial risk of, death or serious bodily injury to another person.

(4) It amends the theft, property destruction and fraud guideline, § 2B1.1, to delete the special instruction pertaining to the imposition of not less than six months imprisonment for a defendant convicted under section 1030 of title 18, United States Code. Section 814(f) of the Act directed the Commission to amend the guidelines ''to ensure that any individual convicted of a violation of section 1030 of title 18, United States Code, can be subjected to appropriate penalties, without regard to any mandatory minimum term of imprisonment.''

(5) It adds a reference in the Statutory Index to the bribery guideline, § 2C1.1, for the new offense created by section 329 of the Act. Section 329 prohibits a Federal official or employee, in connection with administration of the money laundering provisions of the Act, to corruptly demand, seek, receive, accept, or agree to receive or accept anything of value in return for being influenced in the performance of an official act, being influenced to commit or aid in committing any fraud on the United States, or being induced to do or omit to do any act in violation of official duties. The term of imprisonment is not more than 15 years.

(6) It amends § 2M5.1 (Evasion of Export Controls) to incorporate 18 U.S.C. 2332d, which prohibits a person, knowing or having reasonable cause to know that a country is designated under the Export Administration Act as a country supporting international terrorism, to engage in a financial transaction with the government of that country. The amendment also proposes to provide for application of the base offense level of level 26, for 18 U.S.C. 2332d offenses.

(7) It proposes an issue for comment regarding how the Commission should treat an offense under 18 U.S.C. 1036. That offense, added by section 2 of the Enhanced Federal Security Act of 2000, Pub. L. 106–547, prohibits, by fraud or pretense, the entering or attempting to enter any real property, vessel, or aircraft of the United States, or secure area of an airport. The maximum penalty is five years imprisonment.

(8) It provides an issue for comment on how the guidelines should treat offenses involving fraudulent statements under 18 U.S.C. 1001, particularly such offenses committed in connection with acts of terrorism.

Proposed Amendment (Part (H)):

Section 2B1.1 is amended by striking subsection (d) in its entirety.

The Commentary to 2B1.1 captioned ''Background'' is amended by striking the last paragraph in its entirety.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 1, paragraph (B), by adding at the end the following new paragraph:

''(vi) 'Terrorism offense' means any offense involving domestic terrorism (as defined in 18 U.S.C. 2331(5)), a federal crime of terrorism (as defined in 18 U.S.C. 2332b(g)(5)), or international terrorism (as defined in 18 U.S.C. 2331(1)).''.

Section 2M5.1 is amended in the title by adding at the end ''; Financial Transactions with Countries Supporting International Terrorism''.

Section 2M5.1(a)(1) is amended by inserting ''(A)'' after ''if'' and by

inserting '', or (B) the offense involved a financial transaction with a country supporting international terrorism;'' after ''evaded''.

The Commentary to § 2M5.1 captioned ''Statutory Provisions'' is amended by inserting ''18 U.S.C. 2332d;'' before ''50 U.S.C. App. secs. 2401–2420''.

The Commentary to § 2M5.1 captioned ''Application Notes'' is amended by adding at the end the following:

''4. For purposes of subsection (a)(1)(B), ''a country supporting international terrorism'' means a country designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405).''.

[Option 1

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 4 by striking the period at the end of paragraph (i) and inserting a semicolon; and by inserting after paragraph (i) the following:

''(j) failing to comply with a restraining order or injunction issued pursuant to 21 U.S.C. 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. 853(p).''.]

[Option 2

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 4 by adding at the end the following new paragraph:

''This adjustment may also apply if the defendant failed to comply with a restraining order or injunction issued pursuant to 21 U.S.C. 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. 853(p).''.]

Section 5D1.2(a) is amended by adding at the end the following new paragraph:

''Notwithstanding subdivisions (1) through (3), the length of the term of supervised release shall be [not less than three years][life] for any offense listed in 18 U.S.C. 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''18 U.S.C. 2332a'' the following new line:

''18 U.S.C. 2332d 2M5.1''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to ''50 U.S.C. App. § 2410'' the following new line:

''Section 329 of the USA 2C1.1''.
Patriot Act of 2001,
Pub. L. 107–56.''.

Issues for Comment: The Commission requests comment regarding how the Commission should treat an offense under 18 U.S.C. 1036. That offense, added by section 2 of the Enhanced Federal Security Act of 2000, Pub. L. 106–547, prohibits, by fraud or pretense, the entering or attempting to enter any real property, vessel, or aircraft of the United States, or secure area of an airport. The maximum penalty is five years imprisonment. Should such offenses be referenced to § 2B2.3 (Trespass)? If so, how should that guideline be amended to take into account the seriousness of these offenses (e.g., should the enhancement at § 2B2.3(b)(1) be amended to cover trespasses occurring with respect to a vessel or aircraft of the United States, a secure area of an airport, and/or a secure area of a mass transportation system)?

The Commission also requests comment on how the guidelines might more appropriately treat offenses under 18 U.S.C. 1001, particularly such offenses that are committed in connection with acts of terrorism. Currently, offenses under 18 U.S.C. 1001 (making false statements) are referenced in the Statutory Index to § 2B1.1 (Theft, Property Destruction, and Fraud), and a cross reference at § 2B1.1(c)(3) calls for application of another Chapter Two guideline if the conduct set forth in the count of conviction under section 1001 establishes an offense specifically covered by that other Chapter Two guideline.

2. Drugs

Synopsis of Proposed Amendment

In General

The Commission has begun a long term assessment of the guidelines pertaining to drug offenses and is studying how it might amend the guidelines to (A) decrease somewhat the contribution of drug quantity on penalty levels for drug trafficking offenses generally; (B) more adequately account for aggravating and mitigating conduct that may be unrelated to drug quantity; (C) address various circuit conflicts that pertain to the drug guidelines; and (D) improve generally the overall operation of the drug guidelines.

This amendment cycle, the Commission is particularly interested in considering amending the guidelines as they pertain to offenses involving cocaine base (''crack cocaine''). In deciding how best to address various concerns that have been expressed regarding the penalties for crack cocaine offenses, the Commission is considering adding a number of enhancements to the primary drug trafficking guideline, § 2D1.1, to account more adequately for aggravating conduct sometimes associated not only with crack cocaine offenses, but also with drug trafficking offenses generally. The Commission is paying particular attention to the considerations stated in Pub. L. 104–38, the legislation enacted in 1995 disapproving the prior Commission's amendment which, among other things, would have equalized the penalties based on drug quantity for crack cocaine and powder cocaine. The proposed amendment contains a number of enhancements that directly address many of those considerations, especially those that focus on violence, and apply across drug type.

As part of its assessment, and in light of the proposed enhancements which, if adopted, would apply across drug type, the Commission also is exploring how it might amend the guidelines to decrease penalties in appropriate cases in which the current penalty structure may overstate the culpability of the defendant. Accordingly, the Commission is studying a number of options, including a maximum base offense level for offenders who qualify for a mitigating role adjustment and a two level reduction for offenders who meet the ''safety valve'' criteria set forth in § 5C1.2 and have no prior convictions.

Base Offense Level

Mitigating Role Adjustment

The proposed amendment provides a maximum base offense level of [24–32] if the defendant qualifies for an adjustment under § 3B1.2 (Mitigating Role). This base offense level cap is designed to limit somewhat the exposure of low level drug offenders to increased penalties based on drug quantity alone. The impact of the proposed base offense level cap will vary depending on the level at which the cap is set. If level 32 is adopted as the maximum base offense level for these defendants, 805 cases would be affected, and their average sentence would decrease from 82 months to 60 months. If the Commission adopted level 26, 2,062 cases would be affected, and their average sentence would decrease from 60 months to 37 months.

Two issues for comment pertaining to mitigating role follow the proposed amendment. The first issue invites comment regarding whether application of the maximum base offense level should be limited in some manner, for example to defendants who receive a minimal role adjustment under § 3B1.2 or who do not receive enhancements for aggravating conduct such as weapon involvement or bodily injury. The second issue invites comment regarding

whether the Commission also should address three circuit conflicts that remain pertaining to mitigating role, and if so, how should those conflicts be resolved. The issue then requests comment regarding whether the Commission should provide guidance on whether particular drug offenders who perform certain drug trafficking functions (e.g., courier or mule) should or should not receive a mitigating role adjustment.

Enhancements

Violence

The proposed amendment also contains a number of enhancements. First, the proposed amendment contains a number of modifications to § 2D1.1 to more adequately account for violence sometimes associated with drug trafficking offenses. Subsection (b)(1) currently provides a two level enhancement for offenses involving possession of a dangerous weapon, but it does not differentiate penalties to account for the defendant's weapon use, the seriousness of the weapon use, or the type and number of firearms involved.

Accordingly, the proposed amendment modifies subsection (b)(1) to provide a graduated enhancement of [2] to [6] levels for weapon involvement to account more adequately for these factors. Specifically, proposed subsection (b)(1)(A) provides a [6] level enhancement if the defendant discharged a firearm. Proposed subsection (b)(1)(B) provides a [4] level enhancement if the defendant (i) brandished or otherwise used a dangerous weapon (including a firearm); or (ii) possessed a firearm described in 18 U.S.C. 921(a)(30) or 26 U.S.C. 5845(a). Proposed subsection (b)(1)(C) provides (i) a [2] level enhancement if a dangerous weapon (including a firearm) was possessed; or (ii) a [4] level enhancement if eight or more firearms were possessed. An option for an upward departure provision if the number of firearms involved in the offense substantially exceeded eight firearms is provided in proposed Application Note 3.

The enhanced penalties provided by this part of the amendment are likely to apply in a minority of cases. In fiscal year 2000, 21.3 percent of crack cocaine cases received either the enhancement for possession of a dangerous weapon in § 2D1.1(b)(1) or a penalty for a violation of 18 U.S.C. 924(c), 18.7 percent of methamphetamine cases, 10.6 percent of powder cocaine cases, 6.6 percent of heroin cases, and 5.9 percent of marijuana cases. The proposed heightened penalties in subsection (b)(1) would apply in a subset of those cases.

Proposed subsection (b)(2) provides a graduated enhancement of [2] to [8] levels for [death] or bodily injury, depending on the degree of injury. The enhancement does not apply to injury resulting from the use of the controlled substance because subsection (a) already provides heightened base offense levels that account for death or serious bodily injury resulting from such use. Proposed subsection (b)(2) provides an option for an eight level enhancement for death. The option is provided because the cross reference to § 2A1.1 (First Degree Murder) provided by subsection (d) does not apply if a victim was killed under circumstances that would not constitute murder under 18 U.S.C. 1111 (e.g., manslaughter). Proposed subsection (b)(2) also provides a bracketed option that limits the cumulative adjustments from subsections (b)(1) and (b)(2) to [10][12] levels because weapon use and bodily injury are so interrelated.

Two issues for comment follow the proposed amendment pertaining to these proposed enhancements. The first issue invites comment regarding whether subsections (b)(1) and (b)(2) also should provide minimum offense levels, particularly in light of the minimum offense level currently provided in subsection (b)(5) for methamphetamine and amphetamine manufacturing offenses that create a substantial risk of harm to human life. The second issue invites comment regarding whether the Commission also should provide an enhancement that would apply if the offense involved an express or implied threat of death or bodily injury, and if so, what would be an appropriate increase and should the enhancement be applied cumulatively to the proposed enhancements in subsections (b)(1) and (b)(2).

Protected Locations, Underage or Pregnant Individuals

The primary drug trafficking guideline, § 2D1.1, currently does not provide an enhancement for drug distribution near protected locations or distribution involving underage or pregnant individuals. Section § 3B1.4 (Using a Minor to Commit a Crime) provides a two level enhancement if the defendant used or attempted to use a person less than eighteen years of age to commit the offense. Enhanced penalties also are provided in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals), but a conviction for a statutory violation of drug trafficking in a protected location (21 U.S.C. 860) or to underage or pregnant individuals (21 U.S.C. 859 and 861) is necessary in order for § 2D1.2 to be applied.

The proposed amendment consolidates § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) into § 2D1.1, and makes conforming changes to the Statutory Index for offenses currently referenced to § 2D1.2 (21 U.S.C. 849, 859, 860, 861, and 963). Proposed subsection (b)(3) provides a two level enhancement if the defendant (A) was convicted of an offense under 21 U.S.C. 849[, 859] 860[, or 861]; (B) distributed to a pregnant individual [knowing, or having a reasonable cause to believe, that the individual was pregnant at that time]; (C) distributed to a minor individual [knowing, or having a reasonable cause to believe, that the individual was a minor at that time]; or (D) used a minor individual to commit the offense or to assist in avoiding detection or apprehension for the offense. The requirement that the defendant be convicted of a statutory violation of drug trafficking in a protected location is retained because otherwise the enhancement could apply in an overly broad manner, particularly for trafficking offenses occurring in dense urban areas.

A minimum offense level of [26] is provided if subdivision (C) or (D) applies. This minimum offense level is required by the directive to the Commission contained in section 6454 of the Anti-Drug Abuse Act of 1988. An issue for comment follows the proposed amendment that invites comment regarding whether the minimum offense level should be extended to apply to any of the other subdivisions of proposed subsection (b)(3).

The impact of this enhancement should be limited but it will allow increased sentences in appropriate cases. Compared to the 22,639 defendants sentenced under § 2D1.1 in fiscal year 2000, only 196 were convicted under any of the statutes referenced to § 2D1.2. The majority of those cases (89.3%) were for violations of 21 U.S.C. 860 for trafficking in a protected location. There likely would be no net penalty increase from this part of the proposed amendment because the proposed amendment still would require a conviction under that statute. Also, in fiscal year 2000, only 131 defendants received the adjustment in § 3B1.4 (Use of a Minor) and, for those cases, no net increase results from this part of the proposed amendment because proposed Application Note 22 expressly provides that if proposed

subsection (b)(3)(D) applies, § 3B1.4 does not apply. This proposed application note corresponds to Application Note 2 in § 3B1.4, which instructs that if the Chapter Two offense guideline incorporates use of a minor to commit a crime, § 3B1.4 should not be applied.

Prior Criminal Conduct

Proposed subsection (b)(8) provides a [2][4] level increase if the defendant committed any part of the instant offense after sustaining one felony conviction of [either a crime of violence or] a controlled substance offense. Chapter Four operates generally to provide increased punishment for past criminal conduct and includes a number of particular provisions often applicable in drug trafficking cases, such as the career offender provision. The proposed enhancement, however, may more adequately account for certain prior criminal conduct, particularly drug trafficking offenses. Proposed subsection (b)(8) also presents an option that extends application of the enhancement to convictions for prior crimes of violence.

Proposed Application Note 23 defines ''controlled substance offense'' and ''crime of violence'' as those terms are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1) and defines ''felony conviction'' as a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. (The definitions also are consistent with the approach taken in § 2K2.1.) Proposed Application Note 23 also presents an option that limits application of proposed subsection (b)(8) to felony convictions that receive criminal history points under § 4A1.1(a), (b), or (c). Additionally, proposed Application Note 23 expressly provides that prior felony convictions that trigger application of proposed subsection (b)(8) also are counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

An issue for comment follows the proposed amendment that invites comment regarding whether a minimum offense level should be provided in proposed subsection (b)(8), similar to the minimum offense level provided in § 2K2.1(a)(4).

Reduction for No Prior Convictions

The proposed amendment provides, in proposed subsection (b)(9)(B), an additional reduction of two levels for defendants who previously have not been convicted of any offense and who currently qualify for a two level reduction for meeting the criteria set forth in subdivisions (1) through (5) of § 5C1.2(a). This additional reduction is available only to defendants who meet that criteria and who previously have not been convicted of any offense. For purposes of applying the reduction, ''convicted'' means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere, without regard to the applicable time periods set forth in § 4A1.2(e). [The definition also includes juvenile adjudications.] Although tribal, foreign, and military convictions are excluded for criminal history purposes under Chapter Four, such convictions are considered ''convictions'' for purposes of applying the proposed reduction, and any such conviction would disqualify the defendant from receiving the additional two level reduction. Expunged convictions and convictions for certain petty offenses set forth in § 4A1.2(c)(2) are specifically excluded from the definition. By permitting the court to consider tribal, foreign, and military convictions, as well as permitting the court to consider convictions outside of the applicable time periods from Chapter Four, the proposed amendment differentiates penalties for defendants with zero or one criminal history point and defendants who do not have any prior convictions.

This portion of the proposed amendment also clarifies the application of the current two level reduction in § 2D1.1(b)(6) (redesignated as subsection (b)(9) by this proposed amendment) by stating more clearly that the reduction applies regardless of whether the defendant was subject to a mandatory minimum term of imprisonment. Additionally, the proposed amendment makes clear that § 5C1.2(b), which provides a minimum offense level of 17 for certain defendants, is not pertinent to the application of the current two level reduction.

Maintaining Drug-Involved Premises and Ecstasy Offenses

Concerns have been raised that § 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy) does not adequately punish certain defendants convicted under 21 U.S.C. 856 (Establishment of manufacturing operations). That statute originally was enacted to target so-called ''crack houses'' and more recently has been applied to defendants who promote drug use at commercial dance parties frequently called ''raves.''

Currently, § 2D1.8 provides two alternative base offense level computations. For defendants who participate in the underlying controlled substance offense, the offense level from § 2D1.1 applies pursuant to § 2D1.8(a)(1). For defendants who had no participation in the underlying controlled substance offense other than allowing use of the premises, subsection (a)(2) provides a four level reduction from the offense level from § 2D1.1 and a maximum offense level of 16. Because many club owners and rave promoters who do not participate in the underlying offense nonetheless facilitate, promote and profit, at least indirectly, from the use of illegal drugs (primarily 3,4-methylenedioxymethamphetamine, more commonly known as MDMA or ecstasy), the maximum offense level of 16 may not adequately account for the seriousness of these offenses.

The proposed amendment addresses this concern by consolidating § 2D1.8 into § 2D1.1 and making a conforming change to the Statutory Index. The proposed consolidation will have no impact on the offense level for cases in which § 2D1.8(a)(1) previously applied. Proposed Application Note 24 effectively retains the four level reduction currently provided in § 2D1.8(a)(2) by providing that a minimal role adjustment under § 3B1.2 shall apply if the defendant (a) was convicted under 21 U.S.C. 856; and (b) had no participation in the underlying controlled substance offense other than allowing use of the premises.

The maximum offense level for those defendants for which § 2D1.8(a)(2) applied, however, will be increased because the level 16 base offense level cap currently provided in § 2D1.8(a)(2) effectively will be increased to [24–32], the proposed maximum base offense level for defendants who qualify for a mitigating role adjustment. In addition, under the proposed consolidation, the enhancements contained in § 2D1.1 can apply to those defendants. Although the overall impact of the proposed consolidation on drug trafficking sentences will be minimal (only 69 defendants were sentenced under § 2D1.8 in fiscal year 2000), 95.6 percent of defendants sentenced under § 2D1.8 received a base offense level of 16 and likely will be affected by the proposed consolidation.

The proposed amendment also amends the Typical Weight Per Unit (Dose, Pill, or Capsule) Table in Application Note 11 of § 2D1.1 to more accurately reflect the type and quantity

of ecstasy typically trafficked and consumed. Specifically, the proposed amendment adds a reference in the Typical Weight Per Unit Table for MDMA and sets the typical weight at 250 milligrams per pill. Ecstasy usually is trafficked and used as MDMA, not MDA, the drug currently listed in the table. In addition, the proposed amendment revises upward the typical weight for MDA from 100 milligrams to 250 milligrams and deletes the asterisk that previously indicated that the weight per unit shown is the weight of the actual controlled substance, and not the weight of the mixture or substance containing the controlled substance. The absence of MDMA from the table and the use of an estimate of the actual weight of the controlled substance (MDA) rather than an estimate of the weight of the mixture or substance containing the controlled substance may create an incentive to improperly apply the MDA estimate in cases in which the drug involved is MDMA, resulting in underpunishment in some cases, and generally resulting in unwarranted disparity.

Simple Possession of Crack Cocaine

Defendants convicted of possession of five or more grams of a mixture or substance containing cocaine base receive a mandatory minimum sentence of five years under 21 U.S.C. 844(a). The mandatory minimum for simple possession is unique to crack cocaine. The guidelines incorporate the mandatory minimum in § 2D2.1 (Unlawful Possession; Attempt or Conspiracy) by providing a cross reference at subsection (b)(1) to § 2D1.1 if the defendant is convicted of possession of more than five grams of crack. The proposed amendment deletes the cross reference to the drug trafficking guideline, but retains the heightened base offense level of 8.

The cross reference to the drug trafficking guideline is deleted to more adequately differentiate between the seriousness of an offense involving the distribution of crack cocaine and an offense merely involving simple possession of crack cocaine, with no intent to distribute. The impact of the proposed deletion of the cross reference will have minimal impact on drug penalties overall because a total of only 67 defendants have been cross referenced from § 2D2.1 to § 2D1.1 in the past three fiscal years.

Proposed Amendment

Section 2D1.1 is amended in the title by inserting ''Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Renting or Managing a Drug Establishment;'' after ''Offenses);''.

Subsection 2D1.1(a)(3) is amended by striking ''below'' and inserting '', except that if the defendant qualifies for an adjustment under § 3B1.2 (Mitigating Role), the base offense level under this subsection shall not exceed level [24–32]''.

Subsection 2D1.1(b)(1) is amended to read as follows:

''(1) (Apply the greatest):

(A) If the defendant discharged a firearm, increase by [6] levels.

(B) If the defendant (i) brandished or otherwise used a dangerous weapon (including a firearm); or (ii) possessed a firearm described in 18 U.S.C. 921(a)(30) or 26 U.S.C. § 5845(a), increase by [4] levels.

(C) If (i) a dangerous weapon (including a firearm) was possessed, increase by [2] levels; or (ii) eight or more firearms were possessed, increase by [4] levels.''.

Subsection 2D1.1(b)(5) is amended by striking ''greater'' and inserting ''greatest''.

Subsection 2D1.1(b) is amended by redesignating subdivision (6) as subdivision (9); by redesignating subdivisions (2) through (5) as subdivisions (4) through (7), respectively; by inserting the following after subsection (b)(1):

''(2) If the offense involved [death or] bodily injury other than [death or] bodily injury that resulted from the use of the controlled substance, increase the offense level according to the seriousness of the injury:

Degree of injury	Increase in level
(A) Bodily Injury	add [2] levels.
(B) Serious Bodily Injury.	add [4] levels.
(C) Permanent or Life-Threatening Bodily Injury.	add [6] levels.
[(D) Death	add [8] levels.].

[The cumulative adjustments from subsections (b)(1) and (b)(2) shall not exceed [10][12] levels.]

(3) If the defendant (A) was convicted of an offense under 21 U.S.C. 849, [859,] 860 [, or 861]; (B) distributed a controlled substance to a pregnant individual [knowing, or having a reasonable cause to believe, that the individual was pregnant at that time]; (C) distributed a controlled substance to a minor individual [knowing, or having a reasonable cause to believe, that the individual was a minor at that time]; or (D) used a minor individual to commit the offense or to assist in avoiding detection or apprehension for the offense, increase by [2] levels. If subdivision (C) or (D) applies and the offense level is less than [26], increase to level [26].'';

and by inserting after redesignated subdivision (7) (formerly subdivision (5)) the following:

''(8) If the defendant committed any part of the instant offense after sustaining one felony conviction of [either a crime of violence or] a controlled substance offense, increase by [2][4] levels.''.

Subsection 2D1.1(b)(9) (formally subdivision (6)) is amended by inserting ''(A)'' before ''If the'' and by adding at the end the following:

''(B) If (i) subsection (A) applies; and (ii) the defendant previously has not been convicted of any offense, decrease by 2 levels.''.

The Commentary to § 2D1.1 captioned ''Statutory Provisions'' is amended by inserting ''849, 856, 859, 860, 861,'' before ''960(a)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by striking Note 3 in its entirety and inserting the following:

''3. Application of Subsection (b)(1).—

(A) Definitions.—For purposes of this subsection:

'Brandished', 'dangerous weapon', 'firearm', and 'otherwise used' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

'A firearm described in 18 U.S.C. 921(a)(30)' does not include a weapon described in 18 U.S.C. 922(v)(3).

(B) Possession of Dangerous Weapon or Firearm.—Subsections (b)(1)(B)(ii) and (b)(1)(C) apply if a dangerous weapon or firearm was present, unless it is clearly improbable that the dangerous weapon or firearm was connected with the offense. For example, the enhancement would not apply if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet.

[(C) Upward Departure Based on Number of Firearms.—If the number of firearms involved in the offense substantially exceeded eight firearms, an upward departure may be warranted.]''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in the second paragraph of Note 8 by striking ''(b)(2)(B)'' and inserting ''(b)(4)(B)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 11 in the table captioned ''Typical Weight Per Unit (Dose, Pill, or Capsule) Table'' in the line referenced to ''MDA'' by striking the asterisk after ''MDA''; and by striking ''100 mg'' and inserting ''250 mg''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 11 in the table captioned ''Typical Weight Per Unit (Dose, Pill, or Capsule) Table'' by inserting after the line referenced to ''MDA'' the following:

''MDMA 250 mg''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 19 by striking ''(b)(5)(A)'' both places it appears and inserting ''(b)(7)(A)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 20 by striking ''(b)(5)(B)'' and inserting ''(b)(7)(B)''; and by striking ''subsection (b)(5)(C)'' and inserting ''subsection (b)(7)(C)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''21. Subsection (b)(2) Definitions.''For purposes of subsection (b)(2), ''bodily injury'', ''permanent or life-threatening bodily injury'', and ''serious bodily injury'' have the meaning given those terms in Application Note 1 of § 1B1.1 (Application Instructions).

22. Non-applicability of § 3B1.4.—If subsection (b)(3)(D) applies, do not apply § 3B1.4 (Using a Minor to Commit a Crime).

23. Application of Subsection (b)(8).—

(A) Definitions.—For purposes of this subsection:

'Controlled substance offense' has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

['Crime of violence' has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.]

'Felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (e.g., a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

(B) [Qualifying Prior Felony Conviction and] Computation of Criminal History Points.—[For purposes of applying subsection (b)(8), use only a prior felony conviction that receives criminal history points under § 4A1.1(a), (b), or (c).] A prior felony conviction that results in application of subsection (b)(8) also is counted for purposes of determining criminal history points under Chapter 4, Part A (Criminal History).

24. Application of § 3B1.2 for Defendant Convicted Under 21 U.S.C. 856.—If the defendant (A) was convicted under 21 U.S.C. 856; and (B) had no participation in the underlying controlled substance offense other than allowing use of the premises, an adjustment under § 3B1.2(a) for minimal role in the offense shall apply.

25. Application of Subsection (b)(9).—

(A) In General.—Subsection (b)(9)(A) applies regardless of whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the application of subsection (b)(9)(A).

(B) Subsection (b)(9)(B).—For purposes of this subdivision, 'convicted'—

(i) means that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere, without regard to the applicable time periods set forth in § 4A1.2(e);

[(ii)includes a juvenile adjudication other than an adjudication for a juvenile status offense or truancy;] and

(iii)does not include an expunged conviction or a conviction for any offense set forth in § 4A1.2(c)(2).''.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the fifth paragraph by striking ''Specific Offense Characteristic (b)(2)'' and inserting ''Subsection (b)(4)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the ninth paragraph by striking ''(b)(5)(A)'' and inserting ''(b)(7)(A)''.

The Commentary captioned ''Background'' is amended in the tenth paragraph by striking ''(b)(5)(B)'' and inserting ''(b)(7)(B)''.

The Commentary to § 2D1.1 captioned ''Background'' is amended by inserting after the fourth paragraph the following:

''The minimum offense level applicable to subsection (b)(3)(C) and (D) implements the direction to the Commission in Section 6454 of the Anti-Drug Abuse Act of 1988.''.

Chapter Two, Part D, is amended by striking § 2D1.2 and its accompanying commentary in its entirety.

Chapter Two, Part D, is amended by striking § 2D1.8 and its accompanying commentary in its entirety.

Section 2D2.1 is amended by striking subsection (b)(1) in its entirety and by redesignating subsection (b)(2) as subsection (b)(1).

The Commentary to § 2D2.1 captioned ''Background'' is amended by striking the second paragraph in its entirety.

Appendix A (Statutory Index) is amended by striking the following:

''21 U.S.C. 845 2D1.2
21 U.S.C. 845a 2D1.2
21 U.S.C. 845b 2D1.2''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 846'' by striking ''2D1.2,''; and by striking ''2D1.8,''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 849'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 856'' by striking ''2D1.8''; and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 859'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 860'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 861'' by striking ''2D1.2'' and inserting ''2D1.1''.

Appendix A (Statutory Index) is amended in the line referenced to ''21 U.S.C. 963'' by striking ''2D1.2,''; and by striking ''2D1.8,''.

Issues for Comment

(1) The Commission requests comment concerning the sentencing of defendants convicted of cocaine base (''crack cocaine'') offenses under the sentencing guidelines. Currently, five grams of crack cocaine triggers a five year mandatory minimum sentence and is assigned a base offense level of 26 under the guidelines, and 50 grams of crack cocaine triggers a ten year mandatory minimum sentence and is assigned a base offense level of 32. This penalty structure has raised several concerns. First, concern has been expressed that the penalty structure does not adequately differentiate between crack cocaine offenders who engage in aggravating conduct and those crack cocaine offenders who do not. This lack of differentiation is caused by the fact that, for crack cocaine offenses, the Drug Quantity Table accounts for aggravating conduct that is sometimes

associated with crack cocaine (e.g., violence). Building these aggravating factors into the Drug Quantity Table essentially penalizes all crack cocaine offenders to some degree for aggravating conduct, even though a minority of crack cocaine offenses may involve such aggravating conduct. As a result, the penalty structure does not provide adequate differentiation in penalties among crack cocaine offenders and often results in penalties too severe for those offenders who do not engage in aggravating conduct. It has been suggested by some that proportionality could be better served (i) by providing sentencing enhancements that target offenders who engage in aggravating conduct such as violence or distribution in protected locations or to minors or pregnant individuals; and (ii) by reducing the penalties based solely on the quantity of crack cocaine to the extent that the Drug Quantity Table takes into account aggravating conduct. Such an approach may better provide proportionate sentencing because it will enable the court to punish more severely the defendant who actually engages in aggravating conduct.

Second, concerns have been expressed that the current penalty structure for crack cocaine offenses overstates the drug trafficking function of crack cocaine offenders. In general, the statutory penalty structure for most, but not all, drug offenses was designed to provide a five year sentence for a serious drug trafficker (often a manager and supervisor of retail level trafficking) and a ten year sentence for a major drug trafficker (often the head of the organization that is responsible for creating and delivering very large quantities). The guidelines have incorporated this structure in § 2D1.1 by linking the Drug Quantity Table to statutory mandatory minimums. The drug quantities that trigger the five year and ten year penalties for crack cocaine offenses, however, are thought by many to be too small to be associated with a serious or major trafficker, respectively. As a result, many low level retail crack traffickers are subject to penalties that may be more appropriate for higher level traffickers.

Third, concerns have been expressed that these problems may result in an unwarranted disparate impact on minority populations, particularly African-Americans, as they comprise the majority of offenders sentenced for crack cocaine offenses.

The Commission requests comment regarding whether the current penalty structure for crack cocaine offenses is appropriate, or whether some other penalty structure is more appropriate for guideline purposes. In deciding how these various concerns might be addressed, the Commission is reviewing Pub. L. 104–38, the legislation enacted in 1995 disapproving the prior Commission's submitted amendment, which among other things equalized the penalties based on drug quantity for crack cocaine and powder cocaine. Any proposed change might contain enhancements that address a number of the considerations contained in that legislation, especially violence associated with drug trafficking. Other considerations set forth in Pub. L. 104–38 already may be adequately accounted for in the guidelines (e.g., obstruction of justice).

The Commission also requests comment regarding the 100:1 drug quantity ratio for crack cocaine and powder cocaine offenses. Under the current penalty structure of the sentencing guidelines and 21 U.S.C. 841, 100 times as much powder cocaine as crack cocaine is required to trigger the same five and ten year penalties based on drug quantity. The Commission requests comment regarding whether the 100:1 drug quantity ratio is appropriate, or whether some alternative ratio is more appropriate for guideline purposes. If so, how should the alternative ratio be achieved (i.e., by decreasing the penalties for crack cocaine, increasing the penalties for powder cocaine, or a combination of both) and why? How would any such change to the penalty structure for crack cocaine effect crime rates and deterrence? How would such change impact minority populations? Additionally, the Commission requests comment regarding whether the penalties for crack cocaine offenses should be more severe, less severe, or equal to the penalties for heroin or methamphetamine offenses. In particular, how do the addictiveness of crack cocaine, short term and long term physiological and psychological effects on the user, the violence associated with its use or distribution, its distribution trafficking pattern, and any secondary health consequences of its use (e.g., its effect on an infant who has been exposed prenatally to crack cocaine) compare to those associated with heroin or methamphetamine?

(2) The proposed amendment provides enhancements that address harms caused by violence often associated with drug trafficking offenses. Specifically, the proposed weapon enhancement in subsection (b)(1) provides graduated penalties for weapon involvement, depending on the use, type, and number of weapons involved. Similarly, the proposed bodily injury enhancement in subsection (b)(2) provides graduated penalties depending on the degree of injury involved in the offense. The Commission requests comment regarding whether either or both of these two enhancements also should provide minimum offense levels. If so, what is the appropriate minimum offense level for the conduct described in each subdivision? For example, should the Commission provide a minimum offense level of 27 in the case of a defendant who discharges a firearm (subdivision (b)(1)(A)), on the basis that the discharge of a firearm creates a risk of harm similar to that which is accounted for by the minimum offense level currently provided in subsection (b)(5)? Should the Commission provide a minimum offense level of 27 for offenses involving permanent or life threatening injury for similar reasons?

The Commission also requests comment regarding whether, in addition to the proposed enhancements pertaining to violence, it also should provide an enhancement that would apply if the offense involved an express or implied threat of death or bodily injury. (Note that 18 U.S.C. 3553 and § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases) preclude a ''safety valve'' reduction for any defendant who uses violence or credible threats of violence in connection with the offense.) If so, what would be an appropriate increase and should the enhancement be applied cumulatively to the proposed enhancements in subsections (b)(1) and (b)(2)?

(3) The proposed amendment consolidates §§ 2D1.2 (Drug Offense Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy) and 2D1.1 and also provides a new enhancement in § 2D1.1(b)(3) to cover the conduct previously covered by § 2D1.2. That enhancement provides a minimum offense level of 26 for offenses in which the defendant distributed a controlled substance to a minor or used a minor to commit the offense or to assist in avoiding detection or apprehension for the offense. This minimum offense level complies with the directive to the Commission in section 6454 of the Anti-Drug Abuse Act of 1988 and maintains the penalties that currently exist for such offenses under § 2D1.2. The Commission requests comment regarding whether it should extend this minimum offense level to the other conduct contained in proposed § 2D1.1(b)(3).

(4) Subsection (b)(8) of the proposed amendment provides a [two][four] level enhancement if the defendant

committed any part of the instant offense after sustaining one felony conviction for either a crime of violence or a controlled substance offense. The Commission requests comment regarding whether proposed subsection (b)(8) also should provide a minimum offense level. If so, what offense level would be appropriate?

(5) Subsection (a)(3) of the proposed amendment provides a maximum base offense level of [24–32] for a defendant who qualifies for an adjustment under § 3B1.2 (Mitigating Role). The Commission requests comment regarding whether application of this maximum base offense level should be limited to only defendants who receive an adjustment for minimal role in the offense (as opposed to an adjustment for either minimal role or minor role in the offense). Additionally, should application of the maximum base offense level be predicated on the absence of certain aggravating factors, such as bodily injury or dangerous weapon possession? Should any other limitation apply?

(6) The Commission recently amended § 3B1.2 (Mitigating Role) to resolve a circuit conflict regarding whether a defendant who is accountable under § 1B1.3 (Relevant Conduct) only for conduct in which the defendant was personally involved, and who performs a limited function in concerted criminal activity, is precluded from consideration of a mitigating role adjustment under § 3B1.2. See USSG Appendix C (Amendment 635, effective November 1, 2001). Under the approach adopted by the Commission, even in a case in which a defendant is liable under § 1B1.3 only for conduct in which the defendant was personally involved (e.g., drug quantities personally handled by the defendant), the court can apply the traditional § 3B1.2 analysis to determine whether the defendant should receive a reduction for mitigating role.

The amendment, however, did not address three additional circuit conflicts pertaining to mitigating role:

(A) Whether, in determining if the defendant is substantially less culpable than the ''average participant'', the court should assess the defendant's conduct in relation not only to the conduct of co-conspirators, but also to the conduct of a hypothetical defendant who performs similar functions in similar offenses involving multiple participants. *Compare United States* v. *Ajmal*, 67 F.3d 12, 18 (2d Cir. 1995) (holding that defendant only played a minor role in the offense if he was less culpable than his co-conspirators as well as the average participant in such a crime); *United States* v. *Thomas*, 932 F.2d 1085, 1092 (5th Cir. 1991) (holding that defendant was not entitled to minor role adjustment because his role ''as greater than the minimal participation exercised by the defendant to whom we have previously allowed a downward adjustment''); *United States* v. *Caruth*, 930 F.2d 811, 815 (10th Cir. 1991) (''The Guidelines permit courts not only to compare a defendant's conduct with that of others in the same enterprise, but also with the conduct of an average participant in that type of crime.''); *United States* v. *Daughtrey*, 874 F.2d 213, 216 (4th Cir. 1989) (holding that the court should measure both the relative culpability of each participant in relation to the relevant conduct and the defendant's acts and relative culpability against an objective standard): *United States* v. *Rotolo*, 950 F.2d 70, 71 (1st Cir. 1991) (distinguishing between aggravating and mitigating roles and suggesting that ''substantially less culpable than the average participant'' means an objective comparison between the defendant and average person engaged in such conduct); *United States* v. *Owusu*, 199 F.3d 329, 337 (6th Cir. 2000) (to qualify for a minor role reduction, ''a defendant must be less culpable than most other participants and substantially less culpable than the average participant''); *United States* v. *Westerman*, 973 F.2d 1422 (8th Cir. 1992) (whether role in the offense adjustments are warranted is to be determined not only by comparing the acts of each participant in relation to the relevant conduct for which the participant is held accountable, § 1B1.3, but also by measuring each participant's individual acts and relative culpability against the elements of the offense of conviction) *with United States* v. *Rojas-Millan*, 234 F.3d 464, 473 (9th Cir. 2000) (rejected the consideration of comparisons against the hypothetical ''average participant'' in the type of crime involved); *United States* v. *Scroggins*, 939 F.2d 416 (7th Cir. 1991) (ruled that a mitigating role assessment must include a comparison of the acts of each participant in relation to the relevant conduct for which the participant is held accountable under § 1B1.3); *United States* v. *Valencia*, 907 F.2d 671 (7th Cir. 1990) (the § 3B1.2 adjustment requires us to focus on the defendant's ''role in the offense,'' rather than unspecified criminal conduct that is not part of the offense).

(B) Whether, in determining if a mitigating role adjustment is warranted, the court may consider only the relevant conduct for which the defendant is held accountable at sentencing, or whether it may also consider ''expanded'' relevant conduct (additional conduct that would appear to be properly includable under § 1B1.3 but was not considered in determining the defendant's offense level). *Compare United States* v. *James*, 157 F.3d 1218, 1220 (10th Cir. 1998) (holding that defendant's role in the offense is determined on the basis of the relevant conduct attributed to him in calculating his base offense level); *United States* v. *Burnett*, 66 F.3d 137, 140 (7th Cir. 1995) (same); *United States* v. *Atanda*, 60 F.3d 196, 199 (5th Cir. 1995) (per curiam) (same); *United States* v. *Lampkins*, 47 F.3d 175, 180 (7th Cir. 1995) (same); *United States* v. *Gomez*, 31 F.3d 28, 31 (2d Cir. 1994) (per curiam) (same); *United States* v. *Lucht*, 18 F.3d 541, 555–56 (8th Cir. 1994) (same); *United States* v. *Olibrices*, 979 F.2d 1557, 1560 (D.C. Cir. 1992) (''To take the larger conspiracy into account only for purposes of making a downward adjustment in the base level would produce the absurd result that a defendant involved both as a minor participant in a larger distribution scheme for which she was not convicted, and as a major participant in a smaller scheme for which she was convicted, would receive a shorter sentence than a defendant involved solely in the smaller scheme.'') with *United States* v. *Assisi-Zapata*, 148 F.3d 236, 240–41 (3d Cir. 1998) (relying on this Court's panel opinion in *De Varan* and holding that a court must examine all relevant conduct even if defendant is sentenced only for own acts); *United States* v. *Rails*, 106 F.3d 1416, 1419 (9th Cir.) (recognizing that ''[the defendant's role in relevant conduct may provide a basis for an adjustment even if that conduct is not used to calculate the defendant's base offense level'' but holding that defendant was ''not entitled to a reduction in his sentence simply because he was tied to a larger drug trafficking scheme''), *cert. denied*, 520 U.S. 1282 (1997); *United States* v. *Demers*, 13 F.3d 1381, 1383 (9th Cir. 1994) (declining ''to restrict the scope of relevant conduct on which a downward adjustment may be based to the relevant conduct that is included in the defendant's base offense level.'').

(C) Whether the court may depart downward from the applicable guideline offense level for defendants who, but for the law enforcement status of other participants, would have received a mitigating role adjustment under § 3B1.2. *Compare United States* v. *Speenburgh*, 990 F.2d 72, 75 (2d Cir. 1993) (if a district court would have decreased the defendant's offense level under section 3B1.2 had the other

person involved in the offense been criminally responsible, it should likewise have the discretion to depart downward between two and four levels, based on the defendant's culpability relative to that of the Government agent); *United States* v. *Bierley*, 922 F.2d 1061 (3d Cir. 1990) (''when an adjustment for Role in the Offense is not available by strict application of the Guideline language, the court has power to use analogic reasoning to depart from the guidelines when the basis for departure is conduct similar to that encompassed in the Role in the Offense Guideline.''); *United States* v. *Valdez-Gonzalez*, 957 F.2d 643, 648 (9th Cir. 1992), (''[I]n view of the limited application of § 3B1.2 minimal participant adjustment, the Sentencing Commission had failed to consider adequately the role of the defendants in conduct surrounding the offense of conviction'') *with United States* v. *Costales*, 5 F.3d 480 (11th Cir. 1993) (held that a defendant was not entitled to an adjustment or ''analogous'' downward departure from the applicable guideline range where the defendant was the only ''criminally responsible'' participant in a crime).

The proposed amendment's inclusion of a maximum base offense level in § 2D1.1 for a defendant who qualifies for an adjustment under § 3B1.2 raises the issue of whether the Commission also should address some or all of these remaining circuit conflicts. The Commission therefore requests comment regarding whether, in conjunction with the proposed maximum base offense level for mitigating role defendants, it should resolve any of these circuit conflicts and, if so, how should the Commission resolve them. If the Commission does address these issues of circuit conflict, should the Commission also amend § 3B1.2 to provide guidance on whether particular drug offenders who perform certain drug trafficking functions (e.g., courier or mule) should or should not receive a mitigating role adjustment?

3. Alternatives to Imprisonment

Synopsis of Amendment: This amendment provides three options to increase sentencing alternatives in Zone C of the Sentencing Table (Chapter Five, Part A).

Currently, under §§ 5B1.1 and 5C1.1, the court has three options when sentencing a defendant whose offense level is in Zone B. The court may impose (A) a sentence of imprisonment; (B) a sentence of probation with a condition of confinement sufficient to satisfy the minimum of the applicable guideline range; or (C) a ''split-sentence'' in which the defendant must serve at least one month of imprisonment followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range.

When the defendant's offense level is in Zone C, the court may impose either (A) a sentence of imprisonment; or (B) a ''split-sentence'' in which the defendant must serve at least one-half of the minimum of the applicable guideline range followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range.

Option One amends the Sentencing Table by combining Zones B and C, thereby providing offenders at offense levels 11 and 12 with the sentencing options currently available in Zone B: (A) a probation sentence with a condition of confinement sufficient to satisfy the minimum of the applicable guideline range; and (B) one month imprisonment followed by a term of supervised release with a condition of confinement sufficient to satisfy the remainder of the minimum of the applicable guideline range (a ''split-sentence''). This option reduces the amount of imprisonment required for the ''split-sentence'' from four or five (at offense levels 11 and 12, respectively) months to one month.

Option Two also increases sentencing alternatives in Zone C of the Sentencing Table by combining Zones B and C, thereby providing offenders at offense levels 11 and 12 with additional sentencing options similar to Option One. This option differs from Option One in that it limits the use of home detention for defendants in which the minimum of the guideline range is at least eight months (i.e., current Zone C). In such cases, the defendant must satisfy the minimum of the applicable guideline range by some form of confinement, but, unlike Option I, the defendant must serve at least half of that minimum in a form of confinement other than home detention. This ensures that these more serious offenders will serve at least eight or ten (at offense levels 11 and 12, respectively) months in some form of confinement, of which at least four or five (at offense levels 11 and 12, respectively) months shall be served in some form of confinement other than home detention.

Option Three also increases sentencing alternatives in Zone C of the Sentencing Table. However, it differs from Option One and Option Two in that it limits the expansion of the sentencing options available in Zone B to offenders in criminal history Category I of Zone C of the Sentencing Table. This option provides these less serious offenders with the same sentencing options available to offenders in Zone B. Under this option, offenders in Categories II through VI will not benefit from additional sentencing alternatives.

Proposed Amendment

Option 1

The Sentencing Table in Chapter Five, Part A, is amended by striking the lines between Zones B and C; by redesignating Zones B and C as Zone B; and by redesignating Zone D as Zone C.

The Commentary to § 5B1.1 is amended in subdivision (a) of Note 1 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5B1.1 is amended in subdivision (b) of Note 1 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; and by striking ''where'' and inserting ''in a case in which''.

The Commentary to § 5B1.1 is amended in Note 1 by redesignating subdivisions (a) and (b) as subdivisions (A) and (B), respectively.

The Commentary to § 5B1.1 is amended in Note 2 by striking ''Where'' and inserting ''In a case in which''; by striking ''or D''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)''.

Section 5C1.1(c)(1) is amended by striking ''or''.

Section 5C1.1(f) is amended by striking ''Zone D'' and inserting ''Zone C''.

Section 5C1.1 is amended by striking subsection (d) in its entirety; and by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in the first paragraph of Note 2 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''; and by striking ''Where'' and inserting ''In a case in which''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 3 by striking ''where'' each place it appears and inserting ''in a case in which''; in the first paragraph by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; in paragraph (C) by striking ''must'' and

inserting ''shall''; and in the last paragraph by inserting ''of '' after ''two months''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking Note 4 in its entirety; and by redesignating Notes 5 through 8 as Notes 4 through 7, respectively.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 4 (formerly Note 5) by striking ''(e)'' and inserting ''(d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 6 (formerly Note 7) by striking ''subsections (c) and (d)'' and inserting ''subsection (d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 7 (formerly Note 8) by striking ''(f)'' and inserting ''(e)''; by striking ''where'' and inserting ''in a case in which''; by striking ''Zone D'' and inserting ''Zone C''; by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is twelve months or more)''; and by striking ''subsection (e)'' and inserting ''subsection (d)''.

Option Two

The Sentencing Table in Chapter Five, Part A, is amendment by striking the lines between Zones B and C; by redesignating Zones B and C as Zone B; and by redesignating Zone D as Zone C.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (a) of Note 1 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (b) of Note 1 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; by striking ''In such cases'' and inserting ''(i) Except as provided in subdivision (ii)''; by striking ''where'' and inserting ''in a case in which''; and by inserting after ''at least two months.'' the following:

''The court, of course, may impose a sentence at a point within that 2–7 month range that is higher than the minimum sentence. For example, a sentence of probation with a condition requiring six months of community confinement or home detention (under subsection (c)(3)) would be sufficient to satisfy the requirements of this subdivision.

(ii) The court may impose probation in a case in which the minimum term of the applicable guideline range is at least eight months, but only if the court imposes a condition (I) that the defendant shall serve a period of confinement sufficient to satisfy the minimum term of imprisonment specified in the applicable guideline range; except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the offense level is 11 and the criminal history category is I, the guideline range from the Sentencing Table is 8–14 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least eight months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement or intermittent confinement (or a combination of community confinement and intermittent confinement totaling at least four months)). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court may impose a sentence of probation with any combination of community confinement, intermittent confinement, or home detention, as long as at least four of those months are served in a form of confinement other than home detention.''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 1 by redesignating subdivisions (a) and (b) as subdivisions (A) and (B), respectively.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''Where'' and inserting ''In a case in which''; by striking ''or D''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)''.

Section 5C1.1(c)(1) is amended by striking ''or''.

Section § 5C1.1(c) is amended by striking subsection (2) in its entirety and by inserting the following:

''(2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (d), except that (A) at least one month shall be satisfied by actual imprisonment; and (B) the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention, except that if the minimum term of the applicable guideline range is at least eight months, at least one-half of that minimum term shall be served in a form of confinement other than home detention; or''.

Section § 5C1.1(c)(3) is amended by striking ''(e)'' and inserting ''(d) sufficient to satisfy the minimum term of imprisonment specified in the guideline range, except that if the minimum term of the applicable guideline range is at least eight months, at least one-half of that minimum term shall be served in a form of confinement other than home detention.''.

Section § 5C1.1 is amended by striking subsection (d) in its entirety; and by redesignating subsections (e) and (f) and subsections (d) and (e), respectively.

Redesignated section § 5C1.1(e) (formerly § 5C1.1(f)) is amended by striking ''Zone D'' and inserting ''Zone C''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''; and by striking ''Where'' and inserting ''In a case in which''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking Note 3 in its entirety; and by inserting the following:

''3. Subsection (c) provides that in a case in which the applicable guideline range is in Zone B of the Sentencing Table , the court has three options:

(A) It may impose a sentence of imprisonment.

(B) (i) Except as provided in subdivision (ii), the court may impose probation only if it imposes a condition or combination of conditions requiring a period of community confinement, home detention, or intermittent confinement sufficient to satisfy the minimum term of imprisonment specified in the guideline range. For example, in a case in which the offense level is 7 and the criminal history category is II, the guideline range from the Sentencing Table is 2–8 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least two months of community confinement, home detention, or intermittent confinement, or a combination of community confinement, home detention, and intermittent confinement totaling at least two months. The court, of course, may impose a sentence at a point within that 2–7 month range that is higher than the minimum sentence. For example, a sentence of probation with a condition

requiring six months of community confinement or home detention (under subsection (c)(3)) would be sufficient to satisfy the requirements of this subdivision.

(ii) The court may impose probation in a case in which the minimum term of the applicable guideline range is at least eight months, but only if the court imposes a condition (I) that the defendant shall serve a period of confinement sufficient to satisfy the minimum term of imprisonment specified in the applicable guideline range; except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the offense level is 11 and the criminal history category is I, the guideline range from the Sentencing Table is 8–14 months. In such a case, the court may impose a sentence of probation only if it imposes a condition or conditions requiring at least eight months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement or intermittent confinement (or a combination of community confinement and intermittent confinement totaling at least four months)). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court may impose a sentence of probation with any combination of community confinement, intermittent confinement, or home detention, as long as at least four of those months are served in a form of confinement other than home detention.

(C) (i) Except as provided in subdivision (ii), it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, at least one month shall be satisfied by actual imprisonment and the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention. For example, in a case in which the guideline range is 4–10 months, a sentence of imprisonment of one month followed by a term of supervised release with a condition requiring three months of community confinement or home detention would satisfy the minimum term of imprisonment specified in the guideline range. The court, of course, may impose a sentence at a point within that 4–10 month range that is higher than the minimum sentence. For example, a sentence of two months of imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (under subsection (c)(2)) would be within the guideline range.

(ii) If the minimum term of the applicable guideline range is at least eight months, it may impose a sentence of imprisonment that includes a term of supervised release with a condition that requires community confinement or home detention. In such case, (I) at least one month shall be satisfied by actual imprisonment, (II) the remainder of the minimum term specified in the guideline range must be satisfied by community confinement or home detention, except that at least one-half of that minimum term shall be served in a form of confinement other than home detention. For example, in a case in which the applicable guideline range is 8–14 months, the court must impose a sentence of actual imprisonment of one month followed by a term of supervised release requiring a condition or conditions of at least seven months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement). The court, of course, may impose a sentence at a point within that 8–14 month range that is higher than the minimum sentence. For example, in a case in which the court imposes a sentence of 14 months, the court must impose a sentence of actual imprisonment of at least one month followed by a term of supervised release requiring a condition or conditions of at least thirteen months of confinement, at least four months of which shall be in a form other than home detention (e.g., community confinement).''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking Note 4 in its entirety.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by redesignating Notes 5 through 8 as Notes 4 through 7, respectively.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 4 (formerly Note 5) by striking ''(e)'' and inserting ''(d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 6 (formerly Note 7) by striking ''subsections (c) and (d)'' and inserting ''subsection (d)''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended in redesignated Note 7 (formerly Note 8) by striking ''(f)'' and inserting ''(e)''; by striking ''where'' and inserting ''in a case in which''; by striking ''Zone D'' and inserting ''Zone C''; and by striking ''subsection (e)'' and inserting ''subsection (d)''.

Option Three

Section § 5B1.1(a)(2) is amended by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (a) of Note 1 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in subdivision (b) of Note 1 by striking ''Where'' and inserting ''In a case in which''; by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)''; and by striking ''where'' and inserting ''in a case in which''.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 1 by redesignating paragraphs (a) and (b) as paragraphs (A) and (B), respectively.

The Commentary to § 5B1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''Where'' and by inserting ''In a case in which''; by striking ''Zone C or'' and inserting ''criminal history Category II, III, IV, V, or VI of Zone C, or any criminal history category of Zone''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)''.

Section § 5C1.1(c) is amended by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''; and in subdivision (c)(1) by striking ''or''.

Section § 5C1.1(d) is amended by inserting ''criminal history Category II, III, IV, V, or VI of'' after ''is in''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended by striking ''where'' each place it appears and inserting ''in a case in which''.

The Commentary to § 5C1.1 is amended in Note 2 by striking ''Where'' and inserting ''In a case in which''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months)''.

The Commentary to § 5C1.1 is amended in Note 3 by inserting '', or in criminal history Category I of Zone C,'' after ''Zone B''; and by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline

range is at least one but not more than six months)''.

The Commentary to § 5C1.1 is amended in Note 4 by inserting ''criminal history Category II, III, IV, V, or VI of'' after ''is in''; and by striking ''(i.e., the minimum term specified in the applicable guideline range is eight, nine, or ten months)''.

The Commentary to § 5C1.1 is amended in Note 8 by striking ''(i.e., the minimum term of imprisonment specified in the applicable guideline range is twelve months or more)''.

4. Discharged Term of Imprisonment

Issue for Comment: The Commission requests comment regarding whether subsections (b) and (c) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) should be expanded to apply to discharged terms of imprisonment. If so, how should this be accomplished? Alternatively, should the Commission provide a structured downward departure in cases in which the discharged term of imprisonment resulted from offense conduct that has been taken into account in the determination of the offense level for the instant offense of conviction? If so, how should such a departure be structured? For example, should the extent of the departure be linked to the length of the discharged term of imprisonment?

The Commission further requests comment regarding any other issue that should be resolved pertaining to the overall application of § 5G1.3

5. Acceptance of Responsibility

Synopsis of Amendment: This proposed amendment corrects a technical error made in the Commission's notice of proposed amendments to sentencing guidelines, policy statements, and commentary in the **Federal Register**, November 27, 2001(66 FR. 59330–59340). Specifically, proposed amendment 5, regarding § 3E1.1 (Acceptance of Responsibility), inadvertently deletes ''timely'' from subsection (b)(2) of § 3E1.1. The following proposed amendment corrects that inadvertent deletion.

Section 3E1.1(b) is amended by striking ''has assisted authorities'' and all that follows through ''notifying'' and inserting ''timely notified''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''Appropriate Considerations in Determining Applicability of Acceptance of Responsibility.''—before ''In determining''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''Convictions by Trial.—'' before ''This adjustment''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 3 by inserting ''Application of Subsection (a).—''before ''Entry of a plea''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended by striking the text of Note 4 in its entirety and inserting the following:

''Inapplicability of Adjustment.—A defendant who (A) receives an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice); or (B) commits another offense while pending trial or sentencing on the instant offense, ordinarily is not entitled to a reduction under this guideline. [There may, however, be extraordinary cases in which an adjustment under this guideline is warranted even though the defendant received an enhancement under § 3C1.1, or committed another such offense, or both.]''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 5 by inserting ''Deference on Review.—'' before ''The sentencing judge''.

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended by striking the first sentence of Note 6 and inserting ''Application of Subsection (b).—''; and by striking ''has assisted authorities in the investigation or prosecution of his own misconduct by taking one or both of the steps set forth in subsection (b)'' and inserting ''timely notified authorities of the defendant's intention to enter a guilty plea''.

The Commentary to § 3E1.1 captioned ''Background'' is amended in the second sentence of the first paragraph by striking ''by taking, in a timely fashion, one or more of the actions listed above (or some equivalent action)''; and in the second paragraph by striking ''has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the steps specified in subsection (b)'' and inserting ''timely notified authorities of the defendant's intention to enter a guilty plea''.

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SMALL BUSINESS ADMINISTRATION

Notice of Sale of Business and Disaster Assistance Loans

AGENCY: Small Business Administration.

ACTION: Notice of sale of business and disaster assistance loans—Loan Sale #5.

SUMMARY: This notice announces the Small Business Administration's (''SBA'') intention to sell approximately 30,000 secured and unsecured business and disaster assistance loans, (collectively referred to as the ''Loans''). The total unpaid principal balance of the Loans is approximately $620 million. This is the fifth sale of loans originated under the SBA's Business Loan Programs and the fourth sale of Disaster Assistance Loans (both business and consumer loans). SBA previously guaranteed some of the Loans under various sections of the Small Business Investment Act, as amended, 15 U.S.C. 695 et seq. Any SBA guarantees that might have existed at one time have been paid and no SBA guaranty is available to the successful bidders in this sale. The majority of the loans were originated by and are serviced by SBA. The collateral for the secured Loans includes commercial and residential real estate and other business and personal property located nationwide. This notice also summarizes the bidding process for the Loans.

DATES: The Bidder Information Package became available to qualified bidders on October 25, 2001. The Bid Date is scheduled for January 15, 2002, and closings are scheduled to occur between January 22, 2002 and February 15, 2002. These dates are subject to change at SBA's discretion.

ADDRESSES: Bidder Information Packages will be available from the SBA's Transaction Financial Advisor, KPMG Consulting, Inc. (''KPMG'') and its subcontractor, Hanover Capital Partners, Ltd. (''Hanover''). Bidder Information Packages will only be made available to parties that have submitted a completed Confidentiality Agreement and Bidder Qualification Statement and have demonstrated that they are qualified bidders. The Confidentiality Agreement and Bidders Qualification Statement are available on the SBA Web site at *http://www.sba.gov/assets/current__sale/sale5.html* or by calling the SBA Loan Sale #5 Center toll-free at Hanover at (888) 737–3840. The completed Confidentiality and Bidder Qualification Statement can be sent to the attention of Kathryn Merk, SBA Loan Sale #5, by either fax, at (732) 572–5959 or by mail, to Hanover Capital Partners, Ltd., 100 Metroplex Drive, Suite 301, Edison, NJ 08817.

The Due Diligence Facility opened October 29, 2001 and will close January 14, 2002. These dates are subject to change at SBA's discretion.

FOR FURTHER INFORMATION CONTACT: Margaret L. Hawley, Program Manager,

Small Business Administration, 409 Third Street, SW., Washington, DC 20416: 202–401–8234. This is not a toll free number. Hearing or speech-impaired individuals may access this number via TDD/TTY by calling the Federal Information Relay Service's toll-free number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: SBA intends to sell approximately 30,000 secured and unsecured business and disaster assistance loans, collectively referred to as the ''Loans''. The Loans include performing, sub-performing and non-performing loans. The Loans will be offered to qualified bidders in pools that will be based on such factors as performance status, collateral status, collateral type and geographic location of the collateral. A list of the Loans, loan pools and pool descriptions is contained in the Bidder Information Package. SBA will offer interested persons an opportunity to bid competitively on loan pools, subject to conditions set forth in the Bidder Information Package. SBA shall use its sole discretion to evaluate and determine winning bids. No loans will be sold individually. The Loans to be sold are located throughout the United States as well as Puerto Rico, U.S. Virgin Islands, Guam and other Pacific Islands.

The Bidding Process: To ensure a uniform and fair competitive bidding process, the terms of sale are not subject to negotiation. SBA will describe in detail the procedure for bidding on the Loans in the Bidder Information Package, which will include bid forms, a non-negotiable loan sale agreement prepared by SBA (''Loan Sale Agreement''), specific bid instructions, as well as pertinent loan information such as total outstanding unpaid principal balance, interest rate, maturity term, aggregate payment history and collateral information including geographic location and type. The Bidder Information Package also includes CD–ROMs that contain information pertaining to the Loans.

The Bidder Information Package became available approximately 10 weeks prior to the Bid Date. It contains procedures for obtaining supplemental information about the Loans. Any interested party may request a copy of the Bidder Information Package by sending a written request together with a duly executed copy of the Confidentiality Agreement and a Bidder Qualification Statement to the address specified in the **ADDRESSES** section of this notice.

Prior to the Bid Date, a Bidder Information Package Supplement will be mailed to all recipients of the original Bidder Information Package. It will contain the final list of loans included in Sale #5 and any final instructions for the sale.

Deposit and Liquidated Damages: Each Bidder must include with its bid a deposit equal to 10 percent of the amount of the bidder's highest bid. If a successful bidder fails to abide by the terms of the Loan Sale Agreement, including paying SBA any remaining sums due pursuant to the Loan Sale Agreement and closing within the time period specified in the Loan Sale Agreement, SBA shall retain the deposit as liquidated damages.

Due Diligence Facility: The bidder due diligence period began October 29, 2001. During the bidder due diligence period, qualified bidders may, for a non-refundable assessment of $500 US dollars, review all asset file documents that have been imaged onto a database by visiting the due diligence facility located at 1050 Connecticut Avenue, NW., 8th Floor, Washington, DC 20036 and/or via remote access. Bidders that have paid the due diligence assessment of $500 US dollars may also request CD–ROMs that contain substantial due diligence materials such as loan payment history and updated third party reports.

Specific instructions for ordering information in electronic format or making an appointment to visit the due diligence facility are included in the SBA Loan Sale5 Web site (*http://www.sba.gov/assets/current__sale/sale5.html*) and the Bidder Information Package.

SBA Reservation of Rights: SBA reserves the right to remove loans from the sale at any time prior to the Closing Date, and add loans prior to the Cut-Off Date for any reason and without prejudice to its right to include any loans in a later sale. After the Cut-Off Date, SBA will retain any loan that meets the following criteria: (1) The obligor makes a payment that fully satisfies his/her obligation; (2) Seller cannot provide any Evidence of Indebtedness; (3) Seller does not own, control or have the right to transfer the Loan; (4) A pending or threatened suit, action, arbitration, investigation or proceeding which could affect the Seller in an unacceptable manner; and (5) Loan is inextricably related to another asset, claim, right of action that is retained by the Seller.

SBA also reserves the right to terminate this sale at any time prior to the Bid Date.

SBA reserves the right to use its sole discretion to evaluate and determine winning bids. SBA also reserves the right in its sole discretion and for any reason whatsoever to reject any and all bids.

SBA reserves the right to conduct a ''best and final'' round of bidding wherein bidders will be given the opportunity to increase their bids. A best and final round shall not be construed as a rejection of any bid or preclude SBA from accepting any bid made by a bidder.

SBA reserves the right to sell less than 100 percent of the Loans offered for sale and ''re-offer'' the remaining loans subsequent to the initial bid.

Ineligible Bidders: The following individuals and entities (either alone or in combination with others) are ineligible to bid on the Loans included in the sale:

(1) Any employee of SBA, any member of any such employee's household and any entity controlled by a SBA employee or by a member of such employee's household.

(2) Any individual or entity that is debarred or suspended from doing business with SBA or any other agency of the United States Government.

(3) Any contractor, subcontractor, consultant, and/or advisor (including any agent, employee, partner, director, principal, or affiliate of any of the foregoing) who will perform or has performed services for, or on-behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(4) Any individual that was an employee, partner, director, agent or principal of any entity, or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of SBA, either in connection with this sale or the development of SBA's loan sale program.

(5) Any individual or entity that has used or will use the services, directly or indirectly, of any person or entity ineligible under any of paragraphs (1) through (4) above to assist in the preparation of any bid in connection with this sale.

Loan Sale Procedure: SBA plans to use a competitive online closed bid auction process as the method to sell the majority of the Loans. SBA also plans to offer eight designated pools of loans in an open E-cry on line auction format. SBA believes an auction sale optimizes the return on the sale of Loans and attracts the largest field of interested parties. A competitive bid auction also provides the quickest and most efficient vehicle for the SBA to dispose of the Loans.

Post Sale Servicing Requirements: The Loans will be sold servicing released. Purchasers of the Loans and their

successors and assigns will be required to service the Loans in accordance with the applicable provisions of the Loan Sale Agreement for the life of the Loans. In addition, the Loan Sale Agreement establishes certain requirements that a servicer must satisfy in order to service the Loans.

Scope of Notice: This notice applies to Loan Sale Number #5 and does not establish agency procedures and policies for other loan sales. If there are any conflicts between this Notice and the Bidder Information Package, the Bidder Information Package shall prevail.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 02–1265 Filed 1–16–02; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Maximum Dollar Limit in the Fee Agreement Process

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Social Security Administration (SSA) is announcing that the maximum dollar limit for fee agreements approved under sections 206(a)(2)(A) and 1631(d)(2)(A) of the Social Security Act will be increased to $5,300 effective February 1, 2002. On or after February 1, 2002, decision-makers may approve fee agreements up to the new limit provided that the fee agreement otherwise meets the statutory conditions and is not excepted from the fee agreement process.

FOR FURTHER INFORMATION CONTACT: John B. Watson, Office of the General Counsel, phone (410) 965–3137, e-mail: john.watson@ssa.gov.

SUPPLEMENTARY INFORMATION: Section 5106 of Public Law No. 101–508, the Omnibus Budget Reconciliation Act of 1990, amended sections 206(a)(2)(A) and 1631(d)(2)(A) of the Social Security Act to provide for a streamlined process for obtaining approval of the fee a representative wishes to charge for representing a claimant before the Social Security Administration. To use that process, the representative and the claimant must agree, in writing, to a fee that does not exceed the lesser of 25% of past due benefits or a prescribed dollar amount. Public Law 101–508 established the initial amount at $4,000 and gave the Commissioner of Social Security the authority to increase it, from time to time, provided that the cumulative rate of increase does not at any time exceed the rate of increase in primary insurance amounts since January 1, 1991. The law further provided that notice of any increased amount shall be published in the **Federal Register**.

By this notice, we announce that the maximum dollar amount for fee agreements will increase to $5,300; fee agreements with the increased amount may be approved by a decision-maker on or after February 1, 2002. The limit of $5,300 was determined by applying the guideline described above: a hypothetical primary insurance amount of $4,000 on January 1, 1991 would increase by calendar year 2002 to $5,350. We rounded this amount down to the nearest $100 to simplify the figure for use by claimants, representatives, and SSA.

Dated: January 8, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 02–1223 Filed 1–16–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3876]

New Conservation Measures for Antarctic Fishing Under the Auspices of CCAMLR

AGENCY: State Department.

ACTION: Notice.

SUMMARY: At its Twentieth Meeting in Hobart, Tasmania, October 22 to November 2, 2001, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area. All the measures were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. Measures adopted restrict overall catches of certain species of fish and crabs, restrict fishing in certain areas, specify implementation and inspection obligations supporting the Catch Documentation Scheme of Contracting Parties, and promote compliance with CCAMLR measures by non-Contracting Party vessels. This notice includes the full text of the conservation measures adopted at the Twentieth meeting of CCAMLR. For all of the conservation measures in force, see the CCAMLR web site at *www.ccamlr.org.* This notice, therefore, together with the U.S. regulations referenced under the Supplementary Information provides a comprehensive register of all current U.S. obligations under CCAMLR.

DATES: Persons wishing to comment on the measures or desiring more information should submit written comments within 30 days of this announcement.

FOR FURTHER INFORMATION CONTACT: Roberta L. Chew, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, DC 20520; tel: 202–647–3947; fax: 202–647–9099; *e-mail: chewrl@state.gov.*

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see 15 CFR Chapter III—International Fishing and Related Activities, Part 300—International Fishing Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G— Antarctic Marine Living Resources, for other regulatory measures related to conservation and management in the CCAMLR Convention area. Subpart B notes the requirements for high seas fishing vessel licensing. Subparts A and G describe the process for regulating U.S. fishing in the CCAMLR Convention area and contain the text of CCAMLR Conservation Measures that are not expected to change from year to year. The regulations in Subparts A and G include sections on; Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific Research; Initiating a new fishery; Exploratory fisheries; Reporting and recordkeeping requirements; Vessel and gear identification; Gear disposal; Mesh Size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties.

Conservation Measures Remaining in Force: The Commission agreed that the Conservation Measures 2/III, 3/IV, 4/V, 5/V, 6/V, 7/V, 18/XIX, 19/IX, 29/XIX, 31/X, 32/XIX, 40/X, 51/XIX, 61/XII, 62/XIX, 63/XV, 64/XIX, 65/XII, 72/XVII, 73/XVII, 82/XIX, 95/XIV, 106/XIX, 121/XIX, 122/XIX, 129/XVI, 146/XVII, 147/XIX, 160/XVII, 171/XVIII, 173/XVIII, and 180/XVIII, and Resolutions 7/IX, 10/XII, 13/XIX, 14/XIX, 15/XIX, and 16/XIX remain in force. For the text of CCAMLR Conservation Measures remaining in force, see 61 FR 66723, dated December 18, 1996; 63 FR 5587, dated February 3, 1998; 63 FR 300 dated December 22, 1998; 64 FR 71165, dated December 20, 1999; and 66 FR 7527, dated January 23, 2001.

New and Revised Conservation Measures: At its Twentieth Meeting in Hobart, Tasmania, October 22 to November 2, 2001, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) revised the following Conservation Measures 45/XIV, 118/XVII, 119/XVII, 148/XVII and 170/XIX. In addition, 23 new measures and one new resolution were adopted. The conservation measures and resolution adopted at the Twentieth Meeting follow:

Conservation Measure 45/XX

Precautionary Catch Limitation on Euphausia superba in Statistical Division 58.4.2

Catch Limit 1.

The total catch of Euphausia superba in Statistical Division 58.4.2 shall be limited to 450,000 tonnes in any fishing season. This limit shall be kept under review by the Commission, taking into account the advice of the Scientific Committee.

Season 2.

A fishing season begins on 1 December and finishes on 30 November of the following year.

Data 3.

For the purposes of implementing this conservation measure, the catches shall be reported to the Commission on a monthly basis.

Conservation Measure 118/XX

Scheme To Promote Compliance by Non-Contracting Party Vessels With CCAMLR **Conservation Measures**

The Commission,

Requesting non-Contracting Parties to cooperate fully with the Commission with a view to ensuring that the effectiveness of CCAMLR conservation measures is not undermined, hereby adopts the following conservation measure in accordance with Article IX.2(i) of the Convention:

1. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area or has been denied landing or transhipment in accordance with Conservation Measure 147/XIX is presumed to be undermining the effectiveness of CCAMLR conservation measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR conservation measures applies to any other non-Contracting Party vessel which has engaged in such activities with that vessel.

2. Information regarding such sightings or denial of landings or transhipments shall be transmitted immediately to the Commission in accordance with Article XXII of the Convention. The Secretariat shall transmit this information to all Contracting Parties, within one business day of receiving this information, and to the Flag State of the sighted vessel as soon as possible.

3. The Contracting Party which sights the non-Contracting Party vessel or denies it landing or transhipment under paragraph 1 shall attempt to inform the vessel it is presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties and to the Secretariat, and to the Flag State of the vessel.

4. When the non-Contracting Party vessel referred to in paragraph 1 enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials in accordance with Conservation Measure 147/XIX and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, logbooks, fishing gear, catch on board and any other matter, which may include information from a VMS, relating to the vessel's activities in the Convention Area.

5. Landing and transhipments of all fish from a non-Contracting Party vessel which has been inspected pursuant to paragraph 4, shall be prohibited in all Contracting Party ports if such inspection reveals that the vessel has on board species subject to CCAMLR conservation measures, unless the vessel establishes that the fish were caught outside the Convention Area, or in compliance with all relevant CCAMLR conservation measures and requirements under the Convention.

6. Contracting Parties shall ensure that their vessels do not receive transhipments of fish from a non-Contracting Party vessel which has been sighted and reported as having engaged in fishing activities in the Convention Area and therefore presumed as having undermined the effectiveness of CCAMLR conservation measures.

7. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and on any subsequent action, shall be transmitted immediately to the Commission. The Secretariat shall transmit this information immediately to all Contracting Parties, and to the relevant Flag State(s).

8. At each annual meeting the Commission will identify those non-Contracting Parties whose vessels have been sighted engaging in fishing activities in the Convention Area or have been denied landing or transhipment under paragraph 1, or who are otherwise engaged in activities that threaten to undermine the effectiveness of CCAMLR conservation measures.

9. The Secretariat, in consultation with the Chair of the Commission shall request those non-Contracting Parties identified pursuant to paragraph 8, to immediately take steps to desist from activities undermining the effectiveness of CCAMLR conservation measures, and advise the Secretariat of the actions taken in this regard.

10. Contracting Parties shall jointly and/or individually request non-Contracting Parties identified pursuant to paragraph 8, to cooperate fully with the Commission in order to avoid undermining the effectiveness of conservation measures adopted by the Commission.

11. The Commission shall review, at subsequent annual meetings as appropriate, actions taken by those non-Contracting Parties identified pursuant to paragraph 8 to which requests have been made pursuant to paragraphs 9 and 10.

12. The Commission shall annually review information accrued under paragraphs 8 to 11 to decide the appropriate measures to be taken so as to address these issues with those identified non-Contracting Party States. Such measures could include, but are not limited to, those measures set out in paragraph 68[1] of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

Conservation Measure 119/XX[1], [2]

Licensing and Inspection Obligations of Contracting Parties With Regard to Their Flag Vessels Operating in the Convention Area

1. Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a licence[3] that the Contracting Party has issued setting forth the specific areas, species and time periods for which such

[1] '***multilateral trade-related measures envisaged in regional fisheries management organizations may be used to support cooperative efforts to ensure that trade in specific fish and fish products does not in any way encourage IUU fishing or otherwise undermine the effectiveness of conservation and management measures which are consistent with the 1982 UN Convention.'

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjcent to the Prince Edward Islands.

[3] Includes permit.

fishing is authorised and all other specific conditions to which the fishing is subject to give effect to CCAMLR conservation measures and requirements under the Convention.

2. A Contracting Party may only issue such a licence to fish in the Convention Area to vessels flying its flag, if it is satisfied of its ability to exercise its responsibilities under the Convention and its conservation measures, by requiring from each vessel, *inter alia,* the following:

(i) Timely notification by the vessel to its Flag State of exit from and entry into any port;

(ii) Notification by the vessel to its Flag State of entry into the Convention Area and movement between areas, subareas/divisions;

(iii) Reporting by the vessel of catch data in accordance with CCAMLR requirements; and

(iv) Operation of a VMS system on board the vessel in accordance with Conservation Measure 148/XX.

3. Each Contracting Party shall provide to the Secretariat within seven days of the issuance of each licence the following information about licences issued:

- Name of the vessel;
- Time periods authorised for fishing (start and end dates);
- Area(s) of fishing;
- Species targeted; and
- Gear used.

4. The licence or an authorised copy of the licence must be carried by the fishing vessel and must be available for inspection at any time by a designated CCAMLR inspector in the Convention Area.

5. Each Contracting Party shall verify, through inspections of all of its fishing vessels at the Party's departure and arrival ports, and where appropriate, in its ExclusiveEconomic Zone, their compliance with the conditions of the licence as described in paragraph 1 and with the CCAMLR conservation measures. In the event that there is evidence that the vessel has not fished in accordance with the conditions of its licence, the Contracting Party shall investigate the infringement and, if necessary, apply appropriate sanctions in accordance with its national legislation.

6. Each Contracting Party shall include in its annual report pursuant to paragraph 12 of the CCAMLR System of Inspection, steps it has taken to implement and apply this conservation measure; and may include additional measures it may have taken in relation to its flag vessels to promote the effectiveness of CCAMLR conservation measures.

Conservation Measure 148/XX

Automated Satellite-Linked Vessel Monitoring Systems (VMS)

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall, no later than March 1, 1999, establish an automated VesselMonitoring System (VMS) to monitor the position of its fishing vessels, which are licensed [1] in accordance with Conservation Measure 119/XX, to harvest marine living resources in the Convention Area, and for which catch limits, fishing seasons or area restrictions have been set by conservation measures adopted by the Commission.

2. Any Contracting Party unable to establish VMS in accordance with paragraph 1 shall inform the CCAMLR Secretariat within 90 days following the notification of this conservation measure, and communicate its intended timetable for implementation of VMS. However, the Contracting Party shall establish VMS at the earliest possible date, and in any event, no later than December 31, 2000.

3. The implementation of VMS on vessels while participating only in a krill fishery is not currently required.

4. Each Contracting Party, within two working days of receiving the required VMS information, shall provide to the Secretariat dates and the statistical area, subarea or division for each of the following movements of its flag fishing vessels:

(i) Entering and leaving the Convention Area; and

(ii) Crossing boundaries between CCAMLR statistical areas, subareas and divisions.

5. For the purpose of this measure, VMS means a system where, *inter alia:*

(i) Through the installation of satellite-tracking devices on board its fishing vessels, the Flag State receives automatic transmission of certain information. This information includes the fishing vessel identification, location, date and time, and is collected by the Flag State at least every four hours to enable it to monitor effectively its flag vessels;

(ii) Performance standards provide, as a minimum, that the VMS:

(a) Is tamper proof;

(b) Is fully automatic and operational at all times regardless of environmental conditions;

(c) Provides real time data;

(d) Provides the geographical position of the vessel, with a position error of less than 500 m with a confidence interval of 99%, the format being determined by the Flag State; and

(e) In addition to regular messages, provides special messages when the vessel enters or leaves the Convention Area and when it moves between oneCCAMLR area, subarea or division within the Convention Area.

6. In the event of technical failure or other non-function of the VMS, the master or the owner of the fishing vessel, as a minimum:

(i) Shall communicate at least once every 24 hours, starting from the time that this event was detected, the data referred in paragraph 4(i) by telex, by fax, by telephone message or by radio to the Flag State; and

(ii) Shall take immediate steps to have the device repaired or replaced as soon as possible, and, in any event, within two months. If during that period the vessel returns to port it shall not be allowed to commence a further fishing trip without having the defective device repaired or replaced.

7. In the event that the VMS ceases to operate, the Contracting Party as soon as possible shall advise the Executive Secretary of the name of the vessel, the date, time and the location of the vessel when the VMS failed. The Party shall also inform the ExecutiveSecretary when the VMS becomes operational again. The Executive Secretary shall make such information available to Contracting Parties upon request.

8. Contracting Parties shall report to the Secretariat before the start of the annual meeting of the Commission in 1999, on the VMS which has been introduced in accordance with paragraphs 1 and 2, including its technical details, and each year thereafter, on:

(i) Any change in the VMS; and

(ii) In accordance with paragraph XI of the CCAMLR System of Inspection, all cases where they have determined, with the assistance of the VMS that vessels of their flag had fished in the Convention Area in possible contravention of CCAMLR conservation measures.

Conservation Measure 170/XX

Catch Documentation Scheme for Dissostichus spp.

The Commission,

Concerned that illegal, unregulated and unreported (IUU) fishing for *Dissostichus* spp. in the Convention Area threatens serious depletion of populations of *Dissostichus* spp.,

Aware that IUU fishing involves significant by-catch of some Antarctic species, including endangered albatross,

[1] Includes permit.

Noting that IUU fishing is inconsistent with the objective of the Convention and undermines the effectiveness of CCAMLR conservation measures,

Underlining the responsibilities of Flag States to ensure that their vessels conduct their fishing activities in a responsible manner,

Mindful of the rights and obligations of Port States to promote the effectiveness of regional fishery conservation measures,

Aware that IUU fishing reflects the high value of, and resulting expansion in markets for and international trade in, *Dissostichus* spp.,

Recalling that Contracting Parties have agreed to introduce classification codes for *Dissostichus* spp. at a national level,

Recognising that the implementation of a Catch Documentation Scheme for *Dissostichus* spp. will provide the Commission with essential information necessary to provide the precautionary management objectives of the Convention,

Committed to take steps, consistent with international law, to identify the origins of *Dissostichus* spp. entering the markets of Contracting Parties and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into their territories was caught in a manner consistent with CCAMLR conservation measures,

Wishing to reinforce the conservation measures already adopted by the Commission with respect to *Dissostichus* spp.,

Inviting non-Contracting Parties whose vessels fish for *Dissostichus* spp. to participate in the Catch Documentation Scheme for *Dissostichus spp.*, hereby adopts the following conservation measure in accordance with Article IX of the Convention:

1. Each Contracting Party shall take steps to identify the origin of *Dissostichus* spp. imported into or exported from its territories and to determine whether *Dissostichus* spp. harvested in the Convention Area that is imported into or exported from its territories was caught in a manner consistent with CCAMLR conservation measures.

2. Each Contracting Party shall require that each master or authorised representative of its flag vessels authorised to engage in harvesting of *Dissostichus eleginoides* and/or *Dissostichus mawsoni* complete a *Dissostichus* catch document for the catch landed or transhipped on each occasion that it lands or transhipsDissostichus spp.

3. Each Contracting Party shall require that each landing of *Dissostichus* spp. at its ports and each transhipment of *Dissostichus* spp. to its vessels be accompanied by a completed *Dissostichus* catch document.

4. Each Contracting Party shall, in accordance with their laws and regulations, require that their flag vessels which intend to harvest *Dissostichus* spp., including on the high seas outside the Convention Area, are provided with specific authorisation to do so. EachContracting Party shall provide *Dissostichus* catch document forms to each of its flag vessels authorised to harvest *Dissostichus* spp. and only to those vessels.

5. A non-Contracting Party seeking to cooperate with CCAMLR by participating in this scheme may issue *Dissostichus* catch document forms, in accordance with the procedures specified in paragraphs 6 and 7, to any of its flag vessels that intend to harvest *Dissostichus* spp.

6. The *Dissostichus* catch document shall include the following information:

(i) The name, address, telephone and fax numbers of the issuing authority;

(ii) The name, home port, national registry number, and call sign of the vessel and, if issued, its IMO/Lloyd's registration number;

(iii) The reference number of the licence or permit, whichever is applicable, that is issued to the vessel;

(iv) The weight of each *Dissostichus* species landed or transhipped by product type, and

(a) By CCAMLR statistical subarea or division if caught in the Convention Area; and/or

(b) By FAO statistical area, subarea or division if caught outside the ConventionArea;

(v) The dates within which the catch was taken;

(vi) The date and the port at which the catch was landed or the date and the vessel, its flag and national registry number, to which the catch was transhipped; and

(vii) The name, address, telephone and fax numbers of the recipient(s) of the catch and the amount of each species and product type received.

7. Procedures for completing *Dissostichus* catch documents in respect of vessels are set forth in paragraphs A1 to A10 of Annex 170/A to this measure. The standard catch document is available at the CCAMLR website, *www.ccamlr.org*, or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone DeanSwanson: 301–713–2276).

8. Each Contracting Party shall require that each shipment of *Dissostichus* spp. imported into or exported from its territory be accompanied by the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment.

9. An export-validated *Dissostichus* catch document issued in respect of a vessel is one that:

(i) Includes all relevant information and signatures provided in accordance with paragraphs A1 to A11 of Annex 170/A to this measure; and

(ii) Includes a signed and stamped certification by a responsible official of the exporting State of the accuracy of the information contained in the document.

10. Each Contracting Party shall ensure that its customs authorities or other appropriate officials request and examine the documentation of each shipment of *Dissostichus* spp. imported into or exported from its territory to verify that it includes the export-validated *Dissostichus* catch document(s) and, where appropriate, validated re-export document(s) that account for all the *Dissostichus* spp. contained in the shipment. These officials may also examine the content of any shipment to verify the information contained in the catch document or documents.

11. If, as a result of an examination referred to in paragraph 10 above, a question arises regarding the information contained in a *Dissostichus* catch document or a re-export document the exporting State whose national authority validated the document(s) and, as appropriate, the Flag State whose vessel completed the document are called on to cooperate with the importing State with a view to resolving such question.

12. Each Contracting Party shall promptly provide by the most rapid electronic means copies to the CCAMLR Secretariat of all export-validated *Dissostichus* catch documents and, where relevant, validated re-export documents that it issued from and received into its territory and shall report annually to the Secretariat data, drawn from such documents, on the origin and amount of *Dissostichus* spp. exported from and imported into its territory.

13. Each Contracting Party, and any non-Contracting Party that issues *Dissostichus* catch documents in respect of its flag vessels in accordance with paragraph 5, shall inform the CCAMLR Secretariat of the national authority or authorities (including names, addresses, phone and fax numbers and email addresses) responsible for issuing and

validating *Dissostichus* catch documents.

14. Notwithstanding the above, any Contracting Party, or any non-Contracting Party participating in the Catch Documentation Scheme, may require additional verification of catch documents by Flag States by using, *inter alia*, VMS, in respect of catches [1] taken on the high seas outside the Convention Area, when landed at, imported into or exported from its territory.

15. If a Contracting Party participating in the CDS has cause to sell or dispose of seized or confiscated *Dissostichus* spp., it may issue a Specially Validated *Dissostichus* Catch Document (SVDCD) specifying the reasons for that validation. The SVDCD shall include a statement describing the circumstances under which confiscated fish are moving in trade. To the extent practicable, Parties shall ensure that no financial benefit arising from the sale of seized or confiscated catch accrue to the perpetrators of IUU fishing. If a Contracting Party issues a SVDCD, it shall immediately report all such validations to the Secretariat for conveying to all Parties and, as appropriate, recording in trade statistics.

16. A Contracting Party may transfer all or part of the proceeds from the sale of seized or confiscated *Dissostichus* spp. into the CDS Fund created by the Commission or into a national fund which promotes achievement of the objectives of the Convention. A Contracting Party may, consistent with its domestic legislation, decline to provide a market for toothfish offered for sale with a SVDCD by another State. Provisions concerning the uses of the CDS Fund are found in Annex B.

Annex 170/A

A1. Each Flag State shall ensure that each *Dissostichus* catch document form that it issues includes a specific identification number consisting of:

(i) A four-digit number, consisting of the two-digit International Standards Organization (ISO) country code plus the last two digits of the year for which the form is issued; and

(ii) A three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued.

It shall also enter on each *Dissostichus* catch document form the number as appropriate of the licence or permit issued to the vessel.

A2. The master of a vessel which has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures prior to each landing or transhipment of *Dissostichus* spp.:

(i) The master shall ensure that the information specified in paragraph 6 of this conservation measure is accurately recorded on the *Dissostichus* catch document form;

(ii) If a landing or transhipment includes catch of both *Dissostichus* spp., the master shall record on the *Dissostichus* catch document form the total amount of the catch landed or transhipped by weight of each species;

(iii) If a landing or transhipment includes catch of *Dissostichus* spp. taken from different statistical subareas and/or divisions, the master shall record on the *Dissostichus* catch document form the amount of the catch by weight of each species taken from each statistical subarea and/or division; and

(iv) The master shall convey to the Flag State of the vessel by the most rapid electronic means available, the *Dissostichus* catch document number, the dates within which the catch was taken, the species, processing type or types, the estimated weight to be landed and the area or areas of the catch, the date of landing or transhipment and the port and country of landing or vessel of transhipment and shall request from the Flag State, a Flag State confirmation number.

A3. If, for catches [1] taken in the Convention Area or on the high seas outside the Convention Area, the Flag State verifies, by the use of a VMS (as described in paragraphs 5 and 6 of Conservation Measure 148/XX), the area fished and that the catch to be landed or transhipped as reported by its vessel is accurately recorded and taken in a manner consistent with its authorisation to fish, it shall convey a unique Flag State confirmation number to the vessel's master by the most rapid electronic means available.

A4. The master shall enter the Flag State confirmation number on the *Dissostichus* catch document form.

A5. The master of a vessel that has been issued a *Dissostichus* catch document form or forms shall adhere to the following procedures immediately after each landing or transhipment of *Dissostichus* spp.:

(i) In the case of a transhipment, the master shall confirm the transhipment by obtaining the signature on the *Dissostichus* catch document of the master of the vessel to which the catch is transferred;

(ii) In the case of a landing, the master or authorised representative shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(iii) In the case of a landing, the master or authorised representative shall also obtain the signature on the *Dissostichus* catch document of the individual that receives the catch at the port of landing or free trade zone; and

(iv) In the event that the catch is divided upon landing, the master or authorised representative shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A6. In respect of each landing or transhipment, the master or authorised representative shall immediately sign and convey by the most rapid electronic means available a copy, or, if the catch landed was divided, copies, of the signed *Dissostichus* catch document to the Flag State of the vessel and shall provide a copy of the relevant document to each recipient of the catch.

A7. The Flag State of the vessel shall immediately convey by the most rapid electronic means available a copy or, if the catch was divided, copies, of the signed *Dissostichus* catch document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A8. The master or authorised representative shall retain the original copies of the signed *Dissostichus* catch document(s) and return them to the Flag State no later than one month after the end of the fishing season.

A9. The master of a vessel to which catch has been transhipped (receiving vessel) shall adhere to the following procedures immediately after landing of such catch in order to complete each *Dissostichus* catch document received from transhipping vessels:

(i) The master of the receiving vessel shall confirm the landing by obtaining a signed and stamped certification on the *Dissostichus* catch document by a responsible official at the port of landing or free trade zone;

(ii) The master of the receiving vessel shall also obtain the signature on the *Dissostichus* catch document of the

[1] Excluding by-catches of *Dissostichus* spp. by trawlers fishing on the high seas outside the Convention Area. A by-catch shall be defined as no more than 5% of total catch of all species and no more than 50 tonnes for an entire fishing trip by a vessel.

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individual that receives the catch at the port of landing or free trade zone; and

(iii) In the event that the catch is divided upon landing, the master of the receiving vessel shall present a copy of the *Dissostichus* catch document to each individual that receives a part of the catch at the port of landing or free trade zone, record on that copy of the catch document the amount and origin of the catch received by that individual and obtain the signature of that individual.

A10. In respect of each landing of transhipped catch, the master or authorised representative of the receiving vessel shall immediately sign and convey by the most rapid electronic means available a copy of all the *Dissostichus* catch documents, or if the catch was divided, copies, of all the *Dissostichus* catch documents, to the Flag State(s) that issued the *Dissostichus* catch document, and shall provide a copy of the relevant document to each recipient of the catch. The Flag State of the receiving vessel shall immediately convey by the most rapid electronic means available a copy of the document to the CCAMLR Secretariat to be made available by the next working day to all Contracting Parties.

A11. For each shipment of *Dissostichus* spp. to be exported from the country of landing, the exporter shall adhere to the following procedures to obtain the necessary export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The exporter shall enter on each *Dissostichus* catch document the amount of each *Dissostichus* spp. reported on the document that is contained in the shipment;

(ii) The exporter shall enter on each *Dissostichus* catch document the name and address of the importer of the shipment and the point of import;

(iii) The exporter shall enter on each *Dissostichus* catch document the exporter's name and address, and shall sign the document; and

(iv) The exporter shall obtain a signed and stamped validation of the *Dissostichus* catch document by a responsible official of the exporting State.

A12. In the case of re-export, the re-exporter shall adhere to the following procedures to obtain the necessary re-export validation of the *Dissostichus* catch document(s) that account for all the *Dissostichus* spp. contained in the shipment:

(i) The re-exporter shall supply details of the net weight of product of all species to be re-exported, together with the *Dissostichus* catch document number to which each species and product relates;

(ii) The re-exporter shall supply the name and address of the importer of the shipment, the point of import and the name and address of the exporter;

(iii) The re-exporter shall obtain a signed and stamped validation of the above details by the responsible official of the exporting State on the accuracy of information contained in the document(s); and

(iv) The responsible official of the exporting state shall immediately transmit by the most rapid electronic means a copy of the re-export document to the Secretariat to be made available next working day to all Contracting Parties.

The standard form for re-export is available at the CCAMLR website, *www.ccamlr.org*, or contact the Office of Sustainable Fisheries at the National Marine Fisheries Service (phone Dean Swanson: 301–713–2276).

Annex 170/B

The Use of the CDS Fund

B1. The purpose of the CDS Fund ('the Fund') is to enhance the capacity of the Commission in improving the effectiveness of the CDS and by this, and other means, to prevent, deter and eliminate IUU fishing in the Convention Area.

B2. The Fund will be operated according to the following provisions:

(i) The Fund shall be used for special projects, or special needs of the Secretariat if the Commission so decides, aimed at assisting the development and improving the effectiveness of the CDS. The Fund may also be used for special projects and other activities contributing to the prevention, deterrence and elimination of IUU fishing in the Convention Area, and for other such purposes as the Commission may decide.

(ii) The Fund shall be used primarily for projects conducted by the Secretariat, although the participation of Members in these projects is not precluded. While individual Member projects may be considered, this shall not replace the normal responsibilities of Members of the Commission. The Fund shall not be used for routine Secretariat activities.

(iii) Proposals for special projects may be made by Members, by the Commission or the Scientific Committee and their subsidiary bodies, or by the Secretariat. Proposals shall be made to the Commission in writing and be accompanied by an explanation of the proposal and an itemised statement of estimated expenditure.

(iv) The Commission will, at each annual meeting, designate six Members to serve on a Review Panel to review proposals made intersessionally and to make recommendations to the Commission on whether to fund special projects or special needs. The Review Panel will operate by email intersessionally and meet during the first week of the Commission's annual meeting.

(v) The Commission shall review all proposals and decide on appropriate projects and funding as a standing agenda item at its annual meeting.

(vi) The Fund may be used to assist Acceding States and non-Contracting Parties that wish to cooperate with CCAMLR and participate in the CDS, so long as this use is consistent with provisions (i) and (ii) above. Acceding States and non-Contracting Parties may submit proposals if the proposals are sponsored by, or in cooperation with, a Member.

(vii) The Financial Regulations of the Commission shall apply to the Fund, except in so far as these provisions provide or the Commission decides otherwise.

(viii) The Secretariat shall report to the annual meeting of the Commission on the activities of the Fund, including its income and expenditure. Annexed to the report shall be reports on the progress of each project being funded by the Fund, including details of the expenditure on each project. The report will be circulated to Members in advance of the annual meeting.

(ix) Where an individual Member project is being funded according to provision (ii), that Member shall provide an annual report on the progress of the project, including details of the expenditure on the project. The report shall be submitted to the Secretariat in sufficient time to be circulated to Members in advance of the annual meeting. When the project is completed, that Member shall provide a final statement of account certified by an auditor acceptable to the Commission.

(x) The Commission shall review all ongoing projects at its annual meeting as a standing agenda item and reserves the right, after notice, to cancel a project at any time should it decide that it is necessary. Such a decision shall be exceptional, and shall take into account progress made to date and likely progress in the future, and shall in any case be preceded by an invitation from the Commission to the project coordinator to present a case for continuation of funding.

(xi) The Commission may modify these provisions at any time.

Conservation Measure 216/XX

Experimental Line-Weighting Trials

In respect of fisheries in Statistical Subareas 48.6 south of 60°S, 88.1 and 88.2, paragraph 3 of Conservation Measure 29/XIX shall not apply only where a vessel can demonstrate prior to licensing for this fishery its ability to fully comply with either of the following experimental protocols.

Protocol A:

A1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines with a minimum of four Time Depth Recorders (TDR) on each line;

(ii) Randomise TDR placement on the longline within and between sets;

(iii) Calculate an individual sink rate for each TDR when returned to the vessel, where:

(a) The sink rate shall be measured as an average of the time taken to sink from the surface (0 m) to 15 m; and

(b) This sink rate shall be at a minimum rate of 0.3 m/s;

(iv) If the minimum sink rate is not achieved at all 20 sample points, repeat the test until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(v) All equipment and fishing gear used in the tests is to be the same as that to be used in the Convention Area.

A2. During fishing, for a vessel to maintain the exemption to night-time setting requirements, continuous line sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to place a TDR on every longline set during the observer's shift;

(ii) Every seven days place all available TDRs on a single longline to determine any sink rate variation along the line;

(iii) Randomise TDR placement on the longline within and between sets;

(iv) Calculate an individual rate for each TDR when returned to the vessel; and

(v) Measure the sink rate as an average of the time taken to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(i) Ensure the average sink rate is at a minimum of 0.3 m/s;

(ii) Report daily to the fishery manager; and

(iii) Ensure that data collected from line sink trials is recorded in the approved format and submitted to the fishery manager at the conclusion of the season.

Protocol B:

B1. The vessel shall, under observation by a scientific observer:

(i) Set a minimum of five longlines of the maximum length to be used in the Convention Area with a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of the longline;

(ii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iii) Calculate an individual sink rate for each bottle test, where the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 15 m;

(iv) This sink rate shall be at a minimum rate of 0.3 m/s;

(v) If the minimum sink rate is not achieved at all 20 sample points (four tests on five lines), continue testing until such time as a total of 20 tests with a minimum sink rate of 0.3 m/s are recorded; and

(vi) All equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention Area.

B2. During fishing, for a vessel to maintain the exemption to paragraph 3 of ConservationMeasure 29/XIX, regular line sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(i) Aim to conduct a bottle test on every longline set during the observer's shift, noting that the test should be undertaken on the middle one-third of the line;

(ii) Every seven days place at least four bottle tests on a single longline to determine any sink rate variation along the line;

(iii) Randomise bottle test placement on the longline within and between sets, noting that all tests should be applied halfway between weights;

(iv) Calculate an individual sink rate for each bottle test; and

(v) Measure the line sink rate as the time taken for the line to sink from the surface (0 m) to 15 m.

B3. The vessel shall whilst operating under this exemption:

(i) Ensure that all longlines are weighted to achieve a minimum line sink rate of 0.3 m/s at all times;

(ii) Report daily to its national agency on the achievement of this target; and

(iii) Ensure that data collected from line sink rate monitoring are recorded in the approved format and submitted to the relevant national agency at the conclusion of the season.

B4. A bottle test is to be conducted as described below.

Bottle Set Up

B5. 15 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 750 ml plastic bottle [1] (buoyancy about 0.7 kg) with a longline clip attached to the other end. The length measurement is taken from the attachment point(terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective tape should be wrapped around the bottle to allow it to be observed at night. A piece of waterproof paper with a unique identifying number large enough to be read from a few metres away should be placed inside the bottle.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline [2], midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds. The time at which the bottle is observed to be pulled completely under is recorded as t_2 in seconds[3]. The result of the test is calculated as follows:

Line sink rate = 15 / (t_2—t_1)

B9. The result should be equal to or greater than 0.3 m/s. These data are to be recorded in the space provided in the electronic observer logbook.

Conservation Measure 217/XX

Fishing Seasons

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

The fishing season for all Convention Area species is 1 December to 30 November of the following year, unless otherwise set in specific conservation measures.

[1] A plastic water bottle that has a hard plastic screw-on 'stopper' is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.

[2] On autolines attach to the backbone; on the Spanish longline system attach to the hookline.

[3] Binoculars will make this process easier to view, especially in foul weather.

Conservation Measure 218/XX [1]

Prohibition of Directed Fishing for Dissostichus spp. Except in Accordance With Specific Conservation Measures in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Article IX of the Convention:

Directed fishing for *Dissostichus* spp. in Statistical Subareas 48.5, 88.2 north of 65°S and 88.3, and Divisions 58.4.1 and 58.5.1 is prohibited from 1 December 2001 to 30 November 2002.

Conservation Measure 219/XX

Limits on the Fishery for Champsocephalus gunnari in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

2. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 n miles of the coast of South Georgia during the period March 1 to May 31, 2002 (spawning period).

Catch Limit

3. The total catch of *Champsocephalus gunnari* in Statistical Subarea 48.3 in the 2001/02 season shall be limited to 5 557 tonnes. The total catch of *Champsocephalus gunnari* taken in the period March 1 to May 31, 2002. shall be limited to 1 389 tonnes.

4. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10%, for a period of at least five days[2]. The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

5. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 95/XIV. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes, then the fishing vessel shall move to another location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 95/XIV exceeded 5% for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of the fishery.

8. When any vessel has caught a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in the 2001/02 season.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari.*

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

13. Each vessel operating in this fishery during the period March 1 to May 31, 2002 shall conduct twenty (20) research trawls in the manner described in Annex 219/A.

Annex 219/A

Research Trawls During Spawning Season

1. All fishing vessels taking part in the fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 between March 1 and May 31, 2002 shall be required to conduct a minimum of 20 research hauls, to be completed during that period. Twelve research hauls shall be carried out in the Shag Rocks-Black Rocks area: Four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the northwestern shelf of South Georgia over water less than 300 m deep.

2. Each research haul must be at least 5 n miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information on the length, sex, maturity and weight composition of *Champsocephalus gunnari.*

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

[1] Except for waters adjacent to the Kerguelen Islands.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

Conservation Measure 220/XX

Limits on the Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 2001/02 Season

Access

1. The fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

2. For the purpose of this fishery for *Champsocephalus gunnari,* the area open to the fishery is defined as that portion of Statistical Division 58.5.2 that lies within the area enclosed by a line:

(i) Starting at the point where the meridian of longitude 72°15′E intersects the Australia-France Maritime Delimitation AgreementBoundary then south along the meridian to its intersection with the parallel of latitude 53°25′S;

(ii) Then east along that parallel to its intersection with the meridian of longitude 74°E;

(iii) Then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40′S and the meridian of longitude 76°E;

(iv) Then north along the meridian to its intersection with the parallel of latitude 52°S;

(v) Then northwesterly along the geodesic to the intersection of the parallel of latitude 51°S with the meridian of longitude 74°30′E; and

(vi) Then southwesterly along the geodesic to the point of commencement.

3. Areas in Statistical Division 58.5.2 outside that defined above shall be closed to directed fishing for *Champsocephalus gunnari.*

Catch Limit

4. The total catch of *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2001/02 season shall be limited to 885 tonnes.

5. Where any haul contains more than 100 kg of *Champsocephalus gunnari,* and more than 10% of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small *Champsocephalus gunnari* exceeded 10% for a period of at least five days.[2] The location where the catch of small *Champsocephalus gunnari* exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Season

6. For the purpose of the trawl fishery for *Champsocephalus gunnari* in Statistical Division 58.5.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-catch

7. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 224/XX.

Mitigation

8. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

11. For the purpose of Annex 220B, the target species is *Champsocephalus gunnari* and by-catch species are defined as any species other than *Champsocephalus gunnari.*

Data: Biological

12. Fine-scale biological data, as required under Annex 220/B, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Annex 220/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: Day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version.

These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Champsocephalus gunnari* and of all by-catch species must be reported;

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Champsocephalus gunnari* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 221/XX

Limits on the Fishery for Dissostichus eleginoides in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 shall be conducted by vessels using longlines and pots only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2001/02 season shall be limited to 5 820 tonnes.

Season

3. For the purpose of the longline fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from 1 May to 31 August 2002, or until the catch limit is reached, whichever is sooner. For the purpose of the pot fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from 1 December 2001 to 30 November 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch of crab shall be counted against the catch limit in the crab fishery in Subarea 48.3.

5. The by-catch of finfish in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3 in the 2001/02 season shall not exceed 291 tonnes for skates and rays and 291 tonnes for *Macrourus* spp. For the purpose of these by-catch limits, skates and rays shall be counted as a single species.

6. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n-miles [1] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Mitigation

7. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides.*

11. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Conservation Measure 222/XX

Limits on the Fishery for Dissostichus eleginoides in Statistical Division 58.5.2 in the 2001/02 Season

Access

1. The fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2 shall be conducted by vessels using trawls only.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.5.2 in the 2001/02 season shall be limited to 2 815 tonnes.

Season

3. For the purpose of the trawl fishery for *Dissostichus eleginoides* in Statistical Division 58.5.2, the 2001/02 season is defined as the period from 1 December 2001 to 30 November 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. Fishing shall cease if the by-catch of any species reaches its by-catch limit as set out in Conservation Measure 224/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer, and may include one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Annex 222/A; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Annex 222/A. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Annex 222/A, the target species is *Dissostichus eleginoides* and by-catch species are defined as any species other than *Dissostichus eleginoides.*

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

9. The total number and weight of *Dissostichus eleginoides* discarded, including those with the 'jellymeat' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

10. Fine-scale biological data, as required under Annex 222/A, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Annex 222/A

Data Reporting System

A ten-day catch and effort reporting system shall be implemented:

(i) For the purpose of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) At the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels information on total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) A report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(v) Such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) At the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

A fine-scale catch, effort and biological data reporting system shall be implemented:

(i) The scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) The catch of *Dissostichus eleginoides* and of all by-catch species must be reported;

(iii) The numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) The scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of *Dissostichus eleginoides* and by-catch species:

(a) Length measurements shall be to the nearest centimetre below; and

(b) Representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

Conservation Measure 223/XX

Precautionary Catch Limit for Electrona carlsbergi in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

1. For the purposes of this conservation measure the fishing season for *Electrona carlsbergi* is defined as the period from December 1, 2001 to November 30, 2002.

2. The total catch of *Electrona carlsbergi* in the 2001/02 season shall be limited to 109,000 tonnes in Statistical Subarea 48.3.

3. In addition, the total catch of *Electrona carlsbergi* in the 2001/02 season shall be limited to 14,500 tonnes in the Shag Rocks region, defined as the area bounded by 52°30′S, 40°W; 52°30′S, 44°W; 54°30′S, 40°W and 54°30′, 44°W.

4. In the event that the catch of *Electrona carlsbergi* is expected to exceed 20,000 tonnes in the 2001/02 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the meeting of the Working Group on Fish Stock Assessment in 2002.

5. The directed fishery for *Electrona carlsbergi* in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 109,000 tonnes, whichever is sooner.

6. The directed fishery for *Electrona carlsbergi* in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of *Electrona carlsbergi* reaches 14,500 tonnes, whichever is sooner.

7. If, in the course of the directed fishery for *Electrona carlsbergi*, the by-catch in any one haul of any species other than the target species—

- Is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- Is equal to or greater than 2 tonnes,

then the fishing vessel shall move to another fishing location at least 5 n miles distant.[1] The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species, other than the target species, exceeded 5%, for a period of at least five days.[2] The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. For the purpose of implementing this conservation measure:

(i) The Catch Reporting System set out in Conservation Measure 40/X shall apply in the 2001/02 season;

(ii) The Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 122/XIX shall also apply in the 2001/02 season. For the purposes of Conservation Measure 122/XIX, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*; and

(iii) The Monthly Fine-scale Biological Data Reporting System set out in Conservation Measure 121/XIX shall also apply in the 2001/02 season. For the purposes of Conservation Measure

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

121/XIX, the target species is *Electrona carlsbergi*, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than *Electrona carlsbergi*. For the purposes of paragraph 3(ii) of Conservation Measure 121/XIX a representative sample shall be a minimum of 500 fish.

Conservation Measure 224/XX

Limitation of By-Catch in Statistical Division 58.5.2 in the 2001/02 Season

1. There shall be no directed fishing for any species other than *Dissostichus eleginoides* and *Champsocephalus gunnari* in Statistical Division 58.5.2 in the 2001/02 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 2001/02 season, the by-catch of *Channichthys rhinoceratus* shall not exceed 150 tonnes, and the by-catch of *Lepidonotothen squamifrons* shall not exceed 80 tonnes.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tonnes in Statistical Division 58.5.2. For the purposes of this measure, '*Macrourus spp.*' and 'skates and rays' should each be counted as a single species.

4. If, in the course of a directed fishery, the by-catch in any one haul of *Channichthys rhinoceratus* or *Lepidonotothen squamifrons* is equal to, or greater than 2 tonnes, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 2 tonnes for a period of at least five days.[2] The location where the by-catch exceeded 2 tonnes is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. If, in the course of a directed fishery, the by-catch in any one haul of any other by-catch species for which by-catch limitations apply under this conservation measure is equal to, or greater than 1 tonne, then the fishing vessel shall not fish using that method of fishing at any point within 5 n miles [1] of the location where the by-catch exceeded 1 tonne for a period of at least five days.[2] The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Conservation Measure 225/XX

Limits on the Fishery for Crab in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 7/V:

Access

1. The fishery for crab in Statistical Subarea 48.3 shall be conducted by vessels using pots only. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. The crab fishery shall be limited to one vessel per Member.

3. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

Catch Limit

4. The total catch of crab in Statistical Subarea 48.3 in the 2001/02 season shall not exceed a precautionary catch limit of 1.600 tonnes.

5. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa,* males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

6. Crab processed at sea shall be frozen as crab sections (size of crabs can be determined using crab sections).

Season

7. For the purpose of the pot fishery for crab in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

8. The by-catch of *Dissostichus eleginoides* shall be counted against the catch limit in the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 61/XII and 122/XIX the target species is crab and by-catch species are defined as any species other than crab.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data requirements described in Annex 225/A and the experimental harvest regime described in Conservation Measure 226/XX. Data collected for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2002. Such data collected after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 225/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data:
Cruise Descriptions
Cruise code, vessel code, permit number, year.

[1] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XIX, pending the adoption of a more appropriate period by the Commission.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Pot Descriptions
Diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.
Effort Descriptions
Date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.
Catch Descriptions
Retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

TABLE 1.—DATA REQUIREMENTS FOR BY-CATCH SPECIES IN THE CRAB FISHERY IN STATISTICAL SUBAREA 48.3

Species	Data Requirements
Dissostichus eleginoides.	Numbers and estimated total weight.
Notothenia rossii	Numbers and estimated total weight.
Other species	Estimated total weight.

Biological Data:
For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.
Cruise Descriptions
Cruise code, vessel code, permit number.
Sample Descriptions
Date, position at start of the set, compass bearing of the set, line number.
Data
Species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 226/XX

Experimental Harvest Regime for the Crab Fishery in Statistical Subarea 48.3 in the 2001/02 Season

The following measures apply to all crab fishing within Statistical Subarea 48.3 in the 2001/02 fishing season. Every vessel participating in the crab fishery in Statistical Subarea 48.3 shall conduct fishing operations in accordance with an experimental harvest regime as outlined below:

1. Vessels shall conduct the experimental harvest regime in the 2001/02 season at the start of their first season of participation in the crab fishery and the following conditions shall apply:

(i) Every vessel when undertaking an experimental harvesting regime shall expend its first 200,000 pot hours of effort within a total area delineated by twelve blocks of 0.5° latitude by 1.0° longitude. For the purposes of this conservation measure, these blocks shall be numbered A to L. In Annex 226/A, the blocks are illustrated(Figure 1), and the geographic position is denoted by the coordinates of the northeast corner of the block. For each string, pot hours shall be calculated by taking the total number of pots on the string and multiplying that number by the soak time (in hours) for that string. Soak time shall be defined for each string as the time between start of setting and start of hauling;

(ii) Vessels shall not fish outside the area delineated by the 0.5° latitude by 1.0° longitude blocks prior to completing the experimental harvesting regime;

(iii) Vessels shall not expend more than 30,000 pot hours in any single block of 0.5° latitude by 1.0° longitude;

(iv) If a vessel returns to port before it has expended 200,000 pot hours in the experimental harvesting regime the remaining pot hours shall be expended before it can be considered that the vessel has completed the experimental harvesting regime; and

(v) After completing 200,000 pot hours of experimental fishing, it shall be considered that vessels have completed the experimental harvesting regime and they shall be permitted to commence fishing in a normal fashion.

2. Data collected during the experimental harvest regime up to June 30, 2002 shall be submitted to CCAMLR by August 31, 2002.

3. Normal fishing operations shall be conducted in accordance with the regulations set out in Conservation Measure 225/XX.

4. For the purposes of implementing normal fishing operations after completion of the experimental harvest regime, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

5. Vessels that complete experimental harvest regime shall not be required to conduct experimental fishing in future seasons. However, these vessels shall abide by the guidelines set forth in Conservation Measure 225/XX.

6. Fishing vessels shall participate in the experimental harvest regime independently(i.e. vessels may not cooperate to complete phases of the experiment).

7. Crabs taken by any vessel for research purposes will be considered as part of any catch limits in force for each species taken, and shall be reported to CCAMLR as part of the annual STATLANT returns.

8. All vessels participating in the experimental harvest regime shall carry at least one scientific observer on board during all fishing activities.

Conservation Measure 227/XX[1,2]

General Measures for Exploratory Fisheries for Dissostichus spp. in the Convention Area in the 2001/02 Season

The Commission,

Noting the need for the distribution of fishing effort and catch in fine-scale rectangles [3] in these exploratory fisheries,

hereby adopts the following conservation measure:

1. This conservation measure applies to exploratory fisheries using the trawl or longline methods except for such fisheries where the Commission has given specific exemptions to the extent of those exemptions. In trawl fisheries, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

2. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reaches 100 tonnes and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

3. In order to give effect to paragraph 2 above:

(i) The precise geographic position of a haul in trawl fisheries will be determined by the mid-point of the path between the start-point and end-point of the haul;

(ii) The precise geographic position of a haul in longline fisheries will be determined by the centre-point of the line or lines deployed;

(iii) Catch and effort information for each species by fine-scale rectangle

[3] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the statistical subarea or division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

shall be reported to the Executive Secretary every five days using the Five-Day Catch andEffort Reporting System set out in Conservation Measure 51/XIX; and

(iv) The Secretariat shall notify Contracting Parties participating in these fisheries when the total catch for *Dissostichus eleginoides* and *Dissostichus mawsoni* combined in any fine-scale rectangle is likely to reach 100 tonnes, and fishing in that fine-scale rectangle shall be closed when that limit is reached.

4. The by-catch in each exploratory fishery shall be regulated as in Conservation Measure 228/XX.

5. The total number and weight of *Dissostichus eleginoides* and *Dissostichus mawsoni* discarded, including those with the 'jellymeat' condition, shall be reported.

6. Each vessel participating in the exploratory fisheries for *Dissostichus* spp. during the 2001/02 season shall have one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing season.

7. The Data Collection Plan (Annex 227/A) and Research Plan (Annex 227/B) shall be implemented. Data collected pursuant to the Data Collection and Research Plans for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2002. Such data taken after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

8. Members who choose not to participate in the fishery prior to the commencement of the fishery shall inform the Secretariat of changes in their plans no later than one month before the start of the fishery. If, for whatever reason, Members are unable to participate in the fishery, they shall inform the Secretariat no later than one week after finding that they cannot participate. The Secretariat will inform all Contracting Parties immediately after such notification is received.

Annex 227/A

Data Collection Plan for Exploratory Fisheries

1. All vessels will comply with the Five-day Catch and Effort Reporting System (Conservation Measure 51/XIX) and Monthly Fine-scale Catch, Effort and Biological Data Reporting Systems (Conservation Measures 121/XIX and 122/XIX).

2. All data required by the CCAMLR *Scientific Observers Manual* for finfish fisheries will be collected. These include:

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by-haul catch and catch per effort by species;

(iii) Haul-by-haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) Number and mass by species of by-catch of fish and other organisms; and

(viii) Observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) Position and sea depth at each end of every line in a haul;

(ii) Setting, soak, and hauling times;

(iii) Number and species of fish lost at surface;

(iv) Number of hooks set;

(v) Bait type;

(vi) Baiting success (%);

(vii) Hook type; and

(viii) Sea and cloud conditions and phase of the moon at the time of setting the lines.

Annex 227/B

Research Plan for Exploratory Fisheries

1. Activities under this research plan shall not be exempted from any conservation measure in force.

2. This plan applies to all small-scale research units (SSRUs) as defined in Table 1 andFigure 1.

3. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities:

(i) On first entry into a SSRU, the first 10 hauls, designated 'first series', whether by trawl or longline, should be designated 'research hauls' and must satisfy the criteria set out in paragraph 4.

(ii) The next 10 hauls, or 10 tonnes of catch for longlining, whichever trigger level is achieved first, or 10 tonnes of catch for trawling, are designated the 'second series'. Hauls in the second series can, at the discretion of the master, be fished as part of normal exploratory fishing. However, provided they satisfy the requirements of paragraph 4, these hauls can also be designated as research hauls.

(iii) On completion of the first and second series of hauls, if the master wishes to continue to fish within the SSRU, the vessel must undertake a 'third series' which will result in a total of 20 research hauls being made in all three series. The third series of hauls shall be completed during the same visit as the first and second series in a SSRU.

(iv) On completion of 20 research hauls the vessel may continue to fish within the SSRU.

(v) When either the catch limit or the end of the fishing season is reached, all fishing within the designated area should cease.

4. To be designated as a research haul:

(i) Each research haul must be separated by not less than 5 n miles from any other research haul, distance to be measured from the geographical mid-point of each research haul;

(ii) Each haul shall comprise: for longlines, at least 3 500 hooks and no more than 10 000 hooks; this may comprise a number of separate lines set in the same location; for trawls, at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI,Annex 5, Appendix H, Attachment E, paragraph 4); and

(iii) Each haul of a longline shall have a soak time of not less than six hours, measured from the time of completion of the setting process to the beginning of the hauling process.

5. All data specified in the Data Collection Plan (Annex 227/A) of this conservation measure shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and at least 30 fish sampled for biological studies(paragraphs 2(iv) to 2(vi) of Annex 227/A). Where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

TABLE 1.—THE COORDINATES OF THE SMALL-SCALE RESEARCH UNITS (SSRUS)

[Figure 1]

Subarea/division	SSRU	Grid coordinates			
		Top left latutude	Top left longitude	Bottom right latitude	Bottom right longitude
58.4.1	A	55 S	80 E	64 S	89 E
58.4.3	A	55 S	60 E	62 S	73.5 E
58.4.3	B	55 S	73.5 E	62 S	80 E
58.4.4	A	51 S	40 E	54 S	42 E
58.4.4	B	51 S	42 E	54 S	46 E
58.4.4	C	51 S	46 E	54 S	50 E
58.4.4	D	Areas outside SSRUs A, B, C			
58.7	A	45 S	37 E	48 S	40 E
58.6	A	45 S	40 E	48 S	44 E
58.6	B	45 S	44 E	48 S	48 E
58.6	C	45 S	48 E	48 S	51 E
58.6	D	45 S	51 E	48 S	54 E
88.1	A	60 S	150 E	65 S	170 W
88.1	B	65 S	150 E	72 S	180
88.1	C	65 S	180	72 S	170 W
88.1	D	72 S	160 E	84 S	180
88.1	E	72 S	180	84.5 S	170 W

Note.—Subarea 88.2 is divided into six 10° longitudinal sections and one 5° longitudinal section; designated A–G from west to east. Subarea 48.6 is divided into one section north of 60° (A) and five 10° longitudinal sections south of 60°; designated B–F from west to east.

Conservation Measure 228/XX[1]

Limitation of By-Catch in New and Exploratory Fisheries in the 2001/02 Season

1. This conservation measure applies to new and exploratory fisheries in all areas containing small-scale research units (SSRUs) in the 2001/02 season except where specific by-catch conservation measures apply.

2. The by-catch of any species other than Macrourus spp. shall be limited to the following:

• In each SSRU in Statistical Subarea 48.6, Statistical Division 58.4.2 and Statistical Subarea 88.1 south of 65°S, and in Statistical Division 58.4.3b, the by-catch of any species shall be limited to 50 tonnes; and

• In other SSRUs, the by-catch of any species shall be limited to 20 tonnes.

3. The by-catch of Macrourus spp. shall be limited to the following:

• In each SSRU in Statistical Subarea 48.6, Statistical Division 58.4.2 and Statistical Subarea 88.1 south of 65°S, and in Statistical Division 58.4.3b, the by-catch of Macrourus spp. shall be limited to 100 tonnes; and

• In other SSRUs, the by-catch of Macrourus spp. shall be limited to 40 tonnes.

4. For the purposes of this measure, ''Macrourus spp.'' and ''skates and rays'' should each be counted as a single species.

5. If the by-catch of any one species is equal to or greater than 1 tonne in any one haul or set, then the fishing vessel shall move to another location at least 5 n mile[2] distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 1 tonne for a period of at least five days[3]. The location where the by-catch exceeded 1 tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Conservation Measure 229/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 48.6 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 48.6 shall be limited to the exploratory longline fishery by Japan, New Zealand, South Africa and Uruguay. The fishery shall be conducted by Japanese, New Zealand, South African and Uruguayan-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 48.6 in the 2001/02 season shall not exceed a precautionary catch limit of 455 tonnes north of 60°S and 455 tonnes south of 60°S.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6, the 2001/02 season is defined as the period from March 1 to August 31, 2002 north of 60°S and the period from February 15 to October 15 2002 south of 60°S. In the event that either limit is reached, the relevant fishery shall be closed.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 48.6 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply south of 60°S. South of 60°S, prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX and such data shall be reported to the Secretariat immediately.

6. South of 60°S, longlines may be set during daylight hours only if the vessels are demonstrating a consistent

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] This provision concerning the minimum distance separating fishing locations is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[3] The specified period is adopted in accordance with the reporting period specified in ConservationMeasure 51/XIX, pending the adoption of a more appropriate period by the Commission.

minimum line sink rate of 0.3 m/s. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with ConservationMeasure 29/XIX.

7. There shall be no offal discharge in this fishery.

Observers

8. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

9. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

10. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 230/XX

Limits on the Demersal Trawl Fisheries in Statistical Division 58.4.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure for the exploratory fishery for *Dissostichus* spp. in accordance with Conservation Measure 65/XII and the new fishery for *Macrourus* spp. in accordance with Conservation Measure 31/X:

Access

1. Fishing for *Dissostichus* spp. in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Australia. Fishing for *Macrourus* spp. in Statistical Division 58.4.2 shall be limited to the new trawl fishery by Australia. The fisheries shall be conducted by Australian-flagged vessels using trawls only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Division 58.4.2 in the 2001/02 season shall not exceed a precautionary catch limit of 500 tonnes, of which no more than 200 tonnes shall be taken in any one of the three zones bounded by longitudes 40°E to 50°E, 50°E to 57°E and 57°E to 70°E.

3. The total catch of *Macrourus* spp. in Statistical Division 58.4.2 in the 2001/02 season shall not exceed a precautionary catch limit of 150 tonnes, of which no more than 100 tonnes shall be taken in any one of the three zones bounded by longitudes 40°E to 50°E, 50°E to 57°E and 57°E to 70°E.

Season

4. For the purpose of the exploratory trawl fishery for *Dissostichus* spp. and the new fishery for *Macrourus* spp. in Statistical Division 58.4.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit of either species is reached, whichever is sooner.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX. The provisions governing by-catch of *Macrourus* spp. contained in Conservation Measure 228/XX do not apply to this fishery.

Mitigation

6. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

7. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

8. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

9. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

10. The total number and weight of *Dissostichus* spp. discarded, including those with the ''jellymeat'' condition, shall be reported. These fish will count towards the total allowable catch.

Data: Biological

11. Fine-scale biological data, as required under Conservation Measure 121/XIX shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the data collection and research plans described in Annex 230/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 230/A

Data Collection and Research Plans

1. Demersal trawling for *Dissostichus* spp. and *Macrourus* spp. in water shallower than 550 m shall be prohibited except for the research activities described below:

(i) Demersal trawling shall be allowed only in designated ''open'' areas on the upper and mid-slope in depths greater than 550 m;

(ii) The manner in which areas are designated ''open'' and ''closed'' for demersal trawling will be determined according to the following procedure:

(a) Open and closed areas will consist of a series of north-south strips extending from the coast to beyond the foot of the continental slope. Each strip will be one degree of longitude wide;

(b) In the first instance, when the vessel has found an appropriate area for prospecting or fishing, it will designate the strip as open, with the area to be fished to be approximately centred in that strip;

(c) A single prospecting haul will be permitted in that strip before it is designated as open or closed, to establish if an aggregation of interest is present. There must be a minimum of 30 minutes of longitude between prospecting hauls where no strip is designated open;

(d) Whenever a strip is designated open, at least one strip adjacent to that

strip must be designated as closed. Any remnant strips less than one degree wide resulting from the previous selection of open and closed strips, will be designated as closed;

(e) Once a strip is designated closed it cannot be subsequently fished in that season by any method that allows fishing gear to contact the bottom;

(f) Prior to commercial fishing in an open strip, the vessel must undertake the survey trawls in the open strip as described below. The survey trawls in the adjacent closed strip must be undertaken prior to the vessel fishing a new strip. If the adjacent closed strip has already been surveyed, a new survey is not necessary; and

(g) When the vessel wishes to fish in a new strip, it must not choose a strip already closed. Once a new strip is designated, conditions as described in paragraphs (b) to (f) will apply to that strip.

2. Survey trawls in each open strip and its adjacent closed strip will be conducted according to the following scheme:

(i) Each pair of strips will be divided between the shelf area above 550 m and the slope area below 550 m. In each open and closed strip the following research shall be undertaken:

(a) In the section deeper than 550 m, two stations (whose locations have been randomly pre-selected according to depth and longitude) shall be sampled. At each of these stations a beam trawl sample of benthos and a bottom-trawl sample of finfish using a commercial trawl with a small mesh liner shall be taken;

(b) In the section shallower than 550 m, two stations shall be sampled at randomly pre-selected sites according to depth and longitude for benthos using a beam trawl once at each station only; and

(c) This will be undertaken in each pair of the open and closed strips using the process described above.

3. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR *Scientific Observers Manual:*

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by haul catch and catch per effort by species;

(iii) Haul-by haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) By-catch of fish and other organisms; and

(viii) Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 231/XX

Limits on the Exploratory Fishery for Dissostichus spp. on Elan Bank (Statistical Division 58.4.3a) Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France and Japan. The fishery shall be conducted by French and Japanese-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 250 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 232/XX

Limits on the Exploratory Fishery for Dissostichus spp. on BANZARE Bank (Statistical Division 58.4.3b) Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. on BANZARE Bank (Statistical

Division 58.4.3b) outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France and Japan. The fishery shall be conducted by French and Japanese-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus* spp. on BANZARE Bank(Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 300 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. on

BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 233/XX

Limits on the Exploratory Fishery for Dissostichus eleginoides in Statistical Division 58.4.4 Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction shall be limited to the exploratory longline fishery by France, Japan, South Africa and Uruguay. The fishery shall be conducted by French, Japanese, South African andUruguayan-flagged vessels using longlines only. No more than one vessel shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 103 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus eleginoides* in Statistical Division 58.4.4 outside areas of national jurisdiction, the 2001/02 season is defined as the period from May 1 to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research

10. Every haul in this exploratory fishery shall meet the requirements of research hauls in Conservation Measure 227/XX Annex B, paragraph 4.

11. This fishery is exempted from paragraph 7 of Conservation Measure 227/XX except:

(i) On entry into an SSRU as described in Conservation Measure 227/XX, Annex B, Table 1, each vessel shall undertake 10 hauls prior to moving to another SSRU provided that the fishery has not been closed;

(ii) Provisions for data collection in Conservation Measure 227/XX, Annex B, paragraph 5 shall apply;

(iii) The Data Collection Plan in Conservation Measure 227/XX, Annex A will apply; and

(iv) Data collected pursuant to the Data Collection and Research Plans for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment (WG–FSA) in 2002. Such data taken after August 31 shall be reported to CCAMLR not later than three months after the closure of the fishery, but, where possible, submitted in time for the consideration of WG–FSA.

Conservation Measure 234/XX

Limits on the Exploratory Fishery for Dissostichus eleginoides in Statistical Subarea 58.6 Outside Areas of National Jurisdiction in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas

of national jurisdiction shall be limited to the exploratory longline fishery by Chile, France, Japan and South Africa. The fishery shall be conducted by Chilean, French, Japanese and South African-flagged vessels using longlines only. No more than one vessel per country shall fish at any one time.

Catch Limit

2. The total catch of *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas of national jurisdiction in the 2001/02 season shall not exceed a precautionary catch limit of 450 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus eleginoides* in Statistical Subarea 58.6 outside areas of national jurisdiction, the 2001/02 season is defined as the period from 1 May to August 31, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

4. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

5. The operation of this fishery shall be carried out in accordance with Conservation Measure 29/XIX so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

6. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

7. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

8. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

9. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Research

10. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research Plan described in Conservation Measure 227/XX, Annex B.

Conservation Measure 235/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.1 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be limited to the exploratory longline fishery by Japan, New Zealand, Russia and South Africa. The fishery shall be conducted by a maximum in the season of one (1) Japanese, four (4) New Zealand, three (3) Russian and two (2) South African-flagged vessels[1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.1 in the 2001/02 season shall not exceed a precautionary catch limit of 171 tonnes north of 65°S and 2 337 tonnes south of 65°S.

3. In order to ensure an adequate spread of fishing effort south of 65°S, the total catch of *Dissostichus* spp. shall not exceed a precautionary catch limit of 584 tonnes in each of the four small-scale research units (SSRUs) identified for Statistical Subarea 88.1 south of 65°S, as defined in Conservation Measure 227/XX, Annex B.

Season

4. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1, the 2001/02 season is defined as the period from December 1, 2001 to August 31, 2002.

Fishing Operations

5. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 227/XX, except paragraph 6.

By-Catch

6. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

7. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.1 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX and such data shall be reported to the Secretariat immediately.

8. In Statistical Subarea 88.1, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 216/XX. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 29/XIX.

9. There shall be no offal discharge in this fishery.

Observers

10. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

11. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XX.

CDS

12. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 170/XX.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Data: Catch/Effort

14. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

[1] As notified to the Secretariat in accordance with Conservation Measure 65/XII paragraph 2(iv).

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

15. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

16. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

17. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

18. No live poultry or other living birds shall be brought into Statistical Subarea 88.1 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.1.

19. Fishing for *Dissostichus* spp. in Statistical Subarea 88.1 shall be prohibited within 10 n miles of the coast of the Balleny Islands.

Conservation Measure 236/XX

Limits on the Exploratory Fishery for Dissostichus spp. in Statistical Subarea 88.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Dissostichus* spp. in Statistical Subarea 88.2 shall be limited to the exploratory longline fishery by Japan, New Zealand, Russia and South Africa. The fishery shall be conducted by a maximum in the season of one (1) Japanese, three (3) New Zealand, one (1) Russian and two (2) South African-flagged vessels [1] using longlines only.

Catch Limit

2. The total catch of *Dissostichus* spp. in Statistical Subarea 88.2 south of 65°S in the 2001/02 season shall not exceed a precautionary catch limit of 250 tonnes.

Season

3. For the purpose of the exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2, the 2001/02 season is defined as the period from December 1, 2001 to August 31, 2002.

4. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 227/XX, except paragraph 6.

By-Catch

5. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

6. The exploratory longline fishery for *Dissostichus* spp. in Statistical Subarea 88.2 shall be carried out in accordance with the provisions of Conservation Measure 29/XIX, except paragraph 3 (night setting) shall not apply. Prior to licensing, each vessel shall demonstrate its capacity to comply with experimental line-weighting trials as approved by the Scientific Committee and described in Conservation Measure 216/XX, and such data shall be reported to the Secretariat immediately.

7. In Statistical Subarea 88.2, longlines may be set during daylight hours only if the vessels are demonstrating a consistent minimum line sink rate of 0.3 m/s in accordance with Conservation Measure 216/XX. Any vessel catching a total of three (3) seabirds shall immediately revert to night setting in accordance with Conservation Measure 29/XIX.

8. There shall be no offal discharge in this fishery.

Observers

9. Each vessel participating in the fishery shall have at least two scientific observers, one of whom shall be an observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

VMS

10. Each vessel participating in this exploratory longline fishery shall be required to operate a VMS at all times, in accordance with Conservation Measure 148/XX.

CDS

11. Each vessel participating in this exploratory longline fishery shall be required to participate in the Catch Documentation Scheme for *Dissostichus* spp., in accordance with Conservation Measure 170/XX.

Research

12. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the research plan described in Conservation Measure 227/XX, Annex B.

Data: Catch/Effort

13. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

14. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species is *Dissostichus* spp. and by-catch species are defined as any species other than *Dissostichus* spp.

Data: Biological

15. Fine-scale biological data, as required under Conservation Measures 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

Discharge

16. All vessels participating in this exploratory fishery shall be prohibited from discharging:

(i) Oil or fuel products or oily residues into the sea, except as permitted in Annex I of MARPOL 73/78;

(ii) Garbage;

(iii) Food wastes not capable of passing through a screen with openings no greater than 25 mm;

(iv) Poultry or parts (including egg shells); or

(v) Sewage within 12 n miles of land or ice shelves, or sewage while the ship is travelling at a speed of less than 4 knots.

Additional Elements

17. No live poultry or other living birds shall be brought into Statistical Subarea 88.2 and any dressed poultry not consumed shall be removed from Statistical Subarea 88.2.

[1] As notified to the Secretariat in accordance with Conservation Measure 65/XII paragraph 2(iv).

Conservation Measure 237/XX

Limits on the Exploratory Fishery for Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus and Pleuragramma antarcticum in Statistical Division 58.4.2 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measure 65/XII:

Access

1. Fishing for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2 shall be limited to the exploratory trawl fishery by Australia. The fishery shall be conducted by Australian-flagged vessels using trawls only.

Catch Limit

2. The total catch of all species in the 2001/02 season shall not exceed a precautionary catch limit of 1 500 tonnes.

3. The catch of *Chaenodraco wilsoni* in the 2001/02 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 237/A of this conservation measure, and shall not exceed 500 tonnes.

4. The catches of Lepidonotothen kempi, *Trematomus eulepidotus* and Pleuragramma antarcticum in the 2001/02 season shall be taken by the midwater trawl method only, except for the research program on shallow-water bottom trawling specified in paragraph 4 of Annex 237/A of this conservation measure, and shall not exceed 300 tonnes for any one species.

5. Any *Dissostichus spp.* or *Macrourus spp.* caught during the directed fishery for the above species shall be deducted from the catches of these species authorised in Conservation Measure 230/XX.

Season

6. For the purpose of the exploratory trawl fishery for *Chaenodraco wilsoni, Lepidonotothen kempi, Trematomus eulepidotus* and *Pleuragramma antarcticum* in Statistical Division 58.4.2, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

By-Catch

7. The by-catch in this fishery shall be regulated as set out in Conservation Measure 228/XX.

Mitigation

8. The operation of this fishery shall be carried out in accordance with Conservation Measure 173/XVIII so as to minimise the incidental mortality of seabirds in the course of fishing.

Observers

9. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

10. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XIX; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measures 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

11. For the purpose of Conservation Measures 51/XIX and 122/XIX, the target species are *Chaenodraco wilsoni, Lepidonotothen kempi,Trematomus eulepidotus* and *Pleuragramma antarcticum* and by-catch species are defined as any species other than these species.

Data: Biological

12. Fine-scale biological data, as required under Conservation Measure 121/XIX shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

Research

13. Each vessel participating in this exploratory fishery shall conduct fishery-based research in accordance with the Research and DataCollection Plans described in Annex 237/A. The results shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 237/A

Research and Data Collection Plans

1. There shall be three small-scale research units (SSRUs), bounded by the longitudes 40°E to 50°E, 50°E to 57°E, and 57°E to 70°E.

2. Any vessel undertaking prospecting or commercial fishing in any SSRU must undertake the following research activities once 10 tonnes of any one species have been caught, irrespective of the number of hauls required:

(i) A minimum of 20 hauls must be made within the SSRU and must collectively satisfy the criteria specified in subparagraphs (ii) to (iv);

(ii) Each haul must be separated by not less than 5 n miles from any other haul, distance to be measured from the geographical mid-point of each haul;

(iii) Each haul shall comprise at least 30 minutes effective fishing time as defined in the *Draft Manual for Bottom Trawl Surveys in the Convention Area* (SC–CAMLR–XI, Annex 5, Appendix H, Attachment E, paragraph 4); and

(iv) All data specified in the paragraph 5 of this annex shall be collected for every research haul; in particular, all fish in a research haul up to 100 fish are to be measured and biological characteristics obtained from 30 fish, where more than 100 fish are caught, a method for randomly subsampling the fish should be applied.

3. The requirement to undertake the above research activities applies irrespective of the period over which the trigger levels of 10 tonnes of catch in any SSRU are achieved during the 2001/02 fishing season. The research activities must commence immediately the trigger levels have been reached and must be completed before the vessel leaves the SSRU.

4. In the SSRU between 40°E and 50°E and in locations where the bottom depth is 280 m or less:

(i) A maximum total of 10 commercial bottom trawls may be conducted in no more than seven locations, but with no more than two bottom trawls in any one location;

(ii) Each location must be at least 5 n miles distant from any other location;

(iii) At each location trawled, three separate samples will be taken with a beam trawl in the vicinity of the commercial trawl track to assess the benthos present and compare with the benthos brought up in the commercial trawl; and

(iv) Catches from this program will not count towards the value that triggers the 20 research shots in an SSRU as defined in paragraph 2 above.

5. The following data and material will be collected from research and commercial hauls, as required by the CCAMLR *Scientific Observers Manual:*

(i) Position, date and depth at the start and end of every haul;

(ii) Haul-by haul catch and catch per effort by species;

(iii) Haul-by haul length frequency of common species;

(iv) Sex and gonad state of common species;

(v) Diet and stomach fullness;

(vi) Scales and/or otoliths for age determination;

(vii) By-catch of fish and other organisms; and

(viii) Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 238/XX

Limits on the Exploratory Fishery for Martialia hyadesi in Statistical Subarea 48.3 in the 2001/02 Season

The Commission hereby adopts the following conservation measure in accordance with Conservation Measures 7/V and 65/XII:

Access

1. Fishing for *Martialia hyadesi* in Statistical Subarea 48.3 shall be limited to the exploratory jig fishery by notifying countries. The fishery shall be conducted by vessels using jigs only.]

Catch Limit

2. The total catch of *Martialia hyadesi* in Statistical Subarea 48.3 in the 2001/02 season shall not exceed a precautionary catch limit of 2 500 tonnes.

Season

3. For the purpose of the exploratory jig fishery for *Martialia hyadesi* in Statistical Subarea 48.3, the 2001/02 season is defined as the period from December 1, 2001 to November 30, 2002, or until the catch limit is reached, whichever is sooner.

Observers

4. Each vessel participating in this fishery shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation, and where possible one additional scientific observer, on board throughout all fishing activities within the fishing period.

Data: Catch/Effort

5. For the purpose of implementing this conservation measure in the 2001/02 season, the following shall apply:

(i) The Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII; and

(ii) The Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 122/XIX. Fine-scale data shall be submitted on a haul-by-haul basis.

6. For the purpose of Conservation Measures 61/XII and 122/XIX, the target species is *Martialia hyadesi* and by-catch species are defined as any species other than *Martialia hyadesi.*

Data: Biological

7. Fine-scale biological data, as required under Conservation Measure 121/XIX, shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International ScientificObservation.

Research

8. Each vessel participating in this exploratory fishery shall collect data in accordance with the Data Collection Plan described in Annex 238/A. Data collected pursuant to the plan for the period up to August 31, 2002 shall be reported to CCAMLR by September 30, 2002 so that the data will be available to the meeting of the Working Group on Fish Stock Assessment in 2002.

Annex 238/A

Data Collection Plan for Exploratory Squid (Martialia hyadesi) Fisheries in Statistical Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the data form (Form TAC) for the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 61/XII; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR *Scientific Observers Manual* for squid fisheries will be collected. These include:

(i) Vessel and observer program details (Form S1);

(ii) Catch information (Form S2); and

(v) Biological data (Form S3).

Resolution 17/XX

Use of VMS and Other Measures for the Verification of CDS Catch Data for Areas Outside the Convention Area, in Particular, in FAO Statistical Area 51

The Commission,

Recognising the need to continue to take action, using a precautionary approach, based on the best scientific information available, in order to ensure the long term sustainability of *Dissostichus* spp. stocks in the Convention Area,

Concerned that the Catch Documentation Scheme for *Dissostichus* spp. (CDS) could be used to disguise illegal, unregulated and unreported (IUU) catches of Dissostichus spp. in order to gain legal access to markets,

Concerned that any misreporting and misuse of the CDS seriously undermines the effectiveness of CCAMLR conservation measures,

1. Urges States participating in the CDS to ensure that *Dissostichus* Catch Documents (DCDs) relating to landings or imports of *Dissostichus* spp., when necessary, are checked by contact with Flag States to verify that the information in the DCD is consistent with the data reports derived from an automated satellite-linked VesselMonitoring System (VMS)[1].

2. Urges States participating in the CDS, if necessary to that end, to consider reviewing their domestic laws and regulations, with a view to prohibiting, in a manner consistent with international law, landings/transhipments/imports of *Dissostichus* spp. declared in a DCD as having been caught in FAO Statistical Area 51 if the Flag State fails to demonstrate that it verified the DCD using automated satellite-linked VMS derived data reports.

3. Requests the Scientific Committee to review the data concerning the areas where *Dissostichus* spp. occur outside the Convention Area and the potential biomass of *Dissostichus* spp. in such areas, in order to assist the Commission in the conservation and management of *Dissostichus* stocks and in defining the areas and potential biomasses of *Dissostichus* spp. which could be landed/imported/exported under the CDS.

See the CCAMLR website, *www.ccamlr.org* under Publications for the Schedule of Conservation Measures in Force (2000/2001), or contact CCAMLR at: CCAMLR Secretariat P.O. Box 213, North Hobart, Tasmania 7002, Tel: [61] 3 6231 0366, Fax: [61] 3 6234 9965.

Dated: January 8, 2002.

Margaret F. Hayes

Director, Office of Oceans Affairs, Bureau of Oceans, International Environmental & Scientific Affairs, U.S. Department of State.

[FR Doc. 02–1127 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 3878]

Culturally Significant Objects Imported for Exhibition, Determinations: ''After the Scream: The Late Paintings of Edvard Munch''

AGENCY: United States Department of State.

[1] In this regard, verification of the information in the relevant DCD shall not be requested for the trawlers as described in Conservation Measure 170/XX, paragraph 14.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition: ''After the Scream: The Late Paintings of Edvard Munch,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, GA from on or about February 9, 2002 to on or about May 5, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–1262 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3877]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Secondary School Partnership Program in Armenia, Azerbaijan and Belarus

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Secondary School Partnership Program in Armenia, Azerbaijan and Belarus. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Armenia, Azerbaijan or Belarus. All proposals must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component.

Program Information

The Secondary School Partnership Program is funded under the FREEDOM Support Act to assist young people in building an open society and developing democratic processes and institutions in Armenia, Azerbaijan, and Belarus. This program provides grants to link schools in the three countries noted above with schools in the United States. The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a U.S. network of a minimum of two secondary schools; strengthening an existing working relationship with an organization or agency of government in Armenia, Azerbaijan, or Belarus responsible for a network of at least two schools there; and linking the two networks in one-to-one school partnerships through thematic projects and substantive exchange activities.

Overview

The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and Armenian, Azerbaijani, and Belarussian schools featuring collaborative substantive projects and reciprocal student and educator exchanges with strong academic content. The long-term goals are to: (1) Develop lasting, sustainable institutional ties between U.S. and Armenian, Azerbaijani and Belarussian schools and communities; (2) support democracy and educational reform in the above countries; (3) advance mutual understanding between youth and teachers; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools.

The program has several defining features to help the participating schools develop their partnership:

—Each partnership has a project theme and the students and teachers in the paired schools work on a joint project throughout the school year related to this theme;

—The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges from three weeks to ten months in duration. Exchanges take place while the host school is in session.

—The student and teacher exchanges must be reciprocal.

—The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

—During the exchange, participants attend class, are involved in school-based activities, work on their joint project, perform community service, visit educational and cultural sites, and reside with host families.

Dates: Grants may begin on or about July 2002 and cover the 2002–2003 academic year. The exact starting date of the grant will be dependent on availability of funds.

Guidelines

A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for the linkage apart from the availability of grant funds.

Organizers and school networks in the U.S. and Armenia, Azerbaijan and Belarus should collaborate in planning and preparation. Applicants must have an organizational partner that has its base of operation in the partner country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project, such as the development of educational materials. The proposal should specify measurable goals and objectives of the program.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed. For example, what will the participants be doing and how is it relevant to the thematic focus of the program? Applicants should present a program that involves the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and

communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include civic education, such as citizen activism, volunteerism or community service, youth leadership training, multicultural education, rule of law, and free and independent media.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, shadowing of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools, teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive.

Competitive proposals will demonstrate a solid and comprehensive follow-on plan to sustain the partnerships after the grant has expired.

Responsibilities

The U.S. organization receiving the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep the Bureau informed of its progress; (4) manage all travel arrangements, logistics, travel documents, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of a grant are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants in the exchange components of the program must be open, competitive, and merit-based; the proposal should describe the mechanisms used for participant selection. All participants from the U.S. and Armenia, Azerbaijan, and Belarus should represent the full diversity of their communities (racial, ethnic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Preference will be given to proposals that include schools that have not already received funding under the NIS Secondary School Initiative for a total of three years or more.

Significant cost-sharing is mandatory in all proposals, and those that show more generous and creative cost-sharing will be more favorably viewed. The Bureau encourages proposals that include non-Bureau funded components such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, or capital city civics programs. However, participants from Armenia,Azerbaijan and Belarus may not be charged to participate in the program, aside from paying for home country costs, (such as transportation to the point of departure the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Please be sure to refer to the Project Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information. Also consult the Proposal Submission Instructions (PSI) for information on budget presentation and required forms.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. Only partnerships between secondary schools in the United States and these three countries are eligible for this competition. Organizations may apply to work in more than one country. Funding for each country is expected to be as follows: Armenia, $100,000, Azerbaijan; $150,000; and Belarus,$50,000. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S., Armenian, Azerbaijani, or Belarussian participants. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–02–50.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–4788; fax (202) 619–5311; E-mail: *lbeach@pd.state.gov* to request a Solicitation Package. TheSolicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau ProgramOfficer Randall Biggers on all other inquiries and correspondence, email: *rbiggers@pd.state.gov*, tel: (202) 401–7356.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs *by 5 p.m.* Washington, DC time on *Friday, March 1, 2002.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and six copies including tabs A–E and appendices should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–02–50, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. Applicants are also encouraged to submit proposals as Microsoft Word or Excel documents as well. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 02–1261 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3875]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Development of a Professional Journal and Research Service for Overseas U.S. Educational Advising Centers

SUMMARY: The Educational Information and Resources Branch,Office of Global Educational Programs, Bureau of Educational and Cultural Affairs (the Bureau) announces an open competition for a professional journal and research service for overseas educational advising centers. Public or private non-profit organizations meeting the provisions described in IRS regulation 26 USC 501(c)(3) are invited to submit proposals to produce a professional journal to provide timely and in-depth information on trends and developments in U.S. higher education and other issues and topics relevant to the Department of State-affiliated overseas educational advising and information centers. The selected organization will also answer reference inquiries from Department of State-designated educational advising offices overseas. The Bureau anticipates awarding up to $97,000 to one organization for these activities.

Program Information

Overview

This grant funds a professional journal for overseas advisers to assist them in providing comprehensive information about the strengths and diversity of the U.S. higher educational system to foreign audiences. Proposals should illustrate how the organization will produce a professional journal, including an internet web site and publication, to provide timely and in-depth information for the staff of Department of State-affiliated overseas educational advising and information centers that advise foreign nationals about educational opportunities in the United States. The information provided to advisers should focus on the field of U.S. education and offer skill-building content for practitioners of advising(for example, the resource could train advisers in the ethics of the profession and teach them how to enhance their communication and listening skills). The information should also feature current information on university programs, new advising resources, short-term training programs, current testing announcements, news briefs, reference questions of world-wide interest, and scholarship and financial information useful to overseas educational advisers in the conduct of their duties. E-mail updates on timely topics relating to U.S. education must be distributed regularly to advisers between issues of the electronic and print journals.

Guidelines

The organization should produce four issues of the publication (Summer 2002, Fall 2002, Winter 2002 and Spring 2003), and describe what publishing capacity will be used to assure that each issue of the publication is produced quickly and efficiently. Five hundred copies of the publication must be shipped to the Department of State's

shipping facility for distribution to overseas educational advising centers. The web site must be designed in a user-friendly fashion, with an index of topics, and in a format that can be shared directly with students with minimal repackaging by the adviser. The web site should include additional features such as updates, reference links, and a possible bulletin board or chat room that increases contacts between advisers and U.S. university representatives. The web site may be password protected. The first posting to the web site and the first print issue should be available within 90 days of grant receipt.

The research service will provide information regarding specific degree or postgraduate programs, particular types of resources, short-term training programs, and determining institutional accreditation or legitimacy. Most inquiries are for information which is not readily available in other print or internet resources. The proposal should describe how this service will operate, and how it would respond directly to specific inquiries from Department of State-affiliated educational advisers overseas. An explanation of the staff's expertise in answering individual questions that are detailed or geographically specific should be included. The web site and publication must acknowledge that its contents were developed, in part, under a grant from the Bureau of Educational and Cultural Affairs of the Department of State. The Bureau reserves the right to use all materials produced for its own purposes.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The budget should not exceed $97,000 for the development of the web site, publication, and research service. The $97,000 should also cover all printing costs for producing the publication. For both the electronic and print versions, applicants are encouraged to sell subscriptions and use advertising to offset production costs in excess of the grant. The Applicants must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down of the administrative budget. The Bureau's grant assistance will not exceed $97,000. The $97,000 is expected to constitute only a portion of the total project funding. Cost sharing is required and the proposal should list other anticipated sources of support. Grant applications should demonstrate financial and in-kind support.

Allowable costs for the program include the following:

(1) Salaries and fringe benefits
(2) Web site design costs, printing, utilities, and other direct costs
(3) Indirect expenses, auditing costs

Applicants should refer to the Grant package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–2002–09.

FOR FURTHER INFORMATION CONTACT: The Office of Global Educational Programs, Educational Information and Resources Branch, Department of State, 301 4th Street, SW., (SA–44), Washington, DC 20547, Tel: (202) 619–5549, Fax: (202) 401–1433, E-mail: *aprince@pd.state.gov.* Potential applicants are encouraged to contact the program office to request an ApplicationPackage, which includes more detailed award criteria; all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the Bureau Program Officer,Ann Prince, on all inquiries and correspondences. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's web site at: *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Thursday, March 7, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eleven copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–2002–09,Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW.—SA–44, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to other Department of State Bureaus for their review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations

and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and CulturalAffairs. Final technical authority for assistance awards resides with the Bureau's grants contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning*: Proposals should exhibit originality, substance, precision, and relevance to design a web site, produce a publication, and provide e-mail updates on timely topics that will address the need for in-depth and balanced exploration of issues and topics important to overseas educational advisers. In addition, the proposal should demonstrate the resources and professional contacts necessary to respond in a timely manner to inquiries by overseas educational advisers.

2. *Institution's Track Record/Ability*: Proposals should demonstrate an institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by the Bureau's Office of Contracts. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals.

3. *Demonstrated Ability*: Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. The proposal should describe technological and editorial capability.

4. *Project Evaluation*: Proposal should provide a plan for evaluation by the grantee institution that includes measures of success. Evaluation plan should include periodic progress reports at the end of the grant cycle, as well as intermediate reports describing results of the project.

5. *Cost-Effectiveness*: The overhead and administrative components of the proposal, including salaries, should be kept as low as possible. All other items should be necessary and appropriate.

6. *Cost-Sharing*: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. For both electronic and print versions, applicants may sell subscriptions and use advertising to offset production costs in excess of the grant.

7. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, and to exposing readers to the widest possible range of views and approaches to U.S. higher education. Attention should be given to printing articles relating to different kinds of schools and universities from various regions of the U.S. The Department of State strives to ensure that all programs conducted under its mandate reflect the diversity of the intended audiences.

The Bureau aggressively seeks and actively encourages the involvement of American and international participants from traditionally underrepresented groups in all its grants, programs and other activities. These include women, racial and ethnic minorities and people with disabilities.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961,Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 02–1260 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3835]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Friday, February 1, 2002, from 10 a.m. to approximately 5 p.m., as necessary, in Room 1207 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will discuss the Draft Convention on Jurisdiction and Enforcement of Judgments, the Draft United Nations Convention on Terrorism, the International Law Commission's Articles on State Responsibility, recent legal developments related to International Court of Justice, and other current legal topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, January 30, 2002, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes both government and non-government admittance. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: January 4, 2002.

Mary Catherine Malin,

Attorney-Adviser, Office of United Nations Affairs, Executive Secretary, Advisory Committee on International Law.

[FR Doc. 02–1259 Filed 1–16–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 4, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11268.

Date Filed: January 3, 2002.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 191—Resolution 011a.

Mileage Manual Non-TC Member/Non-IATA Carrier Sectors (Amending).

Intended effective date: 1 February 2002 for implementation 1 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–1258 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending December 28, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11251.

Date Filed: December 28, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 2002.

Description: Application of Amerijet International, Inc., pursuant to 49 U.S.C. section 41105, requesting a disclaimer of jurisdiction and reissuance of certificate or, alternatively, approval of the transfer of Amerijet's certificates of public convenience and necessity and other operating authority to Amerijet Acquisition Corporation.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–1257 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11313]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various organizational and administrative issues relating to the operation of the Committee and to develop a business plan for 2002. The meetings are open to the public.

DATES: GLPAC will meet on Friday, February 1, 2002, from 9:00 a.m. to 12:00 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before January 25, 2002. Requests to have material distributed to each member of the Council prior to the meeting should reach the Executive Director of GLPAC along with 25 copies of the material on or before January 22, 2002.

ADDRESSES: GLPAC will meet at in Room B1 of the Federal Building, 1240 East 9th Street, Cleveland, OH 44199. Send written material and requests to make oral presentations to Ms. Margie G. Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Review of GLPAC's Charter.
(2) Overview of the Federal Advisory Committee Act (FACA).
(3) Committee Operating Procedures.
(4) Committee Planning Session for 2002 and Business Plan Development.

Procedural

All meetings are open to the public. Please note that the meeting may close early if all business is finished. At the Executive Director's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation, please notify the Executive Director no later than January 25, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than January 25, 2002. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit 25 copies to the Executive Director no later than January 22, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: January 11, 2002.

Jeffrey P. High,

Director of Waterways Management.

[FR Doc. 02–1186 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 27]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4 p.m. on Wednesday, February 13, 2002.

ADDRESSES: The meeting of the RSAC will be held at the Almas Temple Club in the Grand Ballroom, 1315 K Street, NW., Washington, DC 20005, (202) 898–1688. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation

can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Butera, or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Wednesday, February 13, 2002. The meeting of the RSAC will be held at the Almas Temple Club, 1315 K Street, NW, Washington, DC, 20005, (202) 898–1688. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual voting representatives and five associate representatives drawn from among 32 organizations representing various rail industry perspectives, two associate representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico and other diverse groups. Staffs of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will receive greetings and a charge from the new FRA Administrator. The morning session will be dedicated to a discussion of security of railroad passenger and freight operations. Status briefings will be held on Locomotive Cab Working Conditions (full RSAC ballot votes on the NPRM completed by December 10th, 2001), Accident/Incident Reporting, Crashworthiness, Event Recorders and other Working Group activities. The Committee may be requested to act upon recommendations of the Accident Reports Working Group regarding estimation of railroad property damages (RSAC Task 97–7) and recommendations of the Positive Train Control Working Group for resolution of comments on the proposed rule for Processor-Based Signal and Train Control Systems (RSAC Task 97–6). The RSAC will also discuss implications of the use of prescription and over-the-counter medications by safety-sensitive employees, and a briefing on safety initiatives directed a highway-rail grade crossings will be held in the afternoon.

See the RSAC Web site for details on pending tasks at: *http: //rsac.fra.dot.gov/* . Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 11, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–1255 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–11109]

Temporary Cessation of Sounding of Locomotive Horn—Yakima, Washington

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 (BNSF) is ordered to temporarily cease the sounding of locomotive horns at specific crossings within the City of Yakima, Washington. 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 February 19, 2002. 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–2001–11109) 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 (9am—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 Web site 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 Yakima, Washington, to order the BNSF to temporarily cease the sounding of locomotive horns at five highway-rail grade 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 I Street (DOT Inventory No. 098492F), D Street (DOT Inventory No. 099162D), Lincoln Avenue (DOT Inventory No. 099163K), B Street (DOT Inventory No. 099164S), and Yakima Avenue (DOT Inventory No. 099165Y). 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 Interim Final Order published today, BNSF will be required to cease sounding of the locomotive horn at the crossings under the terms of the 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 Yakima that such order be issued, and the purpose of the order is to enable effectuation of a quiet zone demonstration project proposed by the community and supported by the Washington Utilities and Transportation Commission, 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 Yakima, Washington, (City) in conjunction with The Burlington Northern and Santa Fe Railway Company (BNSF), 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 I Street (DOT Inventory No. 098492F), D Street (DOT Inventory No. 099162D), Lincoln Avenue (DOT Inventory No. 099163K), B Street (DOT Inventory No. 099164S), and Yakima Avenue (DOT Inventory No. 099165Y) (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 median barriers to prevent motorists from entering public highway-rail grade crossings when warning gates and lights are activated. The tested median barrier consists of an 18-inch wide, one-foot high, raised concrete barrier placed along the centerline of the roadway and consisting of various lengths. Reflective, flexible, three-inch diameter tubular shaped cones are mounted on top of the barrier, spaced five feet apart. This study will provide information on the effectiveness of medians in relationship to both heavy commercial motor vehicles and heavy motor vehicle traffic and the maintenance issues that may arise from these types of traffic.

3. The demonstration project has been designed with three distinct phases. ''Phase 1'' entails studying driver behavior at three of the crossings without medians for four months. ''Phase 2'' of the project, lasting four months, includes studying driver behavior at those crossings with medians installed but with locomotive horns routinely sounded. Driver behavior was compared with the results of the first phase in order to determine the effectiveness of the supplementary safety devices. ''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 data has been gathered 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. FRA will gather further data 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.

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, to cease the routine sounding of locomotive horns on approaches to and at the above crossings 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 necessary state and local governmental entities, 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; and

(c) Advance warning signs, as approved by the Washington Utilities and Transportation Commissioner 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.

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.

Any violation of this order shall subject the person committing the violation to a civil penalty of up to $22,000. 49 U.S.C. 21301. FRA, may through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Issued in Washington, DC on January 10, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–1254 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 26]

Railroad Safety Advisory Committee (''RSAC''); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect their current status.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on April 6, 2001, (66 FR 18352). The seventeenth full Committee meeting was held April 23, 2001, at the Mayflower Hotel in the Colonial Ballroom in Washington, DC. The eighteenth meeting is scheduled for February 13, 2002.

Since its first meeting in April of 1996, the RSAC has accepted seventeen tasks. Status for each of the tasks is provided below:

Task 96–1—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. The final rule was published on January 17, 2001 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001 was published on February 12, 2001, (66 FR 9905). In addition, the FRA is reviewing petitions for reconsideration of the final rule and has published amendments to Subpart D of the final rule (66 FR 36983; 8/1/01). Contact: Thomas Hermann (202) 493–6036.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards was approved by the full RSAC in a mail ballot during August 2000. The GRMS final rule amendment was published January 10, 2001 (66 FR 1894) and the Roadway Maintenance Machines NPRM was published January 10, 2001 (66 FR 1930). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001 in accordance with the Regulatory Review Plan (66 FR 9676). Contact: Al MacDowell (202) 493–6236.

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 (62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. Contact: Gene Cox (202) 493–6319.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to

the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493–6302.

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). The final rule became effective January 18, 2000. Contact: George Scerbo (202) 493–6349.

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR 60966). Contact: John Conklin (202) 493–6318.

Task 96–7—Developing Roadway Maintenance Machine (On-Track Equipment) Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force finalized a proposed rule which was approved by the full RSAC in a mail ballot in August 2000. The NPRM was published January 10, 2001 (66 FR 1930). The Task Force is to meet to review comments on February 27—March 1, 2002. Contact: Al MacDowell (202) 493–6236.

Task 96–8—This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories, and prepared drafts of the task statements for Tasks 97–1 and 97–2.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. An accident review task force has evaluated the potential effectiveness of suggested improvements. An NPRM has been prepared and circulated, and the Working Group met to review the draft on October 9–10, 2001. The next meeting is scheduled for January 17–18, 2002 to go over proposed drafts. The full RSAC will review after approval of the Working Group. Contact: Sean Mehrvazi (202) 493–6237.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation). A draft sanitation NPRM was circulated to the Working Group on Cab Working Conditions with ballot requested by November 3, 2000. The NPRM on sanitation was discussed during the full RSAC meeting on September 14, 2000 and published January 2, 2001 (66 FR 136). A public hearing was held April 2, 2001. Refinement and substantive changes were incorporated into the rule language. A meeting was held on August 21, 2001, to discuss comments in response to the NPRM on sanitation. Agreement was reached on resolution of the comments to the NPRM. The Working Group gave concurrence to send the recommendations to the full RSAC for mail ballot vote. The recommendations were approved by the full Committee in December 2001, and FRA is preparing the final rule for early issuance.

(Noise exposure.) A Task Force has assisted in identifying options for strengthening the occupational noise exposure standard, and the Cab Working Group met in October and November, 2000, and April, 2001, and reached tentative agreement on most of the significant issues related to the noise NPRM. The Cab Working Group held a meeting April 3 to 5, 2001, to discuss Noise exposure Standards. Refinement and substantive changes were incorporated into the rule language. A full draft NPRM will be circulated to the working group for consideration. The Cab Working Group has also considered issues related to cab temperature, and is expected to consider additional issues (such as vibration) in the future. Contact: Jeffrey Horn (202) 493–6283.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. The Event Recorder Working Group is completing preparation of an NPRM. The NPRM went to the Working Group on May 21, 2001, for comments, and FRA has reviewed the comments. A new draft is under review within FRA. It will be circulated to the Working Group, which will be asked to consider it. Contact: Edward Pritchard (202) 493–6247.

Task 97–4 and Task 97–5—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment. Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group. A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The Standards Task Force, formed to develop PTC standards, is developing draft recommendations for performance-based standards for processor-based signal and train control standards. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas to formulate recommendations for resolution of issues raised in the public comments. Consultations continue to complete that activity, after which recommendations will be submitted to the full committee for consideration. Monitoring of implementation continues. Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work, and the Working Group will continue to meet to monitor project implementation. Contact: Grady Cothen (202) 493–6302.

Task 97–7—Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997. A working group was formed to address this task and conducted their initial meeting on February 8, 1999. The working group

designed a survey form to collect specific data about damages to railroad equipment. The survey started on August 1 and ended January 31, 2001. A statistical analysis, using the survey data, was done to see if the method could be used to calculate property damages. The report was complete by the last week of April, 2001. A meeting was held May 21–23, 2001 to review the report. The Working Group has agreed to terminate action on this task after reviewing the options. The Working Group is reviewing a draft close-out report for approval by the full RSAC. Contact: Robert Finkelstein (202) 493–6280.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection). A working group has been formed and held its first meeting on October 16–18, 2000. Meetings have been held: February 27–March 1, 2001, March 19–21, 2001, May 1–3, 2001, June 19–21, 2001 and October 23–25, 2001. The next meeting is tentatively scheduled for January 2002. The Working Group has reached tentative consensus on several issues. Contact: Doug Taylor (202) 493–6255.

Task 01–1—Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide). This task was accepted April 23, 2001, by the full RSAC and assigned to the Accident/Incident Working Group. At a meeting of the Working Group, held May 21–23, 2001, the task was discussed, and four task forces were set up to review changes and/or modifications. To date, these task forces have identified a series of minor modifications to the Reporting Guide/regulations for consideration. A target of September 15, 2001, was set for reporting the recommended changes. The Working Group met September 11, 2001; meeting was dismissed due to national emergency. A meeting was held November 14–15, 2001 in St. Louis, Missouri. A Task Force on Remote Control met on December 11, 2001. The next meeting is scheduled for January 23–24, 2002, in Baltimore, Maryland. Contact: Contact: Robert Finkelstein (202) 493–6280.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 11, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–1256 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. 42052]

Union Pacific Railroad Company—Petition for Declaratory Order—Unilaterally Imposed Interchange Charges

AGENCY: Surface Transportation Board Department of Transportation.

ACTION: Request for Notices of Intent to Participate.

SUMMARY: The Surface Transportation Board (Board) requests that those intending to participate in this phase of this proceeding, in which interested parties will meet to discuss ways to facilitate the interchange of railroad cars, notify the agency and the Association of American Railroads (AAR) of their intent. The Board is also suspending the procedural schedule established in the prior order (served on December 10, 2001).

DATES: We request that those intending to participate notify the Board and AAR by January 28, 2002. We will issue a further order after the notices of intent to participate have been filed, establishing dates by which the first meeting should be conducted and by which AAR should file a progress report.

ADDRESSES: An original and one copy of each party's notice of intent, referring to STB Docket No. 42052, should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, ATTN: STB Docket No. 42052. Two copies should also be sent to Association of American Railroads, 50 F Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: At the Board, Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.] At AAR, John Carroll, (202) 639–2373.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by the Board in response to a request for a declaratory order concerning ways in which rail carriers deal with interchange delays. However, because issues regarding interchange delays are often addressed under the framework of the industry-wide Car Service and Car Hire Agreement (CS/CH Agreement) and Code of Car Service Rules/Code of Car Hire Rules (CS/CH Rules) administered by the AAR, by notice served and published December 10, 2001 (66 FR 63741), the Board concluded that the issues raised could be better addressed in private sector discussions and that the CS/CH Rules must be considered as part of any private sector resolution of the matter that had been brought before the Board. The agency therefore requested that, before a proceeding is moved forward administratively, AAR convene a meeting or series of meetings with railroads, shippers, and other involved parties to discuss ways to address issues concerning delays in the interchange of railroad cars between railroads, and to develop proposals for addressing incidences of traffic delays associated with such interchange. The Board further requested that AAR file a report describing the progress made at the meeting(s) and recommending how best to proceed to resolve these issues.

On December 21, 2001, we received a letter from AAR's General Counsel requesting that we take certain actions to facilitate moving the process forward in the private sector. First, noting that AAR has not been a party to the agency proceeding and that it has not yet been informed of all who may be interested in the matter or what any party's position may be, the letter suggests that we issue a **Federal Register** notice asking interested parties to file notices of intent to participate. To facilitate the conduct of the meeting(s), all parties should file notices of intent to participate, which should provide the name, address, official title, and operational experience of the person who will participate on behalf of the party, along with a brief (not more than one page) summary of the party's position and preliminary recommendations.

Given the interest that we expressed in our prior order for a practical solution based on good faith cooperation among all railroads, AAR's letter further suggests that we encourage participation by persons with expertise in rail operations/interchange issues, rather than by the party's counsel. We agree that the discussions we envisioned in our prior order would focus on operational cooperation rather than legal issues, and that the meeting(s) can be most fruitful if operational solutions are pursued. Thus, we strongly encourage participation by individuals with operational backgrounds.

AAR's letter also suggests that, given the current uncertainty as to the scope of the problem or the number of parties

wishing to participate, the Board consider extending the time for holding the meeting beyond February 8, 2002. We agree. We will suspend the current procedural schedule, and adopt a new schedule after notices of intent to participate are filed.

Finally, AAR's letter expresses concern over potential antitrust exposure in the event that any proposals relating to the interchange issues under consideration could involve collective discussion of prices, rates, or tariffs. We do not want to prejudge or limit the type of permissible dialogue in a way that could undercut resolution of the matters at issue, but our purpose in asking the parties to attempt to resolve this matter in the private sector has been to make the interchange process work better, not to provide a forum for parties to collectively discuss specific rates for specific situations. Thus, in our view, if discussion of rate matters takes place, it should be of a general nature. Such general conversations—particularly given that they would be undertaken pursuant to our request—would not in our view subject the participants to antitrust exposure. And as long as any such conversations that may implicate rates are kept to a general nature, they should not undercut what we hope could be a favorable outcome here, which is the development of a framework in which parties can conduct bilateral negotiations to work out interchange issues of the sort that precipitated this proceeding. If at any point it becomes evident that antitrust issues are a concern, we will be available to address the situation.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Interested parties shall file notices of intent to participate, as described above, by January 28, 2002.

2. The procedural schedule established in our prior order is held in abeyance pending further order.

3. This decision is effective on January 17, 2002.

Decided: January 9, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1122 Filed 1–16–02; 8:45 am]

BILLING CODE 4195–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 9, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 19, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1423.

Regulation Project Number: PS–106–91 Final.

Type of Review: Extension.

Title: State Housing Credit Ceiling and other Rules Relating to the Low-Income Housing Credit.

Description: The regulations provide the order in which credits are allocated from each State's credit ceiling under section 42(h)(3)(C) and the determination of which states qualify for credits from a National Pool and of credits under section 42(h)(3)(D). Allocating agencies need this information to correctly allocate credits and determine National Poole eligibility.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 110.

Estimated Burden Hours Per Respondent: 2 hours, 30 minutes.

Frequency of Response: Other (One time per event).

Estimated Total Reporting Burden: 275 hours.

OMB Number: 1545–1624.

Notice Number: Notice 98–52.

Type of Review: Extension.

Title: Cash or Deferred Arrangements; Nondiscrimination.

Description: Section 1433(a) of the Small Business Job Protection Act of 1966 requires that the Service provide nondiscriminatory safe harbors with respect to section 401(k)(12) and section 401(m)(11) for plan years beginning after December 31, 1998. This notice implements that statutory requirement.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 02–1208 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 9, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before February 19, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1632.

Regulation Project Number: REG–118662–98 Final.

Type of Review: Extension.

Title: New Technologies in Retirement Plans.

Description: These regulations provide that certain notices and consents required in connection with distributions from retirement plans may be transmitted through electronic media. The regulations also modify the timing requirements for provision of certain distribution-related notices.

Respondents: Business or other for-profit, Individuals or households, Not-

for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 375,000.

Estimated Burden Hours Per Respondent: 1 hour, 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 477,563 hours.

Clearance Officer: George Freeland,Internal Revenue Service,Room 5577,1111 Constitution Avenue, NW,Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860,Office of Management and Budget,Room 10202, New Executive Office Building,Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–1263 Filed 1–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of intent to distribute offset for Fiscal Year 2001.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is Customs notice of intention to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2001 in connection with certain antidumping duty orders or findings or countervailing duty orders that were not previously listed in the notice of intent to distribute the offset for Fiscal Year 2001 that was published in the **Federal Register** on August 3, 2001. This document sets forth those additional antidumping duty orders or findings and countervailing duty orders that were not previously listed, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings and the dollar amount of the offset for each order or finding that is available for distribution.

DATES: Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by March 18, 2002.

ADDRESSES: Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229 (ATTN: Jeffrey J. Laxague).

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings, (202–927–0505).

SUPPLEMENTARY INFORMATION:

Background

The Continued Dumping and Subsidy Offset Act of 2000 (''CDSOA'') was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (''Act''). The provisions of the CDSOA are contained in Title X (sections 1001—1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term ''affected domestic producer'' means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) Remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC previously supplied Customs with the list of individual antidumping and countervailing duty cases for Fiscal Year 2001, and the affected domestic producers associated with each case that were potentially eligible to receive an offset. These cases were the subject of a notice of intent to distribute the continued dumping and subsidy offset for Fiscal Year 2001 that was published in the **Federal Register** (66 FR 40782) on August 3, 2001.

However, a number of antidumping and countervailing duty cases were not included on the previously-supplied list of cases that were subject to a distribution of the continued dumping and subsidy offset for Fiscal Year 2001. Accordingly, this notice essentially constitutes a supplement to the August 3, 2001, **Federal Register** notice for the purpose of listing the additional antidumping duty orders or findings or countervailing duty orders that are subject to a distribution of the offset for Fiscal Year 2001.

Customs Regulations Implementing the CDSOA

It is noted that Customs published a final rule in the **Federal Register** (66 FR 48546) on September 21, 2001, as T.D. 01–68, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of the Customs Regulations (19 CFR part 159, subpart F (§§ 159.61–159.64)).

Notice of Intent to Distribute Offset

This document announces Customs intention to distribute to affected domestic producers the assessed antidumping or countervailing duties that were available for distribution in Fiscal Year 2001 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. While § 159.62(a), Customs Regulations (19 CFR 159.62(a)), provides that Customs will publish a notice of intention to distribute assessed duties at least 90 days before the end of a fiscal year, this notice is being published at this time because it came to Customs attention that not all parties were listed in the original notice. In the future, it is not expected that supplemental notices of intent will be published.

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution.

As required by § 159.62(b), Customs Regulations (19 CFR 159.62(b)), this notice provides the specific instructions for filing a certification under § 159.63 to claim a distribution. Also, as required by § 159.62(b), for purposes of determining whether it is worthwhile to file a certification in a given case, this

notice includes the dollar amount for each listed order or finding that is available for distribution.

A successor to a company appearing on the list of affected domestic producers in this notice, or a member company of an association that appears on the list of affected domestic producers in this notice, where the member company does not appear on the list, should also consult § 159.61(b)(1)(i) or 159.61(b)(1)(ii), Customs Regulations, respectively (19 CFR 159.61(b)(1)(i) or 159.61(b)(1)(ii)), concerning whether and, if so, the additional procedures under which such party may file a certification to claim an offset.

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification, in triplicate, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

As provided in § 159.63(b), Customs Regulations (19 CFR 159.63(b)), certifications to obtain a distribution of an offset must be received by Customs 60 days after the date of publication of the notice of intent in the **Federal Register**.

While there is no established format for a certification, the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (Product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The address of the domestic producer (if a post office box, the secondary street address must also be included);
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s);
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled ''Amount Claimed for Distribution';
11. A statement of eligibility, as described in the section below entitled ''Eligibility to Receive Distribution'; and
12. A signature by a corporate officer legally authorized to bind the producer.

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the total amount of qualifying expenditures certified by the domestic producer, and the amount certified by category.

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

Additionally, these expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case (§ 159.61(c), Customs Regulations (19 CFR 159.61(c))).

Eligibility to Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer.

Where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures (§ 159.63(b)(3)(ii), Customs Regulations (19 CFR 159.63(b)(3)(ii))).

Moreover, as required by 19 U.S.C. 1675c(b)(1) and § 159.63(b)(3)(iii), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer would again not be considered an affected domestic producer entitled to receive a distribution.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled ''Verification of Certification'').

Review and Correction of Certification

A certification that is submitted in response to this notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer, as provided in § 159.63(c), Customs Regulations (19 CFR 159.63(c)). It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and

satisfactory will result in the domestic producer not receiving a distribution.

Verification of Certification

Certifications are subject to Customs verification. Because of this, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification (see § 159.63(d), Customs Regulations (19 CFR 159.63(d))). The records must be those that are normally kept in the ordinary course of business; these records must support each qualifying expenditure enumerated in the certification; and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public, as specified in § 159.63(e), Customs Regulations (19 CFR 159.63(e)). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset. Also, the amount of the offset available for distribution with respect to each listed order or finding appears in parentheses immediately below the Commerce case number for the order or finding.

Commerce case number	Commission case number	Product/country	Petitioners/supporters
A–588–015, ($24,311,452.01).	AA 1921–66 ...	Television receivers/Japan.	AGIV (U.S.A.); Casio Computer; CBM America; Citizen Watch; Funai Electric; Hitachi; Industrial Union; Department, AFL–CIO; Matsushita; Mitsubishi Electric; NEC; Orion Electric; J.C. Penney; Philips Electronics; Philips Magnavox; P.T. Imports; Sanyo; Sharp; Toshiba; Toshiba America Consumer; Products; Victor Company of Japan; Montgomery Ward; Zenith Electronics.
A–580–008, ($45,669.05).	731–TA–134 ..	Color television receivers/Korea.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics).
A–583–009, ($1,025.82).	731–TA–135 ..	Color television receivers/Taiwan.	Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television (members were the 4 labor organizations identified above and Allied Industrial Workers of America, International Union; American Flint Glass Workers Union of North America; Communications Workers of America; Corning Glass Works; Glass Bottle Blowers' Association of the United States and Canada; International Association of Machinists; Owens-Illinois; United Furniture Workers of America; United Steelworkers of America; and Wells-Gardner Electronics).
A–122–006, ($13,533.77).	AA1921–49	Steel jacks/Canada	No petition at the Commission; Commerce service list identifies: Bloomfield Manufacturing (formerly Harrah Manufacturing); Seaburn Metal Products.
A–588–029, ($65,301.74).	AA1921–85	Fish netting of man-made fiber/Japan.	No petition at the Commission; Commerce service list identifies: Jovanovich Supply; LFSI; Trans-Pacific Trading.
A–588–038, ($168,261.66).	AA1921–98	Bicycle speedometers/Japan.	No petition at the Commission; Commerce service list identifies: Avocet; Cat Eye; Diversified Products; N.S. International; Sanyo Electric; Stewart-Warner.
A–588–055, ($53.99).	AA1921–154 ..	Acrylic sheet/Japan	Polycas Technology.
C–351–037, ($2,471.93).	104–TAA–21 ..	Cotton yarn/Brazil ..	Harriet & Henderson Yarns; LaFar Industries; American Yarn Spinners Association.
A–588–005, ($572.91).	731–TA–48	High power microwave amplifiers/Japan.	Aydin; MCL.
A–122–401, ($256.98).	731–TA–196 ..	Red raspberries/Canada.	Rader Farms; Ron Roberts; Shuksan Frozen Food; Northwest Food Producers' Association; Oregon Caneberry Commission; Red Raspberry Member Group; Washington Red Raspberry Commission.
A–588–405, ($49,294.92).	731–TA–207 ..	Cellular mobile telephones/Japan.	E.F. Johnson; Motorola.
C–421–601, ($407.22).	701–TA–278 ..	Fresh cut flowers/Netherlands.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–301–602, ($32,909.01).	731–TA–329 ..	Fresh cut flowers/Colombia.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–331–602, ($385.01).	731–TA–331 ..	Fresh cut flowers/Equador.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.

Commerce case number	Commission case number	Product/country	Petitioners/supporters
A–201–601, ($24,291.74).	731–TA–333 ..	Fresh cut flowers/ Mexico.	Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association.
A–401–603, ($412.84).	731–TA–354 ..	Stainless steel hollow products/ Sweden.	AL Tech Specialty Steel; Allegheny Ludlum Steel; ARMCO; Carpenter Technology; Crucible Materials; Damacus Tubular Products; Specialty Tubing Group.
A–508–604, ($376.92).	731–TA–366 ..	Industrial phosphoric acid/Israel.	Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical.
A–588–802, ($8,407.02).	731–TA389	3.5″ microdisks/ Japan.	Verbatim.
A–588–809, ($70,398.66).	731–TA–426 ..	Small business telephone systems/ Japan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–583–806, ($10,079.58).	731–TA–428 ..	Small business telephone systems/ Taiwan.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–580–803, ($12,773.12).	731–TA–427 ..	Small business telephone systems/ Korea.	American Telephone & Telegraph; Comdial; Eagle Telephonic.
A–570–811, ($957.34).	731–TA–497 ..	Tungsten ore concentrates/China.	Curtis Tungsten; U.S. Tungsten.
A–427–804, ($59,480.21).	731–TA–553 ..	Hot-rolled lead & bismuth carbon steel products/ France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.
C–427–805, ($11,868.38).	701–TA–315 ..	Hot-rolled lead & bismuth carbon steel products/ France.	Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel.

Dated: January 11, 2002.

Douglas M. Browning,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 02–1175 Filed 1–16–02; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, January 24, 2002, 9:15 a.m.—5 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 2002 Board Meeting; Approval of Minutes of the One Hundred Second Meeting (November 15, 2001) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Program Reports; Review of Individual Grant Applications; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 11, 2002.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 02–1327 Filed 1–15–02; 11:48 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments, which occur during calendar year 2002.

FOR FURTHER INFORMATION CONTACT: Karen Barber, Program Analyst, Communications and Regulatory Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: (202) 273–5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Public Law 104–275, section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments, which occur during calendar year 2002, is the average cost of Government-furnished graveliners in fiscal year 2001, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by

VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $153.79 for fiscal year 2001.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.50 for calendar year 2002.

The net allowance payable for qualifying interments occurring during calendar year 2002, therefore, is $144.29.

Approved: January 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–1249 Filed 1–16–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
January 17, 2002

Part II

Environmental Protection Agency

40 CFR Part 260, et al.
Resource Conservation and Recovery Act Burden Reduction Initiative; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[FRL–7123–9]

RIN 2050–AE50

Resource Conservation and Recovery Act Burden Reduction Initiative

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to reduce the recordkeeping and reporting burden the Resource Conservation and Recovery Act (RCRA) imposes on the states, the public, and the regulated community. The burden reduction ideas proposed today will have no anticipated impact on the protections for human health and the environment we have established. At the same time, our proposals will eliminate non-essential paperwork.

In a **Federal Register** ''Notice of Data Availability'' published June 18, 1999, we asked for comment on an initial set of burden reduction ideas. In today's action, we are proposing for rulemaking many of these ideas.

DATES: Written comments must be received by April 17, 2002.

ADDRESSES: If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing Docket Number F–1999–IBRA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view public comments and supporting materials in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the data base, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this proposed rule, contact Mr. Robert Burchard at 703–308–8450, *burchard.robert@epa.gov,* write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov.* You should identify comments in electronic format with the docket number F–1999–IBRA–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Accessing Electronic Data

Background information materials for this Notice are available on the Internet. Follow the instructions below to access these materials electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction.

FTP: ftp.epa.gov.

Login: anonymous.

Password: Your Internet address.Files are located in */pub/epaoswer.*

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Regulatory Language

I. Background and Purpose of Today's Proposed Rulemaking

A. Why Are We Reducing Burden?

To meet the federal government-wide goal established by the Paperwork Reduction Act (PRA), we plan to reduce the burden imposed by our reporting and recordkeeping requirements. Burden is the time that a state employee, member of the regulated community, or private citizen spends generating and reporting information to us and keeping records. The PRA establishes a federal government-wide goal of reducing burden 40 percent from the total burden imposed annually on September 30, 1995.

B. How Is Burden Estimated?

We estimate burden by first listing the activities undertaken to collect and organize information in response to our regulations, report the information, or keep it as records. For each activity, we then estimate the time in hours it takes an average respondent to complete the information request, taking into account differences such as facility size and amount of information required. Next, we verify these estimates through consultations with affected parties. These hour estimates are then multiplied by the number of people or entities expected to complete the information collection. The results of these analyses are the basis for our Information Collection Requests, which are published in the **Federal Register**.

C. What Is the Baseline for the Resource Conservation and Recovery Act (RCRA) Paperwork Requirements?

On September 30, 1995, the baseline for the PRA, the burden imposed by RCRA regulation was 12,600,000 hours per year. Forty per cent reduction from the baseline is 7,560,000 hours per year. This proposed rule will eliminate 929,000 hours. Coupled with reductions that have occurred, and reductions that are planned, we expect to reduce our burden by 47% from 1995.

D. What Is the Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative and What Have We Done to Date?

There have already been substantial burden reduction efforts in implementing the Resource Conservation and Recovery Act (RCRA), such as for the Land Disposal Restrictions and Used Oil programs. We have already achieved reductions of close to five million burden hours.

And there are other ongoing, proactive burden reduction efforts such as revisions to the Hazardous Waste Manifest system, including allowing manifests to be sent electronically, development of a standardized permit for selected RCRA facilities, and a major information system overhaul through the Waste Information Needs (WIN) Initiative.

The WIN Initiative is a multi-year project which is reinventing RCRA information management. It operates as a partnership among EPA Headquarters, EPA Regions, and the states. Both information management experts and implementers of hazardous waste programs participate in the Initiative.

The WIN Initiative began by identifying the information needed to carry out the activities of the RCRA program, assessing the reliability and accessibility of current information systems that support these activities, projecting future information needs, and analyzing what the needed information technologies will be. It is now implementing information change, starting with the Biennial Report, Notification, and part A permit application requirements.

The standardized permit, which was proposed on October 12, 2001 (66 FR 52191), would be available to facilities that generate hazardous waste and then manage the waste in on-site units such as tanks, containers, and containment buildings. The standardized permit would streamline the entire permitting process.

Revisions to the Hazardous Waste Manifest include standardizing the content and appearance of manifest forms and allowing waste handlers to complete, send, and store manifest information electronically.

Additionally, we have combined our two main databases of hazardous waste information (the Biennial Report and the Resource Conservation and Recovery Information System—RCRIS) into a new database, named ''RCRAInfo'', which will provide easier and faster access to the information we collect.

These are part of the Agency's efforts to comprehensively reform and improve RCRA information management. This process has asked the questions: Who uses hazardous waste information, why do they need it, is the information useful as it is currently collected, and how can the quality and timeliness of the information be improved?

Over the past three years, the RCRA Burden Reduction Initiative has reviewed and analyzed all RCRA reporting and recordkeeping requirements. We have developed ideas for eliminating or streamlining many of them. We obtained input from program offices at EPA Headquarters, the EPA Regions, and state experts on the validity of the ideas, and whether the ideas would detract from our mission to protect human health and the environment. This input was obtained through almost twenty intensive information gathering sessions and workgroup meetings. We also had the assistance of EPA's Office of Inspector General, which made field visits to see whether certain records required by regulation are kept and used by regulatory authorities. The ideas for the Land Disposal Restrictions changes we are proposing today came from a series of information gathering roundtables on the Land Disposal Restrictions program sponsored by the Agency that brought together EPA, state implementors, the regulated community, and environmental groups.

Our ideas were first announced for comment in a June 18, 1999 **Federal Register** ''Notice of Data Availability'' (64 FR 32859). In the ''Notice'' and background documents (which are available on the Internet), we included every burden reduction idea we considered. We received 36 comments, all of which were taken into consideration when developing today's proposal. Based on comments we received on the ''Notice'', we dropped a number of burden reduction ideas. Ideas were dropped when a commenter demonstrated a practical use for the information, or where they presented a specific example of how an idea would negatively impact human health and the environment. Based on these comments, we also added some additional ideas which appear in today's proposal.

We discussed our burden reduction plans in public forums, including a national public meeting in April 2000, sponsored by the Office of Management and Budget on reinventing government, a national meeting of states sponsored by the Association of Territorial and Solid Waste Management Officials, several industry-outreach roundtables, and a meeting with a coalition of environmental groups. At these forums, we invited discussion of the same questions we had posed in the ''Notice of Data Availability''. We received no specific information from meeting participants indicating that human health and the environment would be impaired if our burden reduction ideas were implemented.

E. How Can I Influence EPA's Thinking on This Rule?

We invite comment on all aspects of this proposal. We specifically want comment on: How will this proposal affect users of environmental

information, particularly the public? Are any of the regulations we are proposing to eliminate crucial to protecting human health and the environment? What kinds of information do people need to protect public health and the environment, and how can they get it most efficiently? Most importantly, what information is actually used? Although a very broad range of information might be theoretically useful to regulators and the public, it is our understanding that much of the information we have required to be collected and reported is not accessed or used on a regular basis for protecting human health and the environment. At this point, twenty years into the RCRA program, we would like our information requirements to reflect demonstrated needs.

We plan to implement the ideas in today's proposal in a final rulemaking, and your comments will play an important part in our decision-making process.

If you have any comments on this proposal, you must submit them even if you already submitted comments on the ''Notice of Data Availability.'' Today's proposed rule responds to the comments we received on the NODA, and we will assume that any concerns identified in the comments on the NODA have been addressed unless we hear otherwise.

In developing this proposal, we tried to address the concerns of our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views clearly, and why you feel that way.
- Provide technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those that you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Submit your comments by the deadline in this Notice.
- Include your name, date, and docket number with your comments.

II. Our Main Burden Reduction Proposals

A. We Propose To Reduce the Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)

We require the submittal of 334 different types of notifications, reports, certifications, demonstrations, and plans from generators and TSDFs to show compliance with the RCRA regulations. We also ask for this information as part of applications for extensions, permits, variances, and exemptions. A study done by the Chemical Manufacturers Association showed that as with the other major environmental statutes implemented by EPA—such as The Clean Air Act and The Clean Water Act—RCRA imposes a large number of reporting requirements.

When we crafted our regulations, we decided to collect as much information as possible about facility operations. Without prior experience as a guide, our philosophy was that it was better to collect information in all cases, knowing that we could eliminate information requirements later if they turned out to not be useful.

Given that we now have 20 years of operating history in RCRA, we have decided to use this proposed rulemaking to step back and reevaluate based on actual experience whether this level of information collection is necessary. And if not, whether we can reduce paperwork while ensuring that public health and environmental protection continues. Doing so will ease some of the unnecessary bureaucratic controls we have established.

Based on comments we received on the ''Notice of Data Availability,'' our own analysis (which consisted of interviews with Agency experts, consulting with stakeholders, and professional judgement in weighing the qualitative costs and benefits of the ideas), and an analysis conducted by EPA's Office of Inspector General (discussed above), we identified approximately one third of the 334 reporting requirements for elimination or modification.

We developed two criteria for determining which reports to keep, cut, or modify, to the extent there was no indication from our outreach activities and analysis that protection of human health and the environment would be affected in any way: (1) Reporting should occur for information about the opening and closing of a facility, along with informational updates such as financial assurance updates and the Biennial Report submission, and, (2) reporting on the majority of the day-to-day functions of a facility is unnecessary. Although oversight of hazardous waste facilities on a day-to-day basis is important, many of the various notices now required are not used in assessing the protectiveness of facility operations, and some are simply redundant. One of the measures we used to determine this was whether the information was put into a database by regulatory authorities.

The bulk of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement (such as complying with a technical standard for the operation of a treatment unit) was performed. Other reports we propose to cut are instances when a facility has to notify the regulatory authorities twice about something that happened at the facility. Requiring a double notification is overly burdensome and does not appreciably improve protection of human health and the environment.

Our proposal maintains facility accountability and responsibility. It still has a facility undertaking the basic environmentally protective activities that are in the regulations—it just won't have to submit a report to the regulatory authority that each activity was completed. And, it will still have to record what happens at the facility in the operating record.

Through this proposal, we hope to focus attention on those critical reports regulators really need to have to ensure protection of human health and the environment.

We are not curtailing the right of regulatory agencies to request and receive any information. We are simply saying that facilities no longer have to send in many of the reports they currently have to submit on a regular basis.

We are not cutting back the government's or the public's ability to know what is happening at a facility, and whether environmentally protective activities are still occurring, because a basic set of compliance information will still be at the facility (in the facility's operating record). This information can be examined by regulatory authorities and then shared with the public. And, another set of information about a facility (how much waste they generate and what is done with it) will still be readily accessible to the public via Agency Web sites and Web sites run by non-Agency organizations such as the Right-to-Know Network (*www.rtknet.org*).

Many of the notices and reports we propose eliminating are obscure and only rarely needed to be sent to

regulatory authorities. They are the kind of notices and reports that, based on our outreach and information gathering, are little, if at all, used by the public.

Please review the regulatory language that is part of today's rulemaking for the specific changes we are proposing to existing regulatory requirements. If commenters believe that any of the notices or reports we are proposing to eliminate are necessary, they should provide specific examples of how the information has been used to address a human health or environmental problem. And, if commenters have a different way to identify which reports to eliminate or modify, they should let us know.

The following chart contains all of the reporting and recordkeeping requirements we propose to eliminate or modify. The first column shows the requirement and what we propose to do with it. The second column provides the regulatory citation that implements the requirement. The Code of Federal Regulations (CFR) is a publication containing all federal regulations. EPA's regulations are in 40 CFR.

We are interested in whether or not any of these items have an existing, specific, and demonstrable use to the public or regulators. In your comments, please provide specific examples of how this information is used, and whether it is stored in an accessible database.

RCRA Reporting and Recordkeeping Requirements Proposed for Elimination or Modification

Requirement	40 CFR (Code of Federal Regulations) citation
Submit report on industry-wide prevalence of the material production process: Eliminate—Regulatory authorities can decide whether to give a variance from classification as a solid waste without this information.	260.31(b)(2).
Exclusion—Submit one-time notification for recycled wood-preserving wastewaters and spent wood-preserving solutions: Eliminate—an unnecessary requirement. According to an EPA expert, this requirement now has limited use for regulators. Also, this proposed change does not affect the other, existing, protective regulatory requirements.	261.4(a)(9)(iii)(E).
Submit report estimating the number of studies and amount of waste to be used in treatability studies: Eliminate—an unnecessary requirement, since this information is provided to the regulatory agency at a later date, meaning that the information has to be supplied by the facility twice (an unnecessary duplication). Plus, according to EPA staff experts, these estimates are not usually accurate.	261.4(f)(9).
Exclusion—Generator submit a one-time comparable/syngas fuel notice to the permitting agency: Eliminate—an unnecessary requirement given the subsequent public notice regulatory requirements (where this information is also submitted). Plus, we are not eliminating the overall regulatory requirements for burning, blending, generation, sampling, etc.	261.38(c)(1)(i)(A).
Personnel training requirements—training program: Eliminate the RCRA requirements, and have facilities follow Occupational Safety and Health Administration standards, which are more comprehensive. This is an area of overlap that has been identified in a comprehensive study of federal personnel training requirements by the General Accounting Office.	264.16(a)(3).
Personnel training requirements—record job title: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(1).
Personnel training requirements—record job description: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(2).
Personnel training requirements—record type and amount of training that will be provided: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement isn't necessarily a good indicator of whether an employee is capable of doing the job safely.	264.16(d)(3).
Contingency Plan—Coordination with other plans: Modify—Plan should be based on the One Plan guidance, which will eliminate the need to prepare multiple contingency plans for Agency requirements.	264.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 264.56(h) before resuming operations: Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	264.56(i).
Operating record: Maintain operating record for facility Modify amount of time most of the information in operating records have to be kept—three years instead of for the life of the facility. We are proposing this to standardize our record retention requirements.	264.73(b).
Standards for Solid Waste Management Units Remove obsolete language	264.90(a)(2).
Detection Monitoring (Permitted Facilities)—Conduct and maintain ground-water monitoring: Modify—We plan to introduce flexibility by allowing sampling for a smaller subset of constituents from the Appendix IX list of constituents. This idea originated from state staff with field experience.	264.98(c).
Detection Monitoring (Permitted Facilities)—Prepare and submit the notification of contamination: We are taking comment on eliminating this requirement (but we are not proposing this in today's rule)—this has been identified through our review of the regulations as a duplicative requirement. The owner/operator must still sample groundwater wells for hazardous constituents (this is required by regulation) and also submit a permit modification to the Regional Administrator that establishes a compliance monitoring program for the constituents. This should be sufficient to protect human health and the environment.	264.98(g)(1).
Detection Monitoring (Permitted Facilities)—Prepare and submit an engineering feasibility plan for corrective action, if required: Modify—Our review of the regulations identified this requirement as one that could be switched from having to send it to the regulatory authority to just keeping it as part of the facility operating record. Our rationale is that this information will be available at the facility for inspectors to see, and that the facility operator still has to undertake the environmentally protective actions described in the regulation.	264.98(g)(5)(ii).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Detection Monitoring (Permitted Facilities)— Prepare and submit notification of intent to make a demonstration: Modify—make part of operating record instead of sending it to the regulatory authority. This information will be available at the facility for inspectors to see. Additionally, this kind of information is also provided to the regulatory authorities in the permit modification submitted under 264.98(g)(6)(iii).	264.98(g)(6)(i), (ii).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of new constituent concentrations: Modify—number of wells, samples, and constituents will be determined on a case-by-case basis, instead of for all wells. This idea came from state experts, and is based on their field experience that sampling all wells can be unnecessary.	264.99(g).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of exceeded concentration limits: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since this information is later included as part of a permit modification that must be submitted under 264.99(h)(2).	264.99(h)(1).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of intent to make a demonstration: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since the Regional Administrator will get the same information through the 264.99(i)(3) permit modification.	264.99(i)(1), (2).
Closure (Permitted Facilities)—Submit semi-annual corrective action report: Modify—report only needs to be submitted annually, instead of semi-annually. According to staff experts at the Agency, annual reports will be sufficient to ensure protection of human health and the environment.	264.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of performing this certification.	264.115.
Certification of Completion of Post-Closure Care: Modify—certification can be by a Certified Hazardous Materials Manager, who will have sufficient education and skill to make this certification.	264.120.
Containers—Inspection frequency: Allow self-inspection frequencies to be changed, on a case-by-case basis. Based on comments from states and the regulated community, we want to provide flexibility in inspections for well-performing facilities.	264.174.
Assessment of existing tank system's integrity: Modify—assessment can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification.	264.191(a), (b)(5)(ii).
Assessment of new tank system and components: Modify—can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification. And, this assessment may be retained on-site.	264.192(a), (b).
Containment and detection of releases: Remove obsolete language	264.193(a), (a)(1)–(5).
Leak Detection System for Tanks: Eliminate need for demonstrations to the regulatory authorities, and make this requirement self-implementing. The owner or operator is in the best position to make the determination as to what is the earliest practical time, based on the site characteristics.	264.193(c)(3), (c)(4), (e)(3)(iii).
Variance from Leak Detection Systems for Tanks: Eliminate need to obtain variance, and make this provision self-implementing. The owner or operator can implement alternate design and operating practices as long as they follow the requirements of this section.	264.193(g), (h).
Tank Systems (Permitted)—Inspection frequency: Change frequency to weekly. Based on comments and the existence of substantial safety features required by regulation, this change will have little negative impact on human health and the environment. Also, inspections may be less frequent than weekly, as determined on a case-by-case basis by regulatory authorities.	264.195(b).
Tank Systems (Permitted)—Notify EPA of release and submit report: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility records.	264.196(d0(1)–(3).
Tank Systems (Permitted)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, the certification may be made by a Certified Hazardous Materials Manager.	264.196(f).
Surface Impoundments (Permitted)—Notify EPA in writing if flow rate exceeds action leakage rate (ALR) for any sumps within 7 days: Eliminate—an unnecessary requirement as long as action is taken to stop leaks; action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(1).
Surface Impoundments (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(2).
Surface Impoundments (Permitted)—Submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(6).
Waste Piles (Permitted)—Installation of liners and leachate collection systems after January 29, 1992: Eliminate—obsolete language.	264.251(c).
Waste Piles (Permitted)—Notify EPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(1).
Waste Piles (Permitted)—Submit a written assessment to the RegionalAdministrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(2).
Waste Piles (Permitted)—Compile and submit information to EPA each month that the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(6).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Land Treatment (Permitted)—Prepare and submit a notice of statistically significant increases in hazardous constituents below treatment zone: Eliminate—a duplicative requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(g)(1).
Land Treatment (Permitted)—Prepare and submit notice of intent to make a demonstration that other sources or error led to increases below treatment zone: Eliminate—an unnecessary requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(h)(1), (2).
Land Treatment (Permitted)—Certification of closure: We are taking comment on (but not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of doing this certification.	264.280(b).
Land Fills (Permitted)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the procedures in the response action plan (a response action plan is regulatorily required) are followed.	264.304(b)(1).
Land Fills (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(2).
Land Fills (Permitted)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(6).
Special Requirements for Bulk and Containerized Liquids: Remove obsolete language	264.314(a)(1), (a)(2), (b), (f).
Incinerators (Permitted)—Submit notification of intent to burn hazardous wastes F020, F021, F022, F023, F026, F027: Eliminate—an unnecessary requirement since the facility is already permitted to burn this waste, and since there are already regulatory standards governing how the waste is burned.	264.343(a)(2).
Drip Pads (Permitted)—Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, these activities may also be done by a Certified Hazardous Materials Manager.	264.571(a), (b), (c).
Drip Pads (Permitted)—Evaluate drip pads: Modify—in addition to an independent, registered professional engineer, this evaluation may also be done by a Certified Hazardous Materials Manager.	264.573 (a)(4)(ii), (g).
Drip Pads (Permitted)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are taken. Information relevant to the happenings at the drip pad will be retained in the facility record.	264.573(m)(1)(iv).
Drip Pads (Permitted)—EPA makes determination about removal of pad: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are undertaken. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(2).
Drip Pads (Permitted)—Notify EPA and certify completion of repairs: Eliminate—an unnecessary requirement as long as cleanup and repairs described in the regulations of this part are made. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(3).
Drip Pads (Permitted)—Inspections: Modify—in addition to an independent, registered professional engineer, these inspections may be done by a Certified Hazardous Materials Manager.	264.574(a).
Process Vents (Permitted)—Submit semi-annual report of control device monitoring events to the Region: Eliminate need to submit report—an unnecessary requirement given the detailed recordkeeping required by 264.1035. The 264.1035 information will be retained on-site for regulators to examine.	264.1036.
Equipment Leaks (Permitted)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement since the relevant information will be retained in the facility record.	264.1061(b)(1).
Equipment Leaks (Permitted)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement since there are standards that must be followed if the regular standards are going to be followed. Relevant information will be retained in the facility record.	264.1061(d).
Equipment Leaks (Permitted)—Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary reporting requirement as long as standards are followed. Relevant information will be retained in the facility record for regulators to examine.	264.1062(a)(2).
Equipment Leaks (Permitted)—Submit a semi-annual report with record of equipment, shutdowns, and control device monitoring events:Eliminate—an unnecessary requirement. The 264.1064 recordkeeping requirements will provide adequate information. The 264.1064 information will remain on-site for regulators to examine.	264.1065.
Containment Buildings (Permitted): Remove obsolete language	264.1100.
Containment Buildings (Permitted)—Obtain certification that building meets requirements: Modify—in addition to an independent, registered professional engineer, the certification may be made by a Certified Hazardous Materials Manager.	264.1101(c)(2).
Containment Buildings (Permitted)—Notify EPA of condition that has caused a release and provide schedule for cleanup: Eliminate—an unnecessary requirement since repair of containment building must occur anyway. Information about this situation will be available in the facility record for regulators to inspect.	264.1101(c)(3)(i)(D).
Containment Buildings (Permitted)—Notify EPA and verify in writing that the cleanup and repairs have been completed after a release: Eliminate—an unnecessary requirement. EPA does not get involved in similar decisions about whether other parts of a facility need to be removed from service. Information about this situation will be available in the facility records for regulators to inspect.	264.1101(c)(3)(ii), (iii).
Containment Buildings (Permitted)—Inspection frequency: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	264.1101(c)(4).
Purpose, Scope, and Applicability: Remove obsolete language	265.1(b).
Personnel Training—Emergency response:Eliminate and replace with Occupational Safety and Health Administration requirements, which are more comprehensive than the RCRA requirements.	265.16(a)(3).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Personnel Training—Record job titles: Eliminate—an unnecessary requirement—from information we received from the field, the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	265.16(d)(1), (2).
Personnel Training—Description of type and amount of training each employee will receive: Eliminate—from information we received from the field, this requirement is not necessarily a good indicator of whether an employee is capable of doing the job safely.	265.16(d)(3).
Contingency Plans—Coordination with other plans: Modify—Facilities should follow the One Plan guidance, which is designed to eliminate overlap between different regulatory requirements for contingency plans. This proposal has been endorsed by a recent General Accounting Office report on worker protection.	265.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 265.56(h) before resuming operations:Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	265.56(i).
Operating Record—Keep operating record for facility:Modify the amount of time most records have to be kept; three years instead of for the life of the facility. This will standardize the RCRA record retention time requirements, eliminating confusion about how long records have to be kept.	265.73(b).
Ground-water Monitoring (Interim Status Facilities)—Submit alternate ground-water monitoring plan: Modify—no need to submit plan to Regional Administrator, it can be kept onsite where it will be available for regulators to inspect.	265.90(d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit report: Modify—no need to submit report to Regional Administrators. It can be kept on-site, where it will be available for regulators to inspect.	265.90(d)(3).
Ground-water Monitoring (Interim Status Facilities)—Submit notification of increased indicator parameter concentrations: Modify—no need to submit reports; this information will be noted as part of the groundwater quality assessment program.	265.93 (c)(1), (d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit information for ground-water quality assessment plan: Modify—no need to submit information. It may be maintained on-site, where it will be available for regulators to inspect.	265.93(d)(2).
Ground-water Monitoring (Interim Status Facilities)—Develop and submit ground-water quality assessment reports: Modify—no need to submit these reports given other regulatory requirements in this part, which give detailed instructions on assessments and cleanups.	265.93(d)(5), (e), (f).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a quarterly report of concentrations of values of the drinking water suitability parameters: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(i).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on indicator parameter concentrations and evaluations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(ii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on ground-water surface elevations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(iii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on the results of the groundwater quality assessment program: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(b)(2).
Closure (Interim Status Facilities)—Submit semi-annual corrective action report: Modify—according to Agency staff experts, regulators will have sufficient information if these reports are sent in annually instead of semiannually.	265.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified HazardousMaterials Manager is capable of performing this certification.	265.115.
Certify completion of post-closure care: Modify—in addition to an independent, registered professional engineer, this certification may be made by a Certified Hazardous Materials Managers.	265.120.
Container Inspection Frequency: Modify—allow regulators to modify the self-inspection frequency for well-performing facilities on a case-by-case basis.	265.174.
Assessment of Existing Tank System's Integrity: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.191(a), (b)(5)(ii).
Design and Installation of New Tank Systems or Components—assessment of structural integrity and acceptability for storing and treating waste: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.192(a).
Design and Installation of New Tank Systems or Components—assessment of tank installation: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.192(b).
Tank Systems (Interim Status): Remove obsolete language	265.193(a).
Tank Systems (Interim Status)—Demonstrate to EPA that technology and site conditions do not allow detection of release within 24 hours: Eliminate this demonstration. Having a functional leak detection system capable of detecting a release within 24 hours or the earliest practicable time, coupled with the tank design requirements, is adequately protective.	265.193(e)(3)(iii).
Tank Systems (Interim Status)—Obtain variance to use alternate tank design and operating practices: Eliminate the need to obtain a variance and make this self-implementing. Records are to be kept on-site describing the decisionmaking.	265.193(g)(1), (h).
Tank Systems (Interim Status): Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.195(a).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Tank Systems (Interim Status)—Notify EPA of release: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility record.	265.196(d)(1), (d)(2).
Tank Systems (Interim Status)—Submit report describing releases: Eliminate—the cleanup requirements in the regulations and the need to certify (required by 265.196(f)) is sufficient to protect human health and the environment.	265.196(d)(3).
Tank Systems (Interim Status)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, this certification may be done by a Certified Hazardous Materials Manager.	265.196(f).
Surface Impoundments (Interim Status): Remove obsolete language	265.221(a).
Surface Impoundments (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—Response Action Plans for other kinds of treatment units are not submitted to EPA. We are proposing that it is sufficient to keep this Plan on-site.	265.223(a).
Surface Impoundments (Interim Status)—Notify EPA in writing if flow rate exceeds action leakage rate for any sumps within 7 days: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(1).
Surface Impoundments (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(2).
Surface Impoundments (Interim Status)—Compile and submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement since information about the leak will be kept onsite, where it is available for inspection by regulators.	265.223(b)(6).
Waste Piles (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—an unnecessary requirement since other treatment units do not have to submit this plan. Removing this requirement will bring consistency to the regulations.	265.259(a).
Waste Piles (Interim Status)—NotifyEPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(1).
Waste Piles (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(2).
Waste Piles (Interim Status)—Submit information to EPA each month that the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(6).
Land Treatment (Interim Status)—Submit notification for food-chain crops at land treatment facility: Eliminate—an unnecessary requirement as long as the other regulatory requirements in 265.276 are followed. Information about compliance with these other regulatory requirements will be in the facility operating record.	265.276(a).
Landfills (Interim Status)—Remove obsolete language	265.301(a).
Land Fills (Interim Status)—Submit the Response Action Plan to EPA: Eliminate requirement to submit plan. Developing a plan, keeping it onsite, and implementing it when necessary is sufficient.	265.303(a).
Land Fills (Interim Status)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(1).
Land Fills (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(2).
Land Fills (Interim Status)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the remediation required by regulation takes place, and information about the remediation is kept in the facility record.	265.303(b)(6).
Requirements for bulk and containerized liquids: Remove obsolete language	265.314(a), (a)(1), (a)(2), (b), (g).
Drip Pads (Interim Status)—Assessment of Drip Pad, Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, certification may be made by a Certified Hazardous Materials Manager.	265.441(a), (b), (c).
Drip Pads (Interim Status)—Assessment of Drip Pad: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.443(a)(4)(ii), (g).
Drip Pads (Interim Status)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place, and is recorded in the facility operating record, where it will be available for inspection by regulators.	265.443(m)(1)(iv), (2).
Drip Pads (Interim Status)—Notify Regional Administrator and certify completion of repairs: Eliminate—an unnecessary requirement as long as the required cleanup and repairs are made.	265.443(m)(3).
Drip Pads (Interim Status)—Inspection of liners: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.444(a).
Equipment Leaks (Interim Status)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement as long as other regulatory requirements in 265.1061 are followed.	265.1061(b)(1).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Equipment Leaks (Interim Status)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement. Owners or operators can decide which standard to meet without notifying the Agency. This information will be retained in the facility's operating record, where it will be available for inspection by regulatory authorities.	265.1061(d).
Equipment Leaks (Interim Status)— Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary requirement. Owners or operators may use alternative work practice without notifying the Agency. This information will be kept in the facility operating record, which is available for regulatory authorities to inspect.	265.1062(a)(2).
Containment Buildings (Interim Status)—Notify EPA of intent to be bound by the regulations earlier than as specified in section 265.1100: Eliminate—an obsolete requirement.	265.1100.
Containment Buildings (InterimStatus)—Obtain certification that building meets design requirements:Modify—in addition to an independent, registered professional engineer, this certification can be done by a Certified Hazardous Materials Manager.	265.1101(c)(2).
Containment Buildings (InterimStatus)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement to notify regulatory authorities about a cleanup that must be done by regulation. Records of the cleanup will be in a facility's operating record, which is available for inspection by regulatory authorities.	265.1101(c)(3)(i)(D).
Containment Buildings (Interim Status)—Notify EPA and verify in writing that the cleanup and repairs have been completed: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place. This information will be maintained in the operating record, which is available for inspection by regulators.	265.1101(c)(3)(ii), (iii).
Containment Buildings—Interim Status: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.1101(c)(4).
Boilers and Industrial Furnaces (Permitted)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.102(e)(10).
Boilers and Industrial Furnaces (Interim Status)—Evaluation of data and making determinations: Modify—in addition to an independent, registered professional engineer, this evaluation can be made by a Certified Hazardous Materials Manager.	266.103(b)(2)(ii)(D).
Boilers and Industrial Furnaces (Interim Status)—Periodic recertifications of compliance: Modify—extend period of time from three to five years, which Agency field staff believe is sufficient for regulatory purposes.	266.103(d).
Boilers and Industrial Furnaces (Interim Status)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.103(k).
Direct Transfer Equipment—Assessment of equipment: Modify—in addition to an independent, registered professional engineer, this assessment can be done by a Certified Hazardous Materials Manager.	266.111(e)(2).
Storage of Solid Waste Military Munitions—Notification of loss or theft: Simplify notification process—there is no need to notify the regulatory authorities twice.	266.205(a)(1)(v).
LDR Generator Requirements—Generator waste determination: Eliminate—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.7(a)(1).
LDR Generator Requirements—Generator waste determination: Eliminate—because we are eliminating 268.7(a)(1), this record retention requirement is unnecessary.	268.7(a)(6).
LDR Treatment Facility Requirements—Submit a recycling notice and certification to EPA: Modify—keep information on-site. See discussion in proposed rule preamble.	268.7(b)(6).
LDR Hazardous Debris Requirements—Submit notification of claim that debris is excluded from definition of hazardous waste: Modify—notification becomes one-time and remains on-site. See discussion in proposed rule preamble.	268.7(d)(1).
LDR Special Rules for Characteristic Wastes—Submit one-time notification: Modify—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.9(a).
LDR Special Rules for CharacteristicWastes—Submit certification: Modify—keep information on-site.See discussion in proposed rule preamble.	268.9(d).
Part B Requirements for Tank Systems—Submit written assessment of structural integrity: Modify—in addition to an registered, independent professional engineer, this assessment may be done by a Certified Hazardous Materials Manager.	270.16(a).
Part B Requirements for Surface Impoundments—Assessment of structural integrity: Modify—in addition to a registered, independent professional engineer, this assessment may be made by a Certified Hazardous Materials Manager.	270.17(d).

B. We Are Proposing Weekly Hazardous Waste Tank Inspections

We are proposing to reduce the self-inspection frequencies for hazardous waste tanks from daily to weekly. Tank regulations are found in 40 CFR 264.190 and 265.190.

This proposal is based on three factors. First, other kinds of tanks are required to be inspected at frequencies less than daily. These tanks have to meet criteria for protecting human health and the environment similar to those for hazardous waste tanks. For example, in the Underground Storage Tank Program, tanks containing petroleum or hazardous substances are only required to be monitored for releases every thirty days. Oil tanks regulated under the Spill Prevention, Control and Countermeasure Program (SPCC) are required to be frequently observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas. It is up to the engineer who certifies the SPCC Plan how often these observations should occur.

Comments we received on the ''Notice of Data Availability,'' as well as the outreach we did, support going from a daily to weekly inspection frequency. Commenters and an expert on tank systems made the point that the integrity and safety of hazardous waste tanks would not be compromised by reducing the daily inspection requirement to a weekly frequency. Several commenters pointed out that hazardous waste storage tanks, which have secondary containment, are even more protectively designed than process tanks which handle the same chemicals.

Additionally, the tanks are equipped with leak detection systems, and are subject to routine visual inspection by employees. Leak detection systems provide continuous surveillance for the presence of a leak or spill. Technically, they consist of wire grids, observation wells, and U-tubes containing thermal-conductivity or electrical-resistivity sensors, or vapor detectors. Visual inspection is effective for aboveground or vaulted tanks, and for other tanks where access to potentially leaking parts is available. Visual monitoring can also be effective for the inspection of ancillary equipment.

Upon detection of a leak, either through the leak detection system or visual observation, the owner or operator of the tank system must immediately stop the flow of hazardous waste, determine and rectify the cause of the leak, remove the waste, and contain releases to the environment.

Finally, tanks are simpler to design, construct, and manage than units such as combustion units or land disposal units, and therefore require less oversight than these more complicated units for assessing that they are performing protectively.

C. We Propose To Allow Facilities the Opportunity To Adjust the Frequency of Their Self-Inspections

For containers, containment buildings, and tanks (in addition to moving their inspection frequency from daily to weekly), we are proposing to allow on a case-by-case basis decreased inspection frequencies (from the frequency currently required by regulation). The regulations for containers are found in 40 CFR 264.170 and 265.170; containment buildings in 40 CFR 264.1100 and 265.1100; and tanks in 40 CFR 264.190 and 265.190. In all cases, inspections would have to occur at least monthly. Decreased inspection frequencies would be established on a site-specific basis by the Directors of authorized states' hazardous waste programs, or by EPA.

Considerations for decreasing inspection frequencies will be based on factors such as: a demonstrated commitment by facility management to sound environmental practices, demonstrations of good management practices over the years (having a record of sustained compliance with environmental laws and requirements), demonstrated commitment to continued environmental improvement, demonstrated commitment to pubic outreach and performance reporting, the installation of automatic monitoring devices at the facility, and the chemical and physical characteristics of the waste being managed in the unit. States or EPA may also include a qualification that facilities must revert to the original inspection schedule if there are spills or releases.

Several states and a coalition of environmental groups and trade unions commented that they do not support any decrease in inspection frequency because of concerns that if inspection frequencies were decreased, the amount of time between a leak and its discovery would increase. If the factors described above are taken into account when extending the inspection frequencies, there will be little or no increase in the likelihood of an undetected release. These decreased inspection frequencies should only be offered to the safest and best-performing facilities. In addition, the proposed approach may reduce the likelihood of release by providing a financial incentive for companies to avoid releases in order to be approved for reduced inspection frequency.

We also received comments from the states expressing concern over the added administrative burden in implementing case-by-case changes to inspection frequencies. We are not mandating that states offer these changes. We are only providing the option to states that are interested.

Another group of commenters suggested that inspection frequency changes should be self-implementing. For example, an inspection schedule should be deemed approved if EPA does not specifically deny the request in writing within 30 days. Where we were able to identify an across-the-board change, like tanks going to weekly inspections, we did so. We think beyond that, a case-by-case evaluation of facility conditions is still necessary. It is important that regulatory agencies make the decisions to decrease inspection frequencies. Thus, we are not proposing the self-implementing option.

D. We Propose Reducing the Burden of RCRA Personnel Training Requirements and Eliminating an Overlap With Occupational Safety and Health Administration Training Requirements

We currently require facilities to train their employees in facility operations and emergency response procedures. We also require a written job description for each employee. And, we require training records for current employees to be kept until closure of the facility. These requirements are found in 40 CFR 264.16 and 265.16. The idea behind these regulations is that trained employees are safe employees, and will be able to prevent releases of hazardous waste to the environment. By working with the Occupational Safety and Health Administration, we have developed an improved way of meeting these goals.

During our research, we compared the personnel training requirements imposed by EPA under RCRA with those imposed by OSHA through their Hazardous Waste Operations and Emergency Response regulation. Based on this analysis and comments received on the ''Notice of Data Availability,'' we discovered that there is really only one area of overlap. This overlap is emergency response training. A recent report from the General Accounting Office titled: ''Worker Protection, Better Coordination Can Improve Safety and Hazardous Materials Facilities'' independently reached the same conclusion about an overlap in these two sets of emergency response training requirements.

We propose changing the RCRA regulations to have facilities comply with the OSHA regulations for emergency response training, and to drop the current RCRA requirements. The OSHA requirements are more extensive than the current RCRA requirements, and should therefore replace the RCRA requirements.

We are also proposing eliminating the requirement that facilities include job titles and descriptions as part of their personnel records. Based on comments received from the ''Notice of Data Availability,'' we believe that requiring job descriptions provide little value in protecting human health and the environment. Often these job descriptions bear little resemblance to the work the employees do, and they have little relationship to whether an employee is trained properly.

Finally, we are proposing to eliminate the regulatory requirement for a description of the training employees will receive. The facility inspections ensure adequate training—simply

documenting the employee(s) name(s) and date(s) of training is sufficient.

E. We Propose To Further Eliminate and Streamline the Land Disposal Restrictions (LDR) Paperwork Requirements, Existing LDR Paperwork Requirements

The Land Disposal Restrictions (LDR) are a major regulatory component of the RCRA program. In addition to establishing treatment standards for hazardous waste prior to land disposal, they require generators and TSDFs to determine if their waste needs to be treated before land disposal, submit demonstrations and petitions to EPA if applicable, and send notices and/or certifications with shipments to TSDFs.

Based on our review of the LDR paperwork requirements, as well as our conversations with the regulated community, states, and the public through a series of public forums, we have determined that a number of LDR requirements for waste determinations, notifications, and certifications could be eliminated without diminishing the protection of human health or the environment.

Proposed Changes to LDR Paperwork Requirements

Change 1: We Propose To Drop the § 268.7(a)(1) Generator Waste Determination Requirement

We propose to eliminate the need for generators to conduct the waste determination required by § 268.7(a)(1). Section 268.7(a)(1) requires a generator to determine if their hazardous waste must be treated prior to land disposal. This determination can be made either through testing or knowledge of the waste's properties and constituents. After consulting with staff with field experience, we concluded that a combination of several other requirements provide the same safeguards as the § 268.7(a)(1) requirement.

First, a determination of whether a waste is hazardous is required by § 262.11 (which says that generators of solid waste must determine whether a waste is hazardous). This means a generator must know what properties and constituents are present in his waste—for example, does it contain toxic constituents that cause it to exhibit the Toxicity Characteristic described in § 261.24? Some of this same information is used in the determination as to whether the waste must be treated to comply with the LDRs.

Second, § 264.13(a)(1) requires TSDFs to perform a general waste analysis to determine ''all of the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter'' (emphasis added). Therefore, the owner or operator of a TSDF is already required to work with the waste generator to ensure that adequate information is available to comply with LDRs.

Third, in § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of EPA hazardous waste code, waste constituents, wastewater and nonwastewater classification, and treatability group).

These other determinations are sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs. Therefore, we conclude that the § 268.7(a)(1) determination is duplicative, and we propose to eliminate it.

Change 2: We Propose To Modify the § 268.7(b)(6) Recycler Notification and Certification Requirements

Currently, treatment facilities must test their waste to determine whether it complies with LDR treatment standards. A one-time notice containing this information must be sent to the disposal facility. The treatment facility must also send a one-time notice to regulatory authorities that the treatment technology was operated properly. We originally thought that the regulating agency would review these reports to monitor what happens to this waste.

Based on a recent analysis of actual state and Regional facility oversight of treatment and recycling facilities, we have found that this information is not routinely used for its intended purpose. Our informants suggested that it would be sufficient for this information to be available in the facility's files if any question arises as to whether adequate treatment occurred.

Therefore, we are proposing that treatment and recycling facilities no longer send these notifications and certifications to EPA, as long as the information contained in them is kept in facility records.

Change 3: We Propose To Modify the § 268.7(d) Hazardous Debris Notification Requirement

Currently, generators or treatment facilities who claim that their hazardous debris is excluded from the definition of hazardous waste must send a one-time notice of this claim to EPA, and keep a copy of the notice in their files. We established this requirement on the assumption that regulatory agencies would review the notices to make themselves aware that this treated debris was being sent to a non-hazardous waste landfill.

We have been unable to verify that this information is routinely used for its intended purpose. Therefore, we are proposing that generators and treaters of excluded debris not send these notifications to EPA, as long as the information that would have been in the notifications is kept in facility records.

Change 4: We Propose To Modify the § 268.9(a) Characteristic Waste Determination Requirement

We propose to eliminate the need for a separate LDR waste determination for characteristic waste. As with the § 268.7(a)(1) generator determinations above, the § 268.9(a) determinations are duplicated elsewhere. Generators are already required to determine whether they have a hazardous waste under § 262.11, and treaters are required to obtain a detailed chemical and physical analysis under § 264.13. Under § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of the EPA hazardous characteristic waste code, underlying hazardous constituents, wastewater/nonwastewater classification, and treatability group).

These other determinations are sufficient to assure a waste is properly characterized for achieving compliance with the LDRs and, therefore, protecting human health and the environment.

Change 5: We Propose To Modify the § 268.9(d) Notification Requirement

Under § 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification about this must be placed in the generator's or treater's files, and also sent to EPA. We continue to see value in parties knowing that they are receiving wastes that are still subject to land disposal restrictions, even though they no longer exhibit a characteristic.

These records do not need to be sent to EPA, however, if they are kept on site in the facility's files. We have not been able to verify that this information, once sent to EPA, is routinely used. Therefore, we conclude based on the absence of such information from regulatory agencies, that its submission is not critical to overall protection of human health and the environment. And in the event of a question of compliance or enforcement action, it will be available in a facility's files.

III. Other Burden Reduction Proposals

Boiler and Industrial Furnace Records To Be Kept 3 Years

Owner/operators of Boilers and Industrial Furnaces must conduct tests, such as performance tests for their continuous emissions monitors, and report the results to us. We propose to standardize the retention period for all records required to be kept by the Boilers and Industrial Furnaces to three years, bringing it in line with other RCRA recordkeeping retention periods. See 40 CFR 266.102 for the Boiler and Industrial Furnace regulations.

Certified Hazardous Materials Managers

Owners/operators of hazardous waste facilities must certify that their treatment, storage, and disposal units are functioning properly. For example, tank systems for storing or treating hazardous waste must be certified by an independent, qualified, registered professional engineer that the tanks meet thickness and strength requirements.

We propose to modify most of the RCRA certification requirements to allow a person who is a ''Certified Hazardous Materials Manager'' to make the certification. The Certified Hazardous Materials Manager Certification is accredited by the Council on Engineering and Scientific Specialties Board, which also accredits certified industrial hygienists, and certified safety professionals. The Certified Hazardous Materials Manager must have a combination of education and hands-on work experience at a hazardous waste facility, pass a closed book examination, continue their professional education, and follow a code of ethics.

The Agency was not aware of this discipline when most of the regulations were written that require engineers to do certifications. Most certification duties that an independent, qualified, registered professional engineer must perform can be carried out by a Certified Hazardous Materials Manager.

General Facility Standards Are Streamlined and Updated

When EPA originally developed the operating record requirements, we thought that records should routinely be kept for the life of the facility. Our reasoning was that in case an issue or problem came up about an earlier practice at a facility, the records would be available for examination.

After many years of experience with RCRA, we are better able to distinguish records that must be kept for the life of the facility from those which can be discarded after some period of time without affecting protections of human health and the environment.

As discussed below, information about what wastes are disposed at a facility, where the disposed waste is located, and information relevant for facility closure must be kept for the life of the facility. More routine information, such as whether certain notices were filed and records of inspections, can be discarded after three years. In the RCRA regulations, we have generally settled on three years as a reasonable time frame for keeping records. This is consistent with other Agency programs, such as the Toxics Substance Control Act and the Toxic Chemical Release Reporting Community Right to Know programs, that impose a three year record retention time in their regulations.

We propose to modify a number of the §§ 264.73 and 265.73 operating record requirements to require only a three-year limit on keeping information. The following are proposed record retention times for each part of the operating record: § 264.73:

(b)(1) Description and quantity of each hazardous waste received and what was done with it: Maintain until closure of the facility.

(b)(2) The location of each hazardous waste: Maintain until closure of the facility.

(b)(3) Records and results of waste analyses and waste determinations: Maintain for three years after entry into the operating record.

(b)(4) Reports of implementation of contingency plan: Maintain for three years after entry into the operating record.

(b)(5) Records of inspections: Maintain for three years after entry into the operating record.

(b)(6) Monitoring, testing, and analytical data: Maintain until closure of the facility.

(b)(7) § 264.12(b) notices: Maintain for three years after entry into the operating record.

(b)(8) Closure estimates: Maintain in operating record until closure of the facility.

(b)(9) Waste minimization certification: Maintain for three years after entry into the operating record.

(b)(10) Records of quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction: Maintain in operating record until closure of the facility.

(b)(11) For off-site treatment facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(12) For on-site treatment facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(13) For off-site land disposal facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(14) For on-site land disposal facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(15) For off-site storage facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(16) For on-site storage facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(17) Records required under § 264.1(j)(13): Maintain for three years after entry into the operating record.

We propose to similarly change the § 265.73 Operating Record requirements.

Consolidation of Facility Contingency Plans Is Encouraged

Owners and operators of hazardous waste facilities must have contingency plans in place to minimize hazards to human health and the environment from fires, explosions, or unplanned releases of hazardous waste. We received several comments on the ''Notice of Data Availability'' asking that we streamline or combine the various contingency plans required not only by EPA, but by other federal agencies too.

EPA already allows combined plans. In 1996, EPA in conjunction with the Department of Transportation, the Department of the Interior, and the Department of Labor issued the ''Integrated Contingency Plan Guidance.'' This Guidance provides a mechanism for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. Owners and operators of hazardous waste facilities should consider developing one contingency plan based on this Guidance.

Facilities which adopt the ''Integrated Contingency Plan'' will minimize the duplication and costs associated with the preparation and use of multiple contingency plans. The use of a single plan per facility will also eliminate confusion for ''first responders'' (for example, firemen) who often must decide which of the contingency plans is applicable to a particular emergency. And, the adoption of a standard plan should ease the burden of coordination with local emergency planning committees.

The ''Integrated Contingency Plan Guidance'' can be found in the June 5, 1996 **Federal Register** (61 FR 28641–28664) or on the Internet at *http://www.epa.gov/swercepp/p-tech.htm*.

Today's proposals clarifies our regulations (see 40 CFR 265.52) to say that combined plans are acceptable.

We Propose To Streamline the Variance From Classification as a Solid Waste Procedure

We have established provisions in our regulations to allow regulated entities to submit applications for variances, exclusions, petitions, and exceptions from certain RCRA requirements.

To simplify one of these applications, we propose to eliminate the requirement that a petitioner for a variance from classification as a solid waste survey the industry-wide prevalence of the material production process (the requirement is found in 40 CFR 260.31(b)). In practice, we have found that we do not use this information in making decisions on these variances. A variance petitioner can continue to submit such information if they choose, but it will no longer be an application requirement.

We Propose To Eliminate the Requirement for Treatability Study Reports

We also propose to eliminate the requirement that facilities submit in their annual report under § 261.4(f)(9) an estimate of the number of treatability studies and the amount of waste expected to be used in treatability studies in the upcoming year. Based on the observations of recipients (EPA and state regulators), we have determined that these reports do not contribute to the protection of human health and the environment. Moreover, these annual forecasts are not necessarily accurate, and we obtain the precise information anyway in the annual report that is submitted.

We Propose To Streamline Groundwater Monitoring Requirements

Hazardous waste treatment, storage, and disposal facilities must implement a groundwater monitoring system to detect the presence of contaminants in the groundwater. If contamination is detected, monitoring must be performed. If the level of contamination exceeds the groundwater protection standard, corrective action must be undertaken.

We propose to allow owners/operators of facilities to report on the effectiveness of corrective action on an annual basis instead of the current semi-annual basis. In combination with other forms of oversight by regulatory agencies, annual reporting will provide adequate information to ensure compliance.

This proposed change makes sense because monitoring and cleaning up groundwater is almost always a multi-year or even multi-decade effort. Semi-annual reporting of data is not necessary for ensuring protection of human health and the environment.

We are also proposing to allow groundwater monitoring plans and reports to be kept at a facility.

And, we also propose to modify the § 264.99(g) requirement that facilities who are doing compliance monitoring conduct an annual Appendix IX analysis of all monitoring wells. Specifically, we propose allowing, on a case-by-case basis, sampling for a subset of the wells. Appendix IX analyses are costly at large facilities, and analyzing all wells does not necessarily contribute to protection of human health and the environment. This is especially the case if there are multiple units and wells at a facility, and only one unit shows signs of contamination.

Also, monitoring for constituents that are not likely to be found at a site is not a good use of resources and does not increase the protection of monitoring programs. Therefore, we propose allowing, on a case-by-case basis, sampling for a subset of the Appendix IX constituents. These decisions will be based on regulatory agencies' judgement of what supports the protection of human health and the environment, as well as on the contaminant situation at a site.

Biennial Report Changes Are Being Implemented Separately

We are not making changes to the Biennial Report through this effort. Reform of the Biennial Report has already been started in the 2001 Biennial Report cycle.

Changes made to the 2001 Biennial Report include streamlining the Biennial Report Source, Origin, Form, and Management codes; clarifying the types of waste to be reported; and removing some data elements. The 2001 Biennial Report forms and instructions are located on the Internet at: *www.epa.gov/epaoswer/hazwaste/data/brs01/forms.htm.*

Electronic Reporting and Recordkeeping Changes Are Being Handled Separately

In the ''Notice of Data Availability,'' we discussed allowing all RCRA-required documents to be kept and sent electronically. Since the publication of the ''Notice,'' the Agency has begun to develop a separate rulemaking (the ''Cross-Media Electronic Reporting and Recordkeeping Rule'') that will establish Agency-wide standards for electronic reporting and recordkeeping. We are deferring our efforts in this area to the ''Cross-Media Electronic Reporting and Recordkeeping'' rulemaking.

IV. How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than

those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Proposal

Today's proposal affects many aspects of the RCRA program and would be promulgated pursuant to both HSWA and non-HSWA statutory authority. Today's proposal would amend provisions in the RCRA regulations which were promulgated pursuant to HSWA. These provisions include, among others, the land disposal restrictions and the regulation of air emissions from hazardous waste facilities, which were promulgated pursuant to authority in sections 3004(m) and (o) respectively, of RCRA. Therefore, when promulgated, the Agency would add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Other sections of today's proposal would be promulgated pursuant to non-HSWA authority.

The requirements in today's proposed rulemaking are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those States which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended.

This rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking would not become effective in authorized States until they adopted and are authorized for it, EPA will strongly encourage states to amend their programs and seek authorization for today's proposal, once it becomes final.

C. Abbreviated Authorization Procedures

EPA considers today's proposal to be a minor rulemaking and is proposing to add it to the list of minor or routine rulemakings in Table 1 to 40 CFR 271.21. Placement in this table would enable states to use the abbreviated procedures located in 40 CFR 271.21(h) when they seek authorization for today's proposed changes after they are promulgated. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998). EPA requests comment on this placement in Table 1 to 40 CFR 271.21.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the rule raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Environmental Justice Executive Order 12898

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

EPA has considered the impacts of this proposed rulemaking on low-income populations and minority populations and concluded that any risks resulting from the rule would be very small. The basic reason for this finding is that the current features of the RCRA program that protect human health and the environment would be preserved or enhanced under the proposal. As mentioned earlier, the proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because they add little to the protectiveness of the regulations. Most of the paperwork requirements entail notices and reports that are obscure, inconsequential or infrequently submitted. In addition, the proposal would give facilities added flexibility in how they can comply with the regulations. For example, the proposal would let facilities choose between hiring a certified hazardous materials manager or licensed professional engineer to perform specified activities (e.g., certifications). The proposal also would streamline certain requirements, such as contingency planning and personnel training, that are essential to a facility's protectiveness. Such flexibility and streamlining will make it easier for facilities to comply with the regulations.

Despite eliminating a number of paperwork requirements based on interviews and comments, we leave intact the basic environmentally protective activities that facilities are currently undertaking. That is, we would require facilities to continue performing their technical activities, but require them to submit less information to us on their daily activities. Note, however, that the proposal would not curtail the right of regulatory agencies to request any of the information we are proposing to eliminate. Facilities must continue to keep on-site records of their waste management activities and make them available to regulators when requested. As such, the rule would not limit regulators' or the public's ability to learn what is happening at a facility. In addition, basic information about a facility will still be readily accessible to the public via the Agency Web site and non-Agency Web sites such as the ''Right to Know Network'' Web site (*www.rtknet.org*). However, we specifically request comment on

whether today's proposals in any way diminishes protection of human health and the environment.

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because there is no evidence suggesting they contribute in a substantial way to the protectiveness of the regulations. In particular, we propose eliminating notices and reports that are redundant, inconsequential for compliance with technical requirements, or only rarely required to be sent in to regulatory authorities. Most of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement was performed. The proposal would leave intact the basic environmentally protective activities that facilities are currently undertaking.

D. National Technology Transfer and Advancement Act of 1995

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

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; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities''. 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. Today's proposal is specifically intended to be deregulatory and to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the proposed changes would reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the Agency. The proposed rule, for example, would reduce the frequency by which businesses must conduct specified recordkeeping and reporting activities. It also would eliminate certain recordkeeping and reporting requirements altogether, i.e., in cases where the documents are little used by the public or regulators. In addition, the rule would eliminate redundancies between the RCRA regulations and other regulatory programs (e.g., RCRA and OSHA requirements for personnel training), thereby streamlining facilities' compliance activities. Finally, the rule would provide increased flexibility in how waste handlers may comply with the regulations. For example, we would allow waste handlers to seek relief, on a case-by-case basis, from the inspection frequencies in the regulations. Facilities successfully demonstrating that the regulatory frequencies are not necessary (e.g., because of site-specific mitigating factors) would be granted a reduced inspection frequency by the Agency. We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities.

F. 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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. As explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Because these changes are equivalent to or less

stringent than the existing Federal program, States would not be required to adopt and seek authorization for them. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicit comment on this proposed rule from State and local officials.

G. 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 by State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this rule will not result in the expenditure of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector in any one year because this is a burden reduction rulemaking which reduces costs.

H. Executive Order 13175: Consultation and Coordination With Indian and 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'' are 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 explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

I. Paperwork Reduction Act

We have prepared a document listing the information collection requirements of this proposed rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

We calculate the reporting and recordkeeping burden reduction for this rule as 929,000 hours and $120,000,000. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

J. Executive Order 13211 (Energy Effects)

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste Reporting and recordkeeping requirements.

40 CFR Part 261

Comparable fuels, Syngas fuels, Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 20, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, it is proposed that title 40 of

the Code of Federal Regulations be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart C—Rulemaking Petitions

§ 260.31 [Amended]

2. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

§ 261.4 [Amended]

4. Section 261.4 is amended by removing paragraphs (a)(9)(iii)(E) and (f)(9); and redesignating paragraphs (f)(10) and (f)(11) as (f)(9) and (f)(10).

5. Section 261.38 is amended by removing the last sentence of paragraph (c)(1) introductory text and removing and reserving paragraph (c)(1)(i).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

7. Section 264.16 is amended by revising paragraphs (a)(1), (a)(3) and (d) to read as follows (the *Comment* following paragraph (a)(1) is unchanged):

§ 264.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

* * * * *

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility's contingency plan applicable to their roles in emergency response.

* * * * *

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

* * * * *

Subpart D—Contingency Plan and Emergency Procedures

8. Section 264.52 is amended by revising paragraph (b) to read as follows:

§ 264.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator should consider developing one contingency plan based on the National Response Team's Integrated Contingency Plan Guidance (''One Plan'') which meets all regulatory requirements.

* * * * *

§ 264.56 [Amended]

9. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

10. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the Comment following paragraph (b)(2) is unchanged):

§ 264.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(6) Monitoring, testing, or analytical data, and corrective action data where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252 through 264.254, 264.276, 264.278, 264.280, 264.302 through 264.304, 264.309, 264.347, 264.602, 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, and 264.1082 through 264.1090. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(8) All closure cost estimates, and for disposal facilities, all post-closure cost estimates. This information must be maintained in the operating record until closure of the facility.

* * * * *

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 298.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. This information must be maintained in the operating record until closure of the facility.

* * * * *

11. Section 264.90 is amended by revising paragraph (a)(2) to read as follows:

§ 264.90 Applicability.

(a) * * *

(2) All solid waste management units must comply with the requirements in § 264.101. A surface impoundment, waste pile, land treatment unit, or landfill must comply with the

requirements of §§ 264.91 through 264.100 in lieu of § 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial assurance responsibility requirements of § 264.101 apply to all regulated units.

* * * * *

12. Section 264.98 is amended by revising paragraphs (c), (g)(5)(ii), (g)(6)(i), and (g)(6)(ii) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(c) The owner or operator must conduct and maintain records for a ground-water monitoring program for each chemical parameter and hazardous constituent specified in their permit. The Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents. The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h).

(g) * * *

(5) * * *

(ii) Note in the operating record whether this contamination was caused by a source other than the regulated unit or from an error in sampling, analysis, or evaluation;

* * * * *

(6) * * *

(i) Note in the operating record that statistically significant evidence of contamination was found;

(ii) Enter into the operating record a report demonstrating that a source other than a regulated unit caused the contamination, or that the contamination resulted from an error in sampling, analysis, or evaluation;

* * * * *

13. Section 264.99 is amended:

a. Revising paragraph (g);

b. Removing and reserving paragraph (h)(1);

c. Removing paragraphs (i)(1) and (i)(2) and redesignating paragraphs (i)(3) and (i)(4) as (i)(1) and (i)(2).

The revision reads as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(g) The owner or operator must analyze samples from monitoring wells at the compliance point. The number of wells and samples will be worked out on a case-by-case basis with the Regional Administrator. The specific constituents from Appendix IX of part 264 to be analyzed will also be worked out on a case-by-case basis with the Regional Administrator. This analysis must be done annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

* * * * *

14. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

§ 264.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) During the period of corrective action, the owner or operator shall provide an annual report to the Regional Administrator describing the progress of the corrective action. This report shall include all ground-water monitoring data, and an evaluation of the effect of the continued receipt of non-hazardous wastes on the corrective action.

* * * * *

15. Section 264.120 is revised to read as follows:

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period was done in accordance with the specifications in the post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart I—Use and Management of Containers

16. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Subpart J—Tank Systems

17. Section 264.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager attesting to the tank system's integrity.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include a leak test or other integrity examination that is certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, or erosion.

* * * * *

18. Section 264.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 264.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at the time of submittal of part B

information, an assessment, reviewed and certified by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Regional Administrator to approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

* * * * *

19. Section 264.193 is amended:

a. By revising paragraph (a);

b. By revising paragraphs (c)(3) and (c)(4); (the **Note** following paragraph (c)(4) is unchanged);

c. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);

d. By revising paragraph (g) introductory text and paragraph (g)(1);

e. By removing paragraph (h) and redesignating paragraph (i) as (h).

The revisions read as follows:

§ 264.193 Containment and detection of releases.

(a) Secondary containment must be provided for all existing and new tank systems and components.

* * * * *

(c) * * *

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

* * * * *

(e) * * *

(3) * * *

(iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

* * * * *

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the secondary containment requirements of this section.

(1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:

(i) Comply with the requirements of § 264.196 and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.

(iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b).

* * * * *

20. Section 264.195 is amended by revising paragraph (b) to read as follows (the **Note** following paragraph (b) is unchanged):

§ 264.195 Inspections.

* * * * *

(b) The owner or operator must inspect at least weekly, or less frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

21. Section 264.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

Subpart K—Surface Impoundments

22. Section 264.223 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

§ 264.223 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart L—Waste Piles

23. Section 264.251 is amended by revising paragraph (c) introductory text to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners, and a leachate

collection and removal system above and between the liners.

* * * * *

24. Section 264.253 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

§ 264.253 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart M—Land Treatment

§ 264.278 [Amended]

25. Section 264.278 is amended by removing and reserving paragraph (g)(1); removing paragraphs (h)(1) and (h)(2) and redesignating paragraphs (h)(3) and (h)(4) as (h)(1) and (h)(2).

Subpart N—Landfills

26. Section 264.304 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3); and revising paragraph (c) introductory text, to read as follows:

§ 264.304 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

27. Section 264.314 is amended by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e) and by revising newly designated paragraphs (a) and (e) introductory text to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(e) The placement of any liquid that is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:

* * * * *

Subpart O—Incinerators

§ 264.343 [Amended]

28. Section 264.343 is amended by removing the last sentence of paragraph (a)(2).

Subpart W—Drip Pads

29. Section 264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad, the owner or operator must determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). The owner or operator must obtain an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. The assessment must be updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with the standards of § 264.573 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b). This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 264.573. The plan must be completed no later than two years before the date that all repairs, upgrades, and modifications are complete. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must develop as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager that the drip pad conforms to the drawings.

* * * * *

30. Section 264.573 is amended by revising paragraphs (a)(4)(ii), (g), and (m)(1)(iii) and removing paragraphs (m)(1)(iv) and (m)(3) and removing and reserving paragraph (m)(2) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep on file an assessment of the drip pad reviewed and certified by an independent, qualified, registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The owner or operator must evaluate the drip pad to determine that it meets the requirements of paragraphs (a) through (f) of this section and must obtain a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager and maintain this certification on-site.

* * * * *

(m) * * *

(1) * * *

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Records that repairs were completed on schedule must be kept at the facility.

* * * * *

31. Section 264.574 is amended by revising paragraph (a) to read as follows:

§ 264.574 Inspections.

(a) During construction or installation, liners and cover systems (for example, membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified to meet the requirements in § 264.573 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

§ 264.1036 [Removed and Reserved]

32. Remove and reserve § 264.1036.

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1062 [Amended]

33. Section 264.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2),

respectively; and removing paragraph (d).

§ 264.1062 [Amended]

34. Section 264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

§ 264.1065 [Removed and Reserved]

35. Remove and reserve § 264.1065.

Subpart DD—Containment Buildings

36. Section 264.1100 is amended by revising the introductory text to read as follows:

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

37. Section 264.1101 is amended by revising paragraphs (c)(2), (c)(3)(i)(C) and (c)(4), removing paragraphs (c)(3)(i)(D) and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii) to read as follows:

§ 264.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain certification by an independent qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

(3) * * *

(i) * * *

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

38. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart B—General Facility Standards

39. Section 265.1 is amended by revising paragraph (b) to read as follows (the *Comment* following paragraph (b) is unchanged):

§ 265.1 Purpose, scope, and applicability.

* * * * *

(b) Except as provided in § 265.1080(b), the standards of this part, §§ 264.552, 264.553, and 264.554 of this chapter apply to owners and operators of facilities that treat, store, or dispose of hazardous waste and who have complied with the requirements for interim status under RCRA section 3005(e) and § 270.10 of this chapter.

* * *

40. Section 265.16 is amended by revising paragraphs (a)(1) and (a)(3) and (d) to read as follows:

§ 265.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

* * * * *

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility's contingency plan applicable to their roles in emergency response.

* * * * *

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

* * * * *

Subpart D—Contingency Plans and Emergency Procedures

41. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator should consider developing one contingency plan based on the National Response Team's Integrated Contingency Plan Guidance (One Plan) which meets all regulatory requirements.

* * * * *

42. Section 265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i)

43. Section 265.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the *Comment* following paragraph (b)(6) is unchanged):

§ 265.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be kept in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility;

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by

§§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part. All of this information must be maintained in the operating record until closure of the facility;

* * * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, monitoring data required pursuant to a petition under § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8 of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

Subpart F—Groundwater Monitoring

44. Section 265.90 is amended by revising paragraph (d)(1) and (d)(3) to read as follows:

§ 265.90 Applicability.

* * * * *

(d) * * *

(1) Within one year after [the effective date of the final rule], develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system;

* * * * *

(3) Prepare a report in accordance with § 265.93(d)(4);

* * * * *

45. Section 265.93 is amended:

a. By revising paragraph (c)(1);

b. Redesignating paragraph (d)(1) as paragraph (d) introductory text, and redesignating paragraphs (d)(2) through (d)(7) as (d)(1) through (d)(6), respectively;

c. Revising newly designated paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(3) introductory text, (d)(4), (d)(5), (d)(6), and paragraph (e) and (f).

The revisions read as follows:

§ 265.93 Preparation, evaluation and response.

* * * * *

(c)(1) If the comparisons for the upgradient wells made under paragraph (b) of this section show a significant increase (or pH decrease), the owner or operator must note this in the operating record.

* * * * *

(d) If the analyses performed under paragraph (c)(2) of this section confirm a significant increase (or pH decrease), the owner or operator must:

(1) Develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment program at the facility.

(2) The plan to be developed under § 265.90(d)(1) or paragraph (d)(1) of this section must specify:

* * * * *

(3) The owner or operator must implement the ground-water quality assessment program which satisfies the requirements of paragraph (d)(2) of this section, and, at a minimum, determine:

* * * * *

(4) The owner or operator must make his first determination under paragraph (d)(3) of this section as soon as technically feasible, and prepare a report containing an assessment of the ground-water quality. This report must be kept in the facility operating record.

(5) If the owner or operator determines, based on the results of the first determination under paragraph (d)(3) of this section, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he may reinstate the indicator evaluation program described in § 265.92 and paragraph (b) of this section.

(6) If the owner or operator determines, based on the first determination under paragraph (d)(3) of this section, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he:

(i) Must continue to make the determinations required under paragraph (d)(3) of this section on a quarterly basis until final closure of the facility, if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under paragraph (d)(3) of this section, if the ground-water quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of this subpart, any ground-water quality assessment to satisfy the requirements of paragraph (d)(3) of this section which is initiated prior to final closure of the facility must be completed in accordance with paragraph (d)(4) of this section.

(f) Unless the ground water is monitored to satisfy the requirements of paragraph (d)(3) of this section, at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under § 265.92(e) to determine whether the requirements under § 265.91(a) for locating the monitoring wells continue to be satisfied. If the evaluation shows that § 265.91(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

46. Section 265.94 is amended by revising the section heading and paragraphs (a) introductory text, (a)(2), and (b), to read as follows:

§ 265.94 Recordkeeping requirements.

(a) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must:

* * * * *

(2) Keep records of the following:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in § 265.92(b)(1) for each ground-water monitoring well.

(ii) Concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1).

(iii) Results of the evaluations of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must keep records of the following:

(1) Analyses and evaluations specified in the plan, which satisfies the

requirements of § 265.93(d)(2), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Results of his or her ground-water quality assessment program, which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water.

Subpart G—Closure and Post-Closure

47. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

§ 265.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) The owner or operator must provide annual reports to the Regional Administrator describing the progress of the corrective action program. These reports must include ground-water monitoring data and an analysis of the effect of continued receipt of non-hazardous waste on the effectiveness of the corrective action.

* * * * *

48. Section 265.120 is revised as follows:

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart I—Use and Management of Containers

49. Section 265.174 is revised to read as follows:

§ 265.174 Inspections.

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Subpart J—Tank Systems

50. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

§ 265.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the tank system's integrity.

* * * * *

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described in paragraph (b)(5)(i) of this section, or an internal inspection and/or other tank integrity examination certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, and erosion.

* * * * *

51. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 265.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain an assessment by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

* * * * *

52. Section 265.193 is amended:

a. By revising paragraphs (a);

b. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);

c. By revising paragraphs (g) introductory text and (g)(1);

d. Removing paragraph (h);

e. Redesignating paragraph (i) as (h).

The revisions read as follows:

§ 265.193 Containment and detection of releases.

(a) Secondary containment must be provided for all existing and new tank systems and components.

* * * * *

(e) * * *

(3) * * *

(iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

* * * * *

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the

secondary containment requirements of this section.

(1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:

(i) Comply with the requirements of § 264.196 of this chapter and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.

(iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b) of this chapter.

* * * * *

53. Section 265.195 is amended by revising paragraph (a) to read as follows (the **Note** following paragraph (a) is unchanged):

§ 265.195 Inspections.

(a) The owner or operator must inspect at least weekly, or less frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

54. Section 265.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e), to read as follows (the **Note** following newly designated paragraph (e) is unchanged):

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

* * * * *

Subpart K—Surface Impoundments

55. Section 265.221 is amended by revising paragraph (a) to read as follows:

§ 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of a surface impoundment unit must have two or more liners, and a leachate collection and removal system between the liners. The leachate collection and removal system must be operated in accordance with § 264.221(c) of this chapter, unless exempted under § 264.221(d), (e), or (f) of this chapter.

* * * * *

56. The second section designated as § 265.223 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively;

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.223 Response actions.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart L—Waste Piles

57. Section 265.259 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.259 Response actions.

(a) The owner or operator of waste pile units subject to § 265.254 must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart M—Land Treatment

§ 265.276 [Amended]

58. Section 265.276 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Subpart N—Landfills

59. Section 265.301 is amended by revising paragraph (a) to read as follows:

§ 265.301 Design and operating requirements.

(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between the liners. The leachate collection and removal system must be operated in accordance with § 264.301(d), (e), or (f) of this chapter.

* * * * *

60. Section 265.303 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

61. Section 265.314 is amended by removing paragraphs (a), redesignating paragraphs (b) through (g) as paragraphs (a) through (f), and revising newly designated paragraphs (a) and (f) introductory text to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator

of the landfill demonstrates to the Regional Administrator or the Regional Administrator determines that:

* * * * *

Subpart W—Drip Pads

62. Section 265.441 is amended by revising paragraph (a), (b), and (c) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad, the owner or operator must determine whether it meets the requirements of this subpart, except for the requirements for liners and leak detection systems of § 265.443(b). The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 265.443. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Regional Administrator or State Director the as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager attesting that the drip pad conforms to the drawings.

* * * * *

63. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) and removing paragraph (m)(1)(iv), removing and reserving paragraph (m)(2), and removing paragraph (m)(3) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager must be obtained and kept on-site.

* * * * *

64. Section 265.444 is amended by revising paragraph (a) to read as follows:

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1061 [Amended]

65. Section 265.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2), respectively; and removing paragraph (d).

66. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

67. Section 265.1100 is amended by revising the introductory text to read as follows:

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

68. Section 265.1101 is amended by removing paragraphs (c)(3)(i)(D), and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii); and revising paragraphs (c)(2), (c)(3)(i)(C), and (c)(4)to read as follows:

§ 265.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep a certification by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a) through (c) of this section.

(3) * * *

(i) * * *

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

69. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

70. Section 266.102 is amended by revising paragraph (e)(10) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(e) * * *

(10) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

* * * * *

71. Section 266.103 is amended by revising paragraphs (b)(2)(ii)(D), (d), and (k) to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(D) When best engineering judgment is used to develop or evaluate data and make determinations, it must be done by an independent qualified, registered professional engineer or Certified Hazardous Materials Manager, and a certification of his or her determinations must be provided in the certification of precompliance.

* * * * *

(d) *Periodic recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

* * * * *

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

* * * * *

72. Section 266.111 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 266.111 Standards for direct transfer.

* * * * *

(e) * * *

(2) *Requirements prior to meeting secondary containment requirements.* (i) For existing direct transfer equipment that does not have secondary containment, the owner or operator shall determine whether the equipment is leaking or is unfit for use. The owner or operator shall obtain and keep on file at the facility a certified assessment from a qualified, registered professional engineer or Certified Hazardous Materials Manager that attests to the equipment's integrity.

* * * * *

Subpart M—Military Munitions

73. Section 266.205 is amended by revising paragraph (a)(1)(v) to read as follows:

§ 266.205 Standards applicable to the storage of solid waste military munitions.

(a) * * *

(1) * * *

(v) The owner or operator must provide notice to the Director within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of this section.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

74. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

75. Section 268.7 is amended by revising paragraphs (b)(6) and (d)(1); removing paragraphs (a)(1) and (a)(6); and redesignating paragraphs (a)(2) through (a)(5) as (a)(1) through (a)(4) and (a)(7) through (a)(10) as (a)(5) through (a)(8):

§ 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.

* * * * *

(b) * * *

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of 40 CFR 266.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

* * * * *

(d) * * *

(1) A one-time notification, including the following information, must be prepared and placed in the facility's on site files.

* * * * *

76. Section 268.9 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) A generator of hazardous waste must determine, following the requirements of § 262.11 of this chapter, or if applicable, § 264.13 of this chapter, and including the ability to use knowledge of the waste, if the waste has to be treated before it can be land disposed.

(1) This is done by determining if the hazardous waste meets the treatment standards in §§ 268.40, 268.48, and 268.49. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed. These methods of treatment are specified in § 268.40, and are described in detail in § 268.42, Table 1. Wastes with required treatment methods do not need to meet concentration levels.

(2) For purposes of this part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part 261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section.

(3) If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewater treated by CMBST, RORGS, or POLYM of § 268.42, Table 1), the generator must meet treatment standards for all underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files. The notification and certification must be updated if the process or operation generating the waste changes and/or if

the subtitle D facility receiving the waste changes.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

77. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

78. Section 270.16 is amended by revising paragraph (a) to read as follows:

§ 270.16 Specific part B information requirements for tank systems.

* * * * *

(a) An assessment by an independent, registered professional engineer or a Certified Hazardous Materials Manager of the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this chapter.

* * * * *

79. Section 270.17 is amended by revising paragraph (d) to read as follows:

§ 270.17 Specific part B information requirements for surface impoundments.

* * * * *

(d) A certification by a qualified engineer or Certified Hazardous Materials Manager of the structural integrity of each dike. For new units, the owner or operator must submit a statement by a qualified engineer or a Certified Hazardous Materials Manager that construction will be completed in accordance with the plans and specifications.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

80. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

81. Section 271.1 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	*	* *	* *
[Date of publication of final rule in the Federal Register (FR)].	Office of Solid Waste Burden Reduction Project.	[FR page numbers]	[Date of X months from date of publication of final rule].
* *	*	* *	* *

82. Section 271.21 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
* *	* *	* *
* *	* *	* *
Resource Conservation and Recovery Act Burden Reduction Initiative		
* *	* *	* *

[FR Doc. 02–191 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
January 17, 2002

Part II

Environmental Protection Agency

40 CFR Part 260, et al.
Resource Conservation and Recovery Act Burden Reduction Initiative; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[FRL–7123–9]

RIN 2050–AE50

Resource Conservation and Recovery Act Burden Reduction Initiative

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to reduce the recordkeeping and reporting burden the Resource Conservation and Recovery Act (RCRA) imposes on the states, the public, and the regulated community. The burden reduction ideas proposed today will have no anticipated impact on the protections for human health and the environment we have established. At the same time, our proposals will eliminate non-essential paperwork.

In a **Federal Register** ''Notice of Data Availability'' published June 18, 1999, we asked for comment on an initial set of burden reduction ideas. In today's action, we are proposing for rulemaking many of these ideas.

DATES: Written comments must be received by April 17, 2002.

ADDRESSES: If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing Docket Number F–1999–IBRA–FFFFF to: RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or, (2) if using special delivery, such as overnight express service: RIC, Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. You may also submit comments electronically following the directions in the **SUPPLEMENTARY INFORMATION** section below.

You may view public comments and supporting materials in the RIC. The RIC is open from 9 am to 4 pm Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. For information on accessing an electronic copy of the data base, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this proposed rule, contact Mr. Robert Burchard at 703–308–8450, *burchard.robert@epa.gov,* write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Submittal of Comments

You may submit comments electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov.* You should identify comments in electronic format with the docket number F–1999–IBRA–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. The official record for this action will be kept in the paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RIC as described above. We may seek clarification of electronic comments that are garbled in transmission or during conversion to paper form.

You should not electronically submit any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

If you do not submit comments electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential that you specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to protect the diskettes. We emphasize that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Accessing Electronic Data

Background information materials for this Notice are available on the Internet. Follow the instructions below to access these materials electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/data/burdenreduction.

FTP: ftp.epa.gov.

Login: anonymous.

Password: Your Internet address.Files are located in */pub/epaoswer.*

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Regulatory Language

I. Background and Purpose of Today's Proposed Rulemaking

A. Why Are We Reducing Burden?

To meet the federal government-wide goal established by the Paperwork Reduction Act (PRA), we plan to reduce the burden imposed by our reporting and recordkeeping requirements. Burden is the time that a state employee, member of the regulated community, or private citizen spends generating and reporting information to us and keeping records. The PRA establishes a federal government-wide goal of reducing burden 40 percent from the total burden imposed annually on September 30, 1995.

B. How Is Burden Estimated?

We estimate burden by first listing the activities undertaken to collect and organize information in response to our regulations, report the information, or keep it as records. For each activity, we then estimate the time in hours it takes an average respondent to complete the information request, taking into account differences such as facility size and amount of information required. Next, we verify these estimates through consultations with affected parties. These hour estimates are then multiplied by the number of people or entities expected to complete the information collection. The results of these analyses are the basis for our Information Collection Requests, which are published in the **Federal Register**.

C. What Is the Baseline for the Resource Conservation and Recovery Act (RCRA) Paperwork Requirements?

On September 30, 1995, the baseline for the PRA, the burden imposed by RCRA regulation was 12,600,000 hours per year. Forty per cent reduction from the baseline is 7,560,000 hours per year. This proposed rule will eliminate 929,000 hours. Coupled with reductions that have occurred, and reductions that are planned, we expect to reduce our burden by 47% from 1995.

D. What Is the Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative and What Have We Done to Date?

There have already been substantial burden reduction efforts in implementing the Resource Conservation and Recovery Act (RCRA), such as for the Land Disposal Restrictions and Used Oil programs. We have already achieved reductions of close to five million burden hours.

And there are other ongoing, proactive burden reduction efforts such as revisions to the Hazardous Waste Manifest system, including allowing manifests to be sent electronically, development of a standardized permit for selected RCRA facilities, and a major information system overhaul through the Waste Information Needs (WIN) Initiative.

The WIN Initiative is a multi-year project which is reinventing RCRA information management. It operates as a partnership among EPA Headquarters, EPA Regions, and the states. Both information management experts and implementers of hazardous waste programs participate in the Initiative.

The WIN Initiative began by identifying the information needed to carry out the activities of the RCRA program, assessing the reliability and accessibility of current information systems that support these activities, projecting future information needs, and analyzing what the needed information technologies will be. It is now implementing information change, starting with the Biennial Report, Notification, and part A permit application requirements.

The standardized permit, which was proposed on October 12, 2001 (66 FR 52191), would be available to facilities that generate hazardous waste and then manage the waste in on-site units such as tanks, containers, and containment buildings. The standardized permit would streamline the entire permitting process.

Revisions to the Hazardous Waste Manifest include standardizing the content and appearance of manifest forms and allowing waste handlers to complete, send, and store manifest information electronically.

Additionally, we have combined our two main databases of hazardous waste information (the Biennial Report and the Resource Conservation and Recovery Information System—RCRIS) into a new database, named ''RCRAInfo'', which will provide easier and faster access to the information we collect.

These are part of the Agency's efforts to comprehensively reform and improve RCRA information management. This process has asked the questions: Who uses hazardous waste information, why do they need it, is the information useful as it is currently collected, and how can the quality and timeliness of the information be improved?

Over the past three years, the RCRA Burden Reduction Initiative has reviewed and analyzed all RCRA reporting and recordkeeping requirements. We have developed ideas for eliminating or streamlining many of them. We obtained input from program offices at EPA Headquarters, the EPA Regions, and state experts on the validity of the ideas, and whether the ideas would detract from our mission to protect human health and the environment. This input was obtained through almost twenty intensive information gathering sessions and workgroup meetings. We also had the assistance of EPA's Office of Inspector General, which made field visits to see whether certain records required by regulation are kept and used by regulatory authorities. The ideas for the Land Disposal Restrictions changes we are proposing today came from a series of information gathering roundtables on the Land Disposal Restrictions program sponsored by the Agency that brought together EPA, state implementors, the regulated community, and environmental groups.

Our ideas were first announced for comment in a June 18, 1999 **Federal Register** ''Notice of Data Availability'' (64 FR 32859). In the ''Notice'' and background documents (which are available on the Internet), we included every burden reduction idea we considered. We received 36 comments, all of which were taken into consideration when developing today's proposal. Based on comments we received on the ''Notice'', we dropped a number of burden reduction ideas. Ideas were dropped when a commenter demonstrated a practical use for the information, or where they presented a specific example of how an idea would negatively impact human health and the environment. Based on these comments, we also added some additional ideas which appear in today's proposal.

We discussed our burden reduction plans in public forums, including a national public meeting in April 2000, sponsored by the Office of Management and Budget on reinventing government, a national meeting of states sponsored by the Association of Territorial and Solid Waste Management Officials, several industry-outreach roundtables, and a meeting with a coalition of environmental groups. At these forums, we invited discussion of the same questions we had posed in the ''Notice of Data Availability''. We received no specific information from meeting participants indicating that human health and the environment would be impaired if our burden reduction ideas were implemented.

E. How Can I Influence EPA's Thinking on This Rule?

We invite comment on all aspects of this proposal. We specifically want comment on: How will this proposal affect users of environmental

information, particularly the public? Are any of the regulations we are proposing to eliminate crucial to protecting human health and the environment? What kinds of information do people need to protect public health and the environment, and how can they get it most efficiently? Most importantly, what information is actually used? Although a very broad range of information might be theoretically useful to regulators and the public, it is our understanding that much of the information we have required to be collected and reported is not accessed or used on a regular basis for protecting human health and the environment. At this point, twenty years into the RCRA program, we would like our information requirements to reflect demonstrated needs.

We plan to implement the ideas in today's proposal in a final rulemaking, and your comments will play an important part in our decision-making process.

If you have any comments on this proposal, you must submit them even if you already submitted comments on the ''Notice of Data Availability.'' Today's proposed rule responds to the comments we received on the NODA, and we will assume that any concerns identified in the comments on the NODA have been addressed unless we hear otherwise.

In developing this proposal, we tried to address the concerns of our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this rule may effect you, or other relevant information. Your comments will be most effective if you follow the suggestions below:

- Explain your views clearly, and why you feel that way.
- Provide technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those that you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Submit your comments by the deadline in this Notice.
- Include your name, date, and docket number with your comments.

II. Our Main Burden Reduction Proposals

A. We Propose To Reduce the Reporting Requirements for Generators and Treatment, Storage and Disposal Facilities (TSDFs)

We require the submittal of 334 different types of notifications, reports, certifications, demonstrations, and plans from generators and TSDFs to show compliance with the RCRA regulations. We also ask for this information as part of applications for extensions, permits, variances, and exemptions. A study done by the Chemical Manufacturers Association showed that as with the other major environmental statutes implemented by EPA—such as The Clean Air Act and The Clean Water Act—RCRA imposes a large number of reporting requirements.

When we crafted our regulations, we decided to collect as much information as possible about facility operations. Without prior experience as a guide, our philosophy was that it was better to collect information in all cases, knowing that we could eliminate information requirements later if they turned out to not be useful.

Given that we now have 20 years of operating history in RCRA, we have decided to use this proposed rulemaking to step back and reevaluate based on actual experience whether this level of information collection is necessary. And if not, whether we can reduce paperwork while ensuring that public health and environmental protection continues. Doing so will ease some of the unnecessary bureaucratic controls we have established.

Based on comments we received on the ''Notice of Data Availability,'' our own analysis (which consisted of interviews with Agency experts, consulting with stakeholders, and professional judgement in weighing the qualitative costs and benefits of the ideas), and an analysis conducted by EPA's Office of Inspector General (discussed above), we identified approximately one third of the 334 reporting requirements for elimination or modification.

We developed two criteria for determining which reports to keep, cut, or modify, to the extent there was no indication from our outreach activities and analysis that protection of human health and the environment would be affected in any way: (1) Reporting should occur for information about the opening and closing of a facility, along with informational updates such as financial assurance updates and the Biennial Report submission, and, (2) reporting on the majority of the day-to-day functions of a facility is unnecessary. Although oversight of hazardous waste facilities on a day-to-day basis is important, many of the various notices now required are not used in assessing the protectiveness of facility operations, and some are simply redundant. One of the measures we used to determine this was whether the information was put into a database by regulatory authorities.

The bulk of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement (such as complying with a technical standard for the operation of a treatment unit) was performed. Other reports we propose to cut are instances when a facility has to notify the regulatory authorities twice about something that happened at the facility. Requiring a double notification is overly burdensome and does not appreciably improve protection of human health and the environment.

Our proposal maintains facility accountability and responsibility. It still has a facility undertaking the basic environmentally protective activities that are in the regulations—it just won't have to submit a report to the regulatory authority that each activity was completed. And, it will still have to record what happens at the facility in the operating record.

Through this proposal, we hope to focus attention on those critical reports regulators really need to have to ensure protection of human health and the environment.

We are not curtailing the right of regulatory agencies to request and receive any information. We are simply saying that facilities no longer have to send in many of the reports they currently have to submit on a regular basis.

We are not cutting back the government's or the public's ability to know what is happening at a facility, and whether environmentally protective activities are still occurring, because a basic set of compliance information will still be at the facility (in the facility's operating record). This information can be examined by regulatory authorities and then shared with the public. And, another set of information about a facility (how much waste they generate and what is done with it) will still be readily accessible to the public via Agency Web sites and Web sites run by non-Agency organizations such as the Right-to-Know Network (*www.rtknet.org*).

Many of the notices and reports we propose eliminating are obscure and only rarely needed to be sent to

regulatory authorities. They are the kind of notices and reports that, based on our outreach and information gathering, are little, if at all, used by the public.

Please review the regulatory language that is part of today's rulemaking for the specific changes we are proposing to existing regulatory requirements. If commenters believe that any of the notices or reports we are proposing to eliminate are necessary, they should provide specific examples of how the information has been used to address a human health or environmental problem. And, if commenters have a different way to identify which reports to eliminate or modify, they should let us know.

The following chart contains all of the reporting and recordkeeping requirements we propose to eliminate or modify. The first column shows the requirement and what we propose to do with it. The second column provides the regulatory citation that implements the requirement. The Code of Federal Regulations (CFR) is a publication containing all federal regulations. EPA's regulations are in 40 CFR.

We are interested in whether or not any of these items have an existing, specific, and demonstrable use to the public or regulators. In your comments, please provide specific examples of how this information is used, and whether it is stored in an accessible database.

RCRA Reporting and Recordkeeping Requirements Proposed for Elimination or Modification

Requirement	40 CFR (Code of Federal Regulations) citation
Submit report on industry-wide prevalence of the material production process: Eliminate—Regulatory authorities can decide whether to give a variance from classification as a solid waste without this information.	260.31(b)(2).
Exclusion—Submit one-time notification for recycled wood-preserving wastewaters and spent wood-preserving solutions: Eliminate—an unnecessary requirement. According to an EPA expert, this requirement now has limited use for regulators. Also, this proposed change does not affect the other, existing, protective regulatory requirements.	261.4(a)(9)(iii)(E).
Submit report estimating the number of studies and amount of waste to be used in treatability studies: Eliminate—an unnecessary requirement, since this information is provided to the regulatory agency at a later date, meaning that the information has to be supplied by the facility twice (an unnecessary duplication). Plus, according to EPA staff experts, these estimates are not usually accurate.	261.4(f)(9).
Exclusion—Generator submit a one-time comparable/syngas fuel notice to the permitting agency: Eliminate—an unnecessary requirement given the subsequent public notice regulatory requirements (where this information is also submitted). Plus, we are not eliminating the overall regulatory requirements for burning, blending, generation, sampling, etc.	261.38(c)(1)(i)(A).
Personnel training requirements—training program: Eliminate the RCRA requirements, and have facilities follow Occupational Safety and Health Administration standards, which are more comprehensive. This is an area of overlap that has been identified in a comprehensive study of federal personnel training requirements by the General Accounting Office.	264.16(a)(3).
Personnel training requirements—record job title: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(1).
Personnel training requirements—record job description: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement has little bearing on whether the employee is capable of doing the job safely.	264.16(d)(2).
Personnel training requirements—record type and amount of training that will be provided: Eliminate—based on comments from a state expert, we are recommending that these requirements be deleted. The rationale is that this requirement isn't necessarily a good indicator of whether an employee is capable of doing the job safely.	264.16(d)(3).
Contingency Plan—Coordination with other plans: Modify—Plan should be based on the One Plan guidance, which will eliminate the need to prepare multiple contingency plans for Agency requirements.	264.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 264.56(h) before resuming operations: Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	264.56(i).
Operating record: Maintain operating record for facility Modify amount of time most of the information in operating records have to be kept—three years instead of for the life of the facility. We are proposing this to standardize our record retention requirements.	264.73(b).
Standards for Solid Waste Management Units Remove obsolete language	264.90(a)(2).
Detection Monitoring (Permitted Facilities)—Conduct and maintain ground-water monitoring: Modify—We plan to introduce flexibility by allowing sampling for a smaller subset of constituents from the Appendix IX list of constituents. This idea originated from state staff with field experience.	264.98(c).
Detection Monitoring (Permitted Facilities)—Prepare and submit the notification of contamination: We are taking comment on eliminating this requirement (but we are not proposing this in today's rule)—this has been identified through our review of the regulations as a duplicative requirement. The owner/operator must still sample groundwater wells for hazardous constituents (this is required by regulation) and also submit a permit modification to the Regional Administrator that establishes a compliance monitoring program for the constituents. This should be sufficient to protect human health and the environment.	264.98(g)(1).
Detection Monitoring (Permitted Facilities)—Prepare and submit an engineering feasibility plan for corrective action, if required: Modify—Our review of the regulations identified this requirement as one that could be switched from having to send it to the regulatory authority to just keeping it as part of the facility operating record. Our rationale is that this information will be available at the facility for inspectors to see, and that the facility operator still has to undertake the environmentally protective actions described in the regulation.	264.98(g)(5)(ii).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Detection Monitoring (Permitted Facilities)— Prepare and submit notification of intent to make a demonstration: Modify—make part of operating record instead of sending it to the regulatory authority. This information will be available at the facility for inspectors to see. Additionally, this kind of information is also provided to the regulatory authorities in the permit modification submitted under 264.98(g)(6)(iii).	264.98(g)(6)(i), (ii).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of new constituent concentrations: Modify—number of wells, samples, and constituents will be determined on a case-by-case basis, instead of for all wells. This idea came from state experts, and is based on their field experience that sampling all wells can be unnecessary.	264.99(g).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of exceeded concentration limits: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since this information is later included as part of a permit modification that must be submitted under 264.99(h)(2).	264.99(h)(1).
Compliance Monitoring (Permitted Facilities)—Prepare and submit notification of intent to make a demonstration: Eliminate—this has been identified through our review of the regulations as a duplicative requirement, since the Regional Administrator will get the same information through the 264.99(i)(3) permit modification.	264.99(i)(1), (2).
Closure (Permitted Facilities)—Submit semi-annual corrective action report: Modify—report only needs to be submitted annually, instead of semi-annually. According to staff experts at the Agency, annual reports will be sufficient to ensure protection of human health and the environment.	264.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of performing this certification.	264.115.
Certification of Completion of Post-Closure Care: Modify—certification can be by a Certified Hazardous Materials Manager, who will have sufficient education and skill to make this certification.	264.120.
Containers—Inspection frequency: Allow self-inspection frequencies to be changed, on a case-by-case basis. Based on comments from states and the regulated community, we want to provide flexibility in inspections for well-performing facilities.	264.174.
Assessment of existing tank system's integrity: Modify—assessment can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification.	264.191(a), (b)(5)(ii).
Assessment of new tank system and components: Modify—can be made by a Certified Hazardous Materials Manager, who will have sufficient education and skill to do this certification. And, this assessment may be retained on-site.	264.192(a), (b).
Containment and detection of releases: Remove obsolete language	264.193(a), (a)(1)–(5).
Leak Detection System for Tanks: Eliminate need for demonstrations to the regulatory authorities, and make this requirement self-implementing. The owner or operator is in the best position to make the determination as to what is the earliest practical time, based on the site characteristics.	264.193(c)(3), (c)(4), (e)(3)(iii).
Variance from Leak Detection Systems for Tanks: Eliminate need to obtain variance, and make this provision self-implementing. The owner or operator can implement alternate design and operating practices as long as they follow the requirements of this section.	264.193(g), (h).
Tank Systems (Permitted)—Inspection frequency: Change frequency to weekly. Based on comments and the existence of substantial safety features required by regulation, this change will have little negative impact on human health and the environment. Also, inspections may be less frequent than weekly, as determined on a case-by-case basis by regulatory authorities.	264.195(b).
Tank Systems (Permitted)—Notify EPA of release and submit report: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility records.	264.196(d0(1)–(3).
Tank Systems (Permitted)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, the certification may be made by a Certified Hazardous Materials Manager.	264.196(f).
Surface Impoundments (Permitted)—Notify EPA in writing if flow rate exceeds action leakage rate (ALR) for any sumps within 7 days: Eliminate—an unnecessary requirement as long as action is taken to stop leaks; action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(1).
Surface Impoundments (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(2).
Surface Impoundments (Permitted)—Submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.223(b)(6).
Waste Piles (Permitted)—Installation of liners and leachate collection systems after January 29, 1992: Eliminate—obsolete language.	264.251(c).
Waste Piles (Permitted)—Notify EPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(1).
Waste Piles (Permitted)—Submit a written assessment to the RegionalAdministrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(2).
Waste Piles (Permitted)—Compile and submit information to EPA each month that the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as action is taken to stop leaks, action that is already required by regulation. We do not think regulatory authorities need to be notified in these cases.	264.253(b)(6).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Land Treatment (Permitted)—Prepare and submit a notice of statistically significant increases in hazardous constituents below treatment zone: Eliminate—a duplicative requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(g)(1).
Land Treatment (Permitted)—Prepare and submit notice of intent to make a demonstration that other sources or error led to increases below treatment zone: Eliminate—an unnecessary requirement since this information will be in the permit modification that has to be submitted if this event happens. The regulatory authorities do not need to be notified twice.	264.278(h)(1), (2).
Land Treatment (Permitted)—Certification of closure: We are taking comment on (but not proposing in today's rule) whether a Certified Hazardous Materials Manager is capable of doing this certification.	264.280(b).
Land Fills (Permitted)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the procedures in the response action plan (a response action plan is regulatorily required) are followed.	264.304(b)(1).
Land Fills (Permitted)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(2).
Land Fills (Permitted)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the procedures in the response action plan are followed. Response action plans are required by regulation.	264.304(b)(6).
Special Requirements for Bulk and Containerized Liquids: Remove obsolete language	264.314(a)(1), (a)(2), (b), (f).
Incinerators (Permitted)—Submit notification of intent to burn hazardous wastes F020, F021, F022, F023, F026, F027: Eliminate—an unnecessary requirement since the facility is already permitted to burn this waste, and since there are already regulatory standards governing how the waste is burned.	264.343(a)(2).
Drip Pads (Permitted)—Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, these activities may also be done by a Certified Hazardous Materials Manager.	264.571(a), (b), (c).
Drip Pads (Permitted)—Evaluate drip pads: Modify—in addition to an independent, registered professional engineer, this evaluation may also be done by a Certified Hazardous Materials Manager.	264.573 (a)(4)(ii), (g).
Drip Pads (Permitted)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are taken. Information relevant to the happenings at the drip pad will be retained in the facility record.	264.573(m)(1)(iv).
Drip Pads (Permitted)—EPA makes determination about removal of pad: Eliminate—an unnecessary requirement as long as response actions described in (m)(1)(i)–(iii) of this part are undertaken. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(2).
Drip Pads (Permitted)—Notify EPA and certify completion of repairs: Eliminate—an unnecessary requirement as long as cleanup and repairs described in the regulations of this part are made. Information relevant to the drip pad activities will be retained in the facility record.	264.573(m)(3).
Drip Pads (Permitted)—Inspections: Modify—in addition to an independent, registered professional engineer, these inspections may be done by a Certified Hazardous Materials Manager.	264.574(a).
Process Vents (Permitted)—Submit semi-annual report of control device monitoring events to the Region: Eliminate need to submit report—an unnecessary requirement given the detailed recordkeeping required by 264.1035. The 264.1035 information will be retained on-site for regulators to examine.	264.1036.
Equipment Leaks (Permitted)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement since the relevant information will be retained in the facility record.	264.1061(b)(1).
Equipment Leaks (Permitted)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement since there are standards that must be followed if the regular standards are going to be followed. Relevant information will be retained in the facility record.	264.1061(d).
Equipment Leaks (Permitted)—Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary reporting requirement as long as standards are followed. Relevant information will be retained in the facility record for regulators to examine.	264.1062(a)(2).
Equipment Leaks (Permitted)—Submit a semi-annual report with record of equipment, shutdowns, and control device monitoring events:Eliminate—an unnecessary requirement. The 264.1064 recordkeeping requirements will provide adequate information. The 264.1064 information will remain on-site for regulators to examine.	264.1065.
Containment Buildings (Permitted): Remove obsolete language	264.1100.
Containment Buildings (Permitted)—Obtain certification that building meets requirements: Modify—in addition to an independent, registered professional engineer, the certification may be made by a Certified Hazardous Materials Manager.	264.1101(c)(2).
Containment Buildings (Permitted)—Notify EPA of condition that has caused a release and provide schedule for cleanup: Eliminate—an unnecessary requirement since repair of containment building must occur anyway. Information about this situation will be available in the facility record for regulators to inspect.	264.1101(c)(3)(i)(D).
Containment Buildings (Permitted)—Notify EPA and verify in writing that the cleanup and repairs have been completed after a release: Eliminate—an unnecessary requirement. EPA does not get involved in similar decisions about whether other parts of a facility need to be removed from service. Information about this situation will be available in the facility records for regulators to inspect.	264.1101(c)(3)(ii), (iii).
Containment Buildings (Permitted)—Inspection frequency: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	264.1101(c)(4).
Purpose, Scope, and Applicability: Remove obsolete language	265.1(b).
Personnel Training—Emergency response:Eliminate and replace with Occupational Safety and Health Administration requirements, which are more comprehensive than the RCRA requirements.	265.16(a)(3).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Personnel Training—Record job titles: Eliminate—an unnecessary requirement—from information we received from the field, the job title doesn't necessarily correspond to the work the employee does, and has little bearing on whether the employee is capable of doing the job safely.	265.16(d)(1), (2).
Personnel Training—Description of type and amount of training each employee will receive: Eliminate—from information we received from the field, this requirement is not necessarily a good indicator of whether an employee is capable of doing the job safely.	265.16(d)(3).
Contingency Plans—Coordination with other plans: Modify—Facilities should follow the One Plan guidance, which is designed to eliminate overlap between different regulatory requirements for contingency plans. This proposal has been endorsed by a recent General Accounting Office report on worker protection.	265.52(b).
Emergency Procedures—Notify Regional Administrator that facility is in compliance with 265.56(h) before resuming operations:Eliminate—an unnecessary requirement. This is a notification to the regulatory Agency that the emergency coordinator has ensured that no incompatible waste is being treated at the site and that the emergency equipment is ready to use again. This emergency coordinator does not need to have this notification to ensure that these tasks are done. The environmentally protective activities are still in place, and are documented in the facility operating record, as well as documented by the emergency coordinator.	265.56(i).
Operating Record—Keep operating record for facility:Modify the amount of time most records have to be kept; three years instead of for the life of the facility. This will standardize the RCRA record retention time requirements, eliminating confusion about how long records have to be kept.	265.73(b).
Ground-water Monitoring (Interim Status Facilities)—Submit alternate ground-water monitoring plan: Modify—no need to submit plan to Regional Administrator, it can be kept onsite where it will be available for regulators to inspect.	265.90(d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit report: Modify—no need to submit report to Regional Administrators. It can be kept on-site, where it will be available for regulators to inspect.	265.90(d)(3).
Ground-water Monitoring (Interim Status Facilities)—Submit notification of increased indicator parameter concentrations: Modify—no need to submit reports; this information will be noted as part of the groundwater quality assessment program.	265.93 (c)(1), (d)(1).
Ground-water Monitoring (Interim Status Facilities)—Submit information for ground-water quality assessment plan: Modify—no need to submit information. It may be maintained on-site, where it will be available for regulators to inspect.	265.93(d)(2).
Ground-water Monitoring (Interim Status Facilities)—Develop and submit ground-water quality assessment reports: Modify—no need to submit these reports given other regulatory requirements in this part, which give detailed instructions on assessments and cleanups.	265.93(d)(5), (e), (f).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a quarterly report of concentrations of values of the drinking water suitability parameters: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(i).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on indicator parameter concentrations and evaluations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(ii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on ground-water surface elevations: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(a)(2)(iii).
Ground-water Monitoring (Interim Status Facilities)—Prepare and submit a report on the results of the groundwater quality assessment program: Modify—report will be kept onsite, where it may be inspected by regulators.	265.94(b)(2).
Closure (Interim Status Facilities)—Submit semi-annual corrective action report: Modify—according to Agency staff experts, regulators will have sufficient information if these reports are sent in annually instead of semiannually.	265.113(e)(5).
Certification of Closure: We are taking comment on (but we are not proposing in today's rule) whether a Certified HazardousMaterials Manager is capable of performing this certification.	265.115.
Certify completion of post-closure care: Modify—in addition to an independent, registered professional engineer, this certification may be made by a Certified Hazardous Materials Managers.	265.120.
Container Inspection Frequency: Modify—allow regulators to modify the self-inspection frequency for well-performing facilities on a case-by-case basis.	265.174.
Assessment of Existing Tank System's Integrity: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.191(a), (b)(5)(ii).
Design and Installation of New Tank Systems or Components—assessment of structural integrity and acceptability for storing and treating waste: Modify—in addition to an independent, registered professional engineer, this assessment may be done by Certified Hazardous Materials Managers.	265.192(a).
Design and Installation of New Tank Systems or Components—assessment of tank installation: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.192(b).
Tank Systems (Interim Status): Remove obsolete language	265.193(a).
Tank Systems (Interim Status)—Demonstrate to EPA that technology and site conditions do not allow detection of release within 24 hours: Eliminate this demonstration. Having a functional leak detection system capable of detecting a release within 24 hours or the earliest practicable time, coupled with the tank design requirements, is adequately protective.	265.193(e)(3)(iii).
Tank Systems (Interim Status)—Obtain variance to use alternate tank design and operating practices: Eliminate the need to obtain a variance and make this self-implementing. Records are to be kept on-site describing the decisionmaking.	265.193(g)(1), (h).
Tank Systems (Interim Status): Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.195(a).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Tank Systems (Interim Status)—Notify EPA of release: Eliminate—the existing regulatory requirements for cleanup and certification of the cleanup are adequately protective; this extra notification to the regulatory authorities is unnecessary. This information will be retained in the facility record.	265.196(d)(1), (d)(2).
Tank Systems (Interim Status)—Submit report describing releases: Eliminate—the cleanup requirements in the regulations and the need to certify (required by 265.196(f)) is sufficient to protect human health and the environment.	265.196(d)(3).
Tank Systems (Interim Status)—Submit certification of completion of major repairs: Eliminate requirement to submit certification—we do not ask for certifications to be submitted for other kinds of repairs; there is no special reason for this certification to be submitted. Also, this certification may be done by a Certified Hazardous Materials Manager.	265.196(f).
Surface Impoundments (Interim Status): Remove obsolete language	265.221(a).
Surface Impoundments (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—Response Action Plans for other kinds of treatment units are not submitted to EPA. We are proposing that it is sufficient to keep this Plan on-site.	265.223(a).
Surface Impoundments (Interim Status)—Notify EPA in writing if flow rate exceeds action leakage rate for any sumps within 7 days: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(1).
Surface Impoundments (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement since the facility still has to address the leakage and record its response to the leakage in the facility record, which is available for inspection by regulators.	265.223(b)(2).
Surface Impoundments (Interim Status)—Compile and submit information to EPA each month the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement since information about the leak will be kept onsite, where it is available for inspection by regulators.	265.223(b)(6).
Waste Piles (Interim Status)—Submit the Response Action Plan to EPA: Eliminate—an unnecessary requirement since other treatment units do not have to submit this plan. Removing this requirement will bring consistency to the regulations.	265.259(a).
Waste Piles (Interim Status)—NotifyEPA in writing of the exceedance amount of the leakage: Eliminate—an unnecessary requirement as long as Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(1).
Waste Piles (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(2).
Waste Piles (Interim Status)—Submit information to EPA each month that the Action Leakage Rate is exceeded: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed. Information about the facility's response to the leakage will be available in the facility's operating record.	265.259(b)(6).
Land Treatment (Interim Status)—Submit notification for food-chain crops at land treatment facility: Eliminate—an unnecessary requirement as long as the other regulatory requirements in 265.276 are followed. Information about compliance with these other regulatory requirements will be in the facility operating record.	265.276(a).
Landfills (Interim Status)—Remove obsolete language	265.301(a).
Land Fills (Interim Status)—Submit the Response Action Plan to EPA: Eliminate requirement to submit plan. Developing a plan, keeping it onsite, and implementing it when necessary is sufficient.	265.303(a).
Land Fills (Interim Status)—Notify EPA if action leakage rate is exceeded within 7 days of determination: Eliminate—an unnecessary requirement as long as the Response Action Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(1).
Land Fills (Interim Status)—Submit a written assessment to the Regional Administrator within 14 days of determination of leakage: Eliminate—an unnecessary requirement as long as the Response Plan is followed and information on adherence to the Plan is kept in the facility operating record, where it will be available for inspection by regulators.	265.303(b)(2).
Land Fills (Interim Status)—Submit information to EPA each month the Action Leakage Rate (ALR) is exceeded: Eliminate—an unnecessary requirement as long as the remediation required by regulation takes place, and information about the remediation is kept in the facility record.	265.303(b)(6).
Requirements for bulk and containerized liquids: Remove obsolete language	265.314(a), (a)(1), (a)(2), (b), (g).
Drip Pads (Interim Status)—Assessment of Drip Pad, Submit written plan, as-built drawings, and certification for upgrading, repairing and modifying the drip pad: Modify—in addition to an independent, registered professional engineer, certification may be made by a Certified Hazardous Materials Manager.	265.441(a), (b), (c).
Drip Pads (Interim Status)—Assessment of Drip Pad: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.443(a)(4)(ii), (g).
Drip Pads (Interim Status)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place, and is recorded in the facility operating record, where it will be available for inspection by regulators.	265.443(m)(1)(iv), (2).
Drip Pads (Interim Status)—Notify Regional Administrator and certify completion of repairs: Eliminate—an unnecessary requirement as long as the required cleanup and repairs are made.	265.443(m)(3).
Drip Pads (Interim Status)—Inspection of liners: Modify—in addition to an independent, registered professional engineer, assessment may be done by a Certified Hazardous Materials Manager.	265.444(a).
Equipment Leaks (Interim Status)—Submit notification to implement the alternative valve standard: Eliminate—an unnecessary requirement as long as other regulatory requirements in 265.1061 are followed.	265.1061(b)(1).

RCRA REPORTING AND RECORDKEEPING REQUIREMENTS PROPOSED FOR ELIMINATION OR MODIFICATION—Continued

Requirement	40 CFR (Code of Federal Regulations) citation
Equipment Leaks (Interim Status)—Submit notification to discontinue alternative valve standard: Eliminate—an unnecessary requirement. Owners or operators can decide which standard to meet without notifying the Agency. This information will be retained in the facility's operating record, where it will be available for inspection by regulatory authorities.	265.1061(d).
Equipment Leaks (Interim Status)— Submit notification to implement alternative work practices for valves: Eliminate—an unnecessary requirement. Owners or operators may use alternative work practice without notifying the Agency. This information will be kept in the facility operating record, which is available for regulatory authorities to inspect.	265.1062(a)(2).
Containment Buildings (Interim Status)—Notify EPA of intent to be bound by the regulations earlier than as specified in section 265.1100: Eliminate—an obsolete requirement.	265.1100.
Containment Buildings (InterimStatus)—Obtain certification that building meets design requirements:Modify—in addition to an independent, registered professional engineer, this certification can be done by a Certified Hazardous Materials Manager.	265.1101(c)(2).
Containment Buildings (InterimStatus)—Notify EPA of release and provide written notice of procedures and schedule for cleanup: Eliminate—an unnecessary requirement to notify regulatory authorities about a cleanup that must be done by regulation. Records of the cleanup will be in a facility's operating record, which is available for inspection by regulatory authorities.	265.1101(c)(3)(i)(D).
Containment Buildings (Interim Status)—Notify EPA and verify in writing that the cleanup and repairs have been completed: Eliminate—an unnecessary requirement as long as cleanup required by regulation takes place. This information will be maintained in the operating record, which is available for inspection by regulators.	265.1101(c)(3)(ii), (iii).
Containment Buildings—Interim Status: Allow reduced inspection frequencies on a case-by-case basis. This determination will be made by regulatory authorities based on past performance of the facility.	265.1101(c)(4).
Boilers and Industrial Furnaces (Permitted)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.102(e)(10).
Boilers and Industrial Furnaces (Interim Status)—Evaluation of data and making determinations: Modify—in addition to an independent, registered professional engineer, this evaluation can be made by a Certified Hazardous Materials Manager.	266.103(b)(2)(ii)(D).
Boilers and Industrial Furnaces (Interim Status)—Periodic recertifications of compliance: Modify—extend period of time from three to five years, which Agency field staff believe is sufficient for regulatory purposes.	266.103(d).
Boilers and Industrial Furnaces (Interim Status)—Recordkeeping: Modify—records only have to be kept for three years, making this record retention time consistent with other treatment units. Bringing consistency to record retention times will assist facilities in complying with our regulations.	266.103(k).
Direct Transfer Equipment—Assessment of equipment: Modify—in addition to an independent, registered professional engineer, this assessment can be done by a Certified Hazardous Materials Manager.	266.111(e)(2).
Storage of Solid Waste Military Munitions—Notification of loss or theft: Simplify notification process—there is no need to notify the regulatory authorities twice.	266.205(a)(1)(v).
LDR Generator Requirements—Generator waste determination: Eliminate—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.7(a)(1).
LDR Generator Requirements—Generator waste determination: Eliminate—because we are eliminating 268.7(a)(1), this record retention requirement is unnecessary.	268.7(a)(6).
LDR Treatment Facility Requirements—Submit a recycling notice and certification to EPA: Modify—keep information on-site. See discussion in proposed rule preamble.	268.7(b)(6).
LDR Hazardous Debris Requirements—Submit notification of claim that debris is excluded from definition of hazardous waste: Modify—notification becomes one-time and remains on-site. See discussion in proposed rule preamble.	268.7(d)(1).
LDR Special Rules for Characteristic Wastes—Submit one-time notification: Modify—a separate determination is unnecessary. See discussion in proposed rule preamble.	268.9(a).
LDR Special Rules for CharacteristicWastes—Submit certification: Modify—keep information on-site.See discussion in proposed rule preamble.	268.9(d).
Part B Requirements for Tank Systems—Submit written assessment of structural integrity: Modify—in addition to an registered, independent professional engineer, this assessment may be done by a Certified Hazardous Materials Manager.	270.16(a).
Part B Requirements for Surface Impoundments—Assessment of structural integrity: Modify—in addition to a registered, independent professional engineer, this assessment may be made by a Certified Hazardous Materials Manager.	270.17(d).

B. We Are Proposing Weekly Hazardous Waste Tank Inspections

We are proposing to reduce the self-inspection frequencies for hazardous waste tanks from daily to weekly. Tank regulations are found in 40 CFR 264.190 and 265.190.

This proposal is based on three factors. First, other kinds of tanks are required to be inspected at frequencies less than daily. These tanks have to meet criteria for protecting human health and the environment similar to those for hazardous waste tanks. For example, in the Underground Storage Tank Program, tanks containing petroleum or hazardous substances are only required to be monitored for releases every thirty days. Oil tanks regulated under the Spill Prevention, Control and Countermeasure Program (SPCC) are required to be frequently observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas. It is up to the engineer who certifies the SPCC Plan how often these observations should occur.

Comments we received on the ''Notice of Data Availability,'' as well as the outreach we did, support going from a daily to weekly inspection frequency. Commenters and an expert on tank systems made the point that the integrity and safety of hazardous waste tanks would not be compromised by reducing the daily inspection requirement to a weekly frequency. Several commenters pointed out that hazardous waste storage tanks, which have secondary containment, are even more protectively designed than process tanks which handle the same chemicals.

Additionally, the tanks are equipped with leak detection systems, and are subject to routine visual inspection by employees. Leak detection systems provide continuous surveillance for the presence of a leak or spill. Technically, they consist of wire grids, observation wells, and U-tubes containing thermal-conductivity or electrical-resistivity sensors, or vapor detectors. Visual inspection is effective for aboveground or vaulted tanks, and for other tanks where access to potentially leaking parts is available. Visual monitoring can also be effective for the inspection of ancillary equipment.

Upon detection of a leak, either through the leak detection system or visual observation, the owner or operator of the tank system must immediately stop the flow of hazardous waste, determine and rectify the cause of the leak, remove the waste, and contain releases to the environment.

Finally, tanks are simpler to design, construct, and manage than units such as combustion units or land disposal units, and therefore require less oversight than these more complicated units for assessing that they are performing protectively.

C. We Propose To Allow Facilities the Opportunity To Adjust the Frequency of Their Self-Inspections

For containers, containment buildings, and tanks (in addition to moving their inspection frequency from daily to weekly), we are proposing to allow on a case-by-case basis decreased inspection frequencies (from the frequency currently required by regulation). The regulations for containers are found in 40 CFR 264.170 and 265.170; containment buildings in 40 CFR 264.1100 and 265.1100; and tanks in 40 CFR 264.190 and 265.190. In all cases, inspections would have to occur at least monthly. Decreased inspection frequencies would be established on a site-specific basis by the Directors of authorized states' hazardous waste programs, or by EPA.

Considerations for decreasing inspection frequencies will be based on factors such as: a demonstrated commitment by facility management to sound environmental practices, demonstrations of good management practices over the years (having a record of sustained compliance with environmental laws and requirements), demonstrated commitment to continued environmental improvement, demonstrated commitment to pubic outreach and performance reporting, the installation of automatic monitoring devices at the facility, and the chemical and physical characteristics of the waste being managed in the unit. States or EPA may also include a qualification that facilities must revert to the original inspection schedule if there are spills or releases.

Several states and a coalition of environmental groups and trade unions commented that they do not support any decrease in inspection frequency because of concerns that if inspection frequencies were decreased, the amount of time between a leak and its discovery would increase. If the factors described above are taken into account when extending the inspection frequencies, there will be little or no increase in the likelihood of an undetected release. These decreased inspection frequencies should only be offered to the safest and best-performing facilities. In addition, the proposed approach may reduce the likelihood of release by providing a financial incentive for companies to avoid releases in order to be approved for reduced inspection frequency.

We also received comments from the states expressing concern over the added administrative burden in implementing case-by-case changes to inspection frequencies. We are not mandating that states offer these changes. We are only providing the option to states that are interested.

Another group of commenters suggested that inspection frequency changes should be self-implementing. For example, an inspection schedule should be deemed approved if EPA does not specifically deny the request in writing within 30 days. Where we were able to identify an across-the-board change, like tanks going to weekly inspections, we did so. We think beyond that, a case-by-case evaluation of facility conditions is still necessary. It is important that regulatory agencies make the decisions to decrease inspection frequencies. Thus, we are not proposing the self-implementing option.

D. We Propose Reducing the Burden of RCRA Personnel Training Requirements and Eliminating an Overlap With Occupational Safety and Health Administration Training Requirements

We currently require facilities to train their employees in facility operations and emergency response procedures. We also require a written job description for each employee. And, we require training records for current employees to be kept until closure of the facility. These requirements are found in 40 CFR 264.16 and 265.16. The idea behind these regulations is that trained employees are safe employees, and will be able to prevent releases of hazardous waste to the environment. By working with the Occupational Safety and Health Administration, we have developed an improved way of meeting these goals.

During our research, we compared the personnel training requirements imposed by EPA under RCRA with those imposed by OSHA through their Hazardous Waste Operations and Emergency Response regulation. Based on this analysis and comments received on the ''Notice of Data Availability,'' we discovered that there is really only one area of overlap. This overlap is emergency response training. A recent report from the General Accounting Office titled: ''Worker Protection, Better Coordination Can Improve Safety and Hazardous Materials Facilities'' independently reached the same conclusion about an overlap in these two sets of emergency response training requirements.

We propose changing the RCRA regulations to have facilities comply with the OSHA regulations for emergency response training, and to drop the current RCRA requirements. The OSHA requirements are more extensive than the current RCRA requirements, and should therefore replace the RCRA requirements.

We are also proposing eliminating the requirement that facilities include job titles and descriptions as part of their personnel records. Based on comments received from the ''Notice of Data Availability,'' we believe that requiring job descriptions provide little value in protecting human health and the environment. Often these job descriptions bear little resemblance to the work the employees do, and they have little relationship to whether an employee is trained properly.

Finally, we are proposing to eliminate the regulatory requirement for a description of the training employees will receive. The facility inspections ensure adequate training—simply

documenting the employee(s) name(s) and date(s) of training is sufficient.

E. We Propose To Further Eliminate and Streamline the Land Disposal Restrictions (LDR) Paperwork Requirements, Existing LDR Paperwork Requirements

The Land Disposal Restrictions (LDR) are a major regulatory component of the RCRA program. In addition to establishing treatment standards for hazardous waste prior to land disposal, they require generators and TSDFs to determine if their waste needs to be treated before land disposal, submit demonstrations and petitions to EPA if applicable, and send notices and/or certifications with shipments to TSDFs.

Based on our review of the LDR paperwork requirements, as well as our conversations with the regulated community, states, and the public through a series of public forums, we have determined that a number of LDR requirements for waste determinations, notifications, and certifications could be eliminated without diminishing the protection of human health or the environment.

Proposed Changes to LDR Paperwork Requirements

Change 1: We Propose To Drop the § 268.7(a)(1) Generator Waste Determination Requirement

We propose to eliminate the need for generators to conduct the waste determination required by § 268.7(a)(1). Section 268.7(a)(1) requires a generator to determine if their hazardous waste must be treated prior to land disposal. This determination can be made either through testing or knowledge of the waste's properties and constituents. After consulting with staff with field experience, we concluded that a combination of several other requirements provide the same safeguards as the § 268.7(a)(1) requirement.

First, a determination of whether a waste is hazardous is required by § 262.11 (which says that generators of solid waste must determine whether a waste is hazardous). This means a generator must know what properties and constituents are present in his waste—for example, does it contain toxic constituents that cause it to exhibit the Toxicity Characteristic described in § 261.24? Some of this same information is used in the determination as to whether the waste must be treated to comply with the LDRs.

Second, § 264.13(a)(1) requires TSDFs to perform a general waste analysis to determine ''all of the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter'' (emphasis added). Therefore, the owner or operator of a TSDF is already required to work with the waste generator to ensure that adequate information is available to comply with LDRs.

Third, in § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of EPA hazardous waste code, waste constituents, wastewater and nonwastewater classification, and treatability group).

These other determinations are sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs. Therefore, we conclude that the § 268.7(a)(1) determination is duplicative, and we propose to eliminate it.

Change 2: We Propose To Modify the § 268.7(b)(6) Recycler Notification and Certification Requirements

Currently, treatment facilities must test their waste to determine whether it complies with LDR treatment standards. A one-time notice containing this information must be sent to the disposal facility. The treatment facility must also send a one-time notice to regulatory authorities that the treatment technology was operated properly. We originally thought that the regulating agency would review these reports to monitor what happens to this waste.

Based on a recent analysis of actual state and Regional facility oversight of treatment and recycling facilities, we have found that this information is not routinely used for its intended purpose. Our informants suggested that it would be sufficient for this information to be available in the facility's files if any question arises as to whether adequate treatment occurred.

Therefore, we are proposing that treatment and recycling facilities no longer send these notifications and certifications to EPA, as long as the information contained in them is kept in facility records.

Change 3: We Propose To Modify the § 268.7(d) Hazardous Debris Notification Requirement

Currently, generators or treatment facilities who claim that their hazardous debris is excluded from the definition of hazardous waste must send a one-time notice of this claim to EPA, and keep a copy of the notice in their files. We established this requirement on the assumption that regulatory agencies would review the notices to make themselves aware that this treated debris was being sent to a non-hazardous waste landfill.

We have been unable to verify that this information is routinely used for its intended purpose. Therefore, we are proposing that generators and treaters of excluded debris not send these notifications to EPA, as long as the information that would have been in the notifications is kept in facility records.

Change 4: We Propose To Modify the § 268.9(a) Characteristic Waste Determination Requirement

We propose to eliminate the need for a separate LDR waste determination for characteristic waste. As with the § 268.7(a)(1) generator determinations above, the § 268.9(a) determinations are duplicated elsewhere. Generators are already required to determine whether they have a hazardous waste under § 262.11, and treaters are required to obtain a detailed chemical and physical analysis under § 264.13. Under § 268.40, hazardous waste is prohibited from land disposal unless it meets the requirements in the Table of Treatment Standards (which requires knowledge of the EPA hazardous characteristic waste code, underlying hazardous constituents, wastewater/nonwastewater classification, and treatability group).

These other determinations are sufficient to assure a waste is properly characterized for achieving compliance with the LDRs and, therefore, protecting human health and the environment.

Change 5: We Propose To Modify the § 268.9(d) Notification Requirement

Under § 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification about this must be placed in the generator's or treater's files, and also sent to EPA. We continue to see value in parties knowing that they are receiving wastes that are still subject to land disposal restrictions, even though they no longer exhibit a characteristic.

These records do not need to be sent to EPA, however, if they are kept on site in the facility's files. We have not been able to verify that this information, once sent to EPA, is routinely used. Therefore, we conclude based on the absence of such information from regulatory agencies, that its submission is not critical to overall protection of human health and the environment. And in the event of a question of compliance or enforcement action, it will be available in a facility's files.

III. Other Burden Reduction Proposals

Boiler and Industrial Furnace Records To Be Kept 3 Years

Owner/operators of Boilers and Industrial Furnaces must conduct tests, such as performance tests for their continuous emissions monitors, and report the results to us. We propose to standardize the retention period for all records required to be kept by the Boilers and Industrial Furnaces to three years, bringing it in line with other RCRA recordkeeping retention periods. See 40 CFR 266.102 for the Boiler and Industrial Furnace regulations.

Certified Hazardous Materials Managers

Owners/operators of hazardous waste facilities must certify that their treatment, storage, and disposal units are functioning properly. For example, tank systems for storing or treating hazardous waste must be certified by an independent, qualified, registered professional engineer that the tanks meet thickness and strength requirements.

We propose to modify most of the RCRA certification requirements to allow a person who is a ''Certified Hazardous Materials Manager'' to make the certification. The Certified Hazardous Materials Manager Certification is accredited by the Council on Engineering and Scientific Specialties Board, which also accredits certified industrial hygienists, and certified safety professionals. The Certified Hazardous Materials Manager must have a combination of education and hands-on work experience at a hazardous waste facility, pass a closed book examination, continue their professional education, and follow a code of ethics.

The Agency was not aware of this discipline when most of the regulations were written that require engineers to do certifications. Most certification duties that an independent, qualified, registered professional engineer must perform can be carried out by a Certified Hazardous Materials Manager.

General Facility Standards Are Streamlined and Updated

When EPA originally developed the operating record requirements, we thought that records should routinely be kept for the life of the facility. Our reasoning was that in case an issue or problem came up about an earlier practice at a facility, the records would be available for examination.

After many years of experience with RCRA, we are better able to distinguish records that must be kept for the life of the facility from those which can be discarded after some period of time without affecting protections of human health and the environment.

As discussed below, information about what wastes are disposed at a facility, where the disposed waste is located, and information relevant for facility closure must be kept for the life of the facility. More routine information, such as whether certain notices were filed and records of inspections, can be discarded after three years. In the RCRA regulations, we have generally settled on three years as a reasonable time frame for keeping records. This is consistent with other Agency programs, such as the Toxics Substance Control Act and the Toxic Chemical Release Reporting Community Right to Know programs, that impose a three year record retention time in their regulations.

We propose to modify a number of the §§ 264.73 and 265.73 operating record requirements to require only a three-year limit on keeping information. The following are proposed record retention times for each part of the operating record: § 264.73:

(b)(1) Description and quantity of each hazardous waste received and what was done with it: Maintain until closure of the facility.

(b)(2) The location of each hazardous waste: Maintain until closure of the facility.

(b)(3) Records and results of waste analyses and waste determinations: Maintain for three years after entry into the operating record.

(b)(4) Reports of implementation of contingency plan: Maintain for three years after entry into the operating record.

(b)(5) Records of inspections: Maintain for three years after entry into the operating record.

(b)(6) Monitoring, testing, and analytical data: Maintain until closure of the facility.

(b)(7) § 264.12(b) notices: Maintain for three years after entry into the operating record.

(b)(8) Closure estimates: Maintain in operating record until closure of the facility.

(b)(9) Waste minimization certification: Maintain for three years after entry into the operating record.

(b)(10) Records of quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction: Maintain in operating record until closure of the facility.

(b)(11) For off-site treatment facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(12) For on-site treatment facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(13) For off-site land disposal facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(14) For on-site land disposal facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(15) For off-site storage facility, notices and certifications from generator: Maintain for three years after entry into the operating record.

(b)(16) For on-site storage facility, notices and certifications: Maintain for three years after entry into the operating record.

(b)(17) Records required under § 264.1(j)(13): Maintain for three years after entry into the operating record.

We propose to similarly change the § 265.73 Operating Record requirements.

Consolidation of Facility Contingency Plans Is Encouraged

Owners and operators of hazardous waste facilities must have contingency plans in place to minimize hazards to human health and the environment from fires, explosions, or unplanned releases of hazardous waste. We received several comments on the ''Notice of Data Availability'' asking that we streamline or combine the various contingency plans required not only by EPA, but by other federal agencies too.

EPA already allows combined plans. In 1996, EPA in conjunction with the Department of Transportation, the Department of the Interior, and the Department of Labor issued the ''Integrated Contingency Plan Guidance.'' This Guidance provides a mechanism for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. Owners and operators of hazardous waste facilities should consider developing one contingency plan based on this Guidance.

Facilities which adopt the ''Integrated Contingency Plan'' will minimize the duplication and costs associated with the preparation and use of multiple contingency plans. The use of a single plan per facility will also eliminate confusion for ''first responders'' (for example, firemen) who often must decide which of the contingency plans is applicable to a particular emergency. And, the adoption of a standard plan should ease the burden of coordination with local emergency planning committees.

The ''Integrated Contingency Plan Guidance'' can be found in the June 5, 1996 **Federal Register** (61 FR 28641–28664) or on the Internet at *http://www.epa.gov/swercepp/p-tech.htm*.

Today's proposals clarifies our regulations (see 40 CFR 265.52) to say that combined plans are acceptable.

We Propose To Streamline the Variance From Classification as a Solid Waste Procedure

We have established provisions in our regulations to allow regulated entities to submit applications for variances, exclusions, petitions, and exceptions from certain RCRA requirements.

To simplify one of these applications, we propose to eliminate the requirement that a petitioner for a variance from classification as a solid waste survey the industry-wide prevalence of the material production process (the requirement is found in 40 CFR 260.31(b)). In practice, we have found that we do not use this information in making decisions on these variances. A variance petitioner can continue to submit such information if they choose, but it will no longer be an application requirement.

We Propose To Eliminate the Requirement for Treatability Study Reports

We also propose to eliminate the requirement that facilities submit in their annual report under § 261.4(f)(9) an estimate of the number of treatability studies and the amount of waste expected to be used in treatability studies in the upcoming year. Based on the observations of recipients (EPA and state regulators), we have determined that these reports do not contribute to the protection of human health and the environment. Moreover, these annual forecasts are not necessarily accurate, and we obtain the precise information anyway in the annual report that is submitted.

We Propose To Streamline Groundwater Monitoring Requirements

Hazardous waste treatment, storage, and disposal facilities must implement a groundwater monitoring system to detect the presence of contaminants in the groundwater. If contamination is detected, monitoring must be performed. If the level of contamination exceeds the groundwater protection standard, corrective action must be undertaken.

We propose to allow owners/operators of facilities to report on the effectiveness of corrective action on an annual basis instead of the current semi-annual basis. In combination with other forms of oversight by regulatory agencies, annual reporting will provide adequate information to ensure compliance.

This proposed change makes sense because monitoring and cleaning up groundwater is almost always a multi-year or even multi-decade effort. Semi-annual reporting of data is not necessary for ensuring protection of human health and the environment.

We are also proposing to allow groundwater monitoring plans and reports to be kept at a facility.

And, we also propose to modify the § 264.99(g) requirement that facilities who are doing compliance monitoring conduct an annual Appendix IX analysis of all monitoring wells. Specifically, we propose allowing, on a case-by-case basis, sampling for a subset of the wells. Appendix IX analyses are costly at large facilities, and analyzing all wells does not necessarily contribute to protection of human health and the environment. This is especially the case if there are multiple units and wells at a facility, and only one unit shows signs of contamination.

Also, monitoring for constituents that are not likely to be found at a site is not a good use of resources and does not increase the protection of monitoring programs. Therefore, we propose allowing, on a case-by-case basis, sampling for a subset of the Appendix IX constituents. These decisions will be based on regulatory agencies' judgement of what supports the protection of human health and the environment, as well as on the contaminant situation at a site.

Biennial Report Changes Are Being Implemented Separately

We are not making changes to the Biennial Report through this effort. Reform of the Biennial Report has already been started in the 2001 Biennial Report cycle.

Changes made to the 2001 Biennial Report include streamlining the Biennial Report Source, Origin, Form, and Management codes; clarifying the types of waste to be reported; and removing some data elements. The 2001 Biennial Report forms and instructions are located on the Internet at: *www.epa.gov/epaoswer/hazwaste/data/brs01/forms.htm.*

Electronic Reporting and Recordkeeping Changes Are Being Handled Separately

In the ''Notice of Data Availability,'' we discussed allowing all RCRA-required documents to be kept and sent electronically. Since the publication of the ''Notice,'' the Agency has begun to develop a separate rulemaking (the ''Cross-Media Electronic Reporting and Recordkeeping Rule'') that will establish Agency-wide standards for electronic reporting and recordkeeping. We are deferring our efforts in this area to the ''Cross-Media Electronic Reporting and Recordkeeping'' rulemaking.

IV. How Would Today's Proposed Regulatory Changes Be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than

those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Proposal

Today's proposal affects many aspects of the RCRA program and would be promulgated pursuant to both HSWA and non-HSWA statutory authority. Today's proposal would amend provisions in the RCRA regulations which were promulgated pursuant to HSWA. These provisions include, among others, the land disposal restrictions and the regulation of air emissions from hazardous waste facilities, which were promulgated pursuant to authority in sections 3004(m) and (o) respectively, of RCRA. Therefore, when promulgated, the Agency would add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Other sections of today's proposal would be promulgated pursuant to non-HSWA authority.

The requirements in today's proposed rulemaking are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those States which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended.

This rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking would not become effective in authorized States until they adopted and are authorized for it, EPA will strongly encourage states to amend their programs and seek authorization for today's proposal, once it becomes final.

C. Abbreviated Authorization Procedures

EPA considers today's proposal to be a minor rulemaking and is proposing to add it to the list of minor or routine rulemakings in Table 1 to 40 CFR 271.21. Placement in this table would enable states to use the abbreviated procedures located in 40 CFR 271.21(h) when they seek authorization for today's proposed changes after they are promulgated. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998). EPA requests comment on this placement in Table 1 to 40 CFR 271.21.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the rule raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Environmental Justice Executive Order 12898

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

EPA has considered the impacts of this proposed rulemaking on low-income populations and minority populations and concluded that any risks resulting from the rule would be very small. The basic reason for this finding is that the current features of the RCRA program that protect human health and the environment would be preserved or enhanced under the proposal. As mentioned earlier, the proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because they add little to the protectiveness of the regulations. Most of the paperwork requirements entail notices and reports that are obscure, inconsequential or infrequently submitted. In addition, the proposal would give facilities added flexibility in how they can comply with the regulations. For example, the proposal would let facilities choose between hiring a certified hazardous materials manager or licensed professional engineer to perform specified activities (e.g., certifications). The proposal also would streamline certain requirements, such as contingency planning and personnel training, that are essential to a facility's protectiveness. Such flexibility and streamlining will make it easier for facilities to comply with the regulations.

Despite eliminating a number of paperwork requirements based on interviews and comments, we leave intact the basic environmentally protective activities that facilities are currently undertaking. That is, we would require facilities to continue performing their technical activities, but require them to submit less information to us on their daily activities. Note, however, that the proposal would not curtail the right of regulatory agencies to request any of the information we are proposing to eliminate. Facilities must continue to keep on-site records of their waste management activities and make them available to regulators when requested. As such, the rule would not limit regulators' or the public's ability to learn what is happening at a facility. In addition, basic information about a facility will still be readily accessible to the public via the Agency Web site and non-Agency Web sites such as the ''Right to Know Network'' Web site (*www.rtknet.org*). However, we specifically request comment on

whether today's proposals in any way diminishes protection of human health and the environment.

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposal would eliminate or modify paperwork requirements that have been deemed unnecessary because there is no evidence suggesting they contribute in a substantial way to the protectiveness of the regulations. In particular, we propose eliminating notices and reports that are redundant, inconsequential for compliance with technical requirements, or only rarely required to be sent in to regulatory authorities. Most of the reports we propose cutting or modifying are reports notifying the regulatory agency that some other regulatory requirement was performed. The proposal would leave intact the basic environmentally protective activities that facilities are currently undertaking.

D. National Technology Transfer and Advancement Act of 1995

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

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; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities''. 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. Today's proposal is specifically intended to be deregulatory and to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the proposed changes would reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the Agency. The proposed rule, for example, would reduce the frequency by which businesses must conduct specified recordkeeping and reporting activities. It also would eliminate certain recordkeeping and reporting requirements altogether, i.e., in cases where the documents are little used by the public or regulators. In addition, the rule would eliminate redundancies between the RCRA regulations and other regulatory programs (e.g., RCRA and OSHA requirements for personnel training), thereby streamlining facilities' compliance activities. Finally, the rule would provide increased flexibility in how waste handlers may comply with the regulations. For example, we would allow waste handlers to seek relief, on a case-by-case basis, from the inspection frequencies in the regulations. Facilities successfully demonstrating that the regulatory frequencies are not necessary (e.g., because of site-specific mitigating factors) would be granted a reduced inspection frequency by the Agency. We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities.

F. 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'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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. As explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Because these changes are equivalent to or less

stringent than the existing Federal program, States would not be required to adopt and seek authorization for them. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicit comment on this proposed rule from State and local officials.

G. 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 by State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this rule will not result in the expenditure of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector in any one year because this is a burden reduction rulemaking which reduces costs.

H. Executive Order 13175: Consultation and Coordination With Indian and 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'' are 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 explained above, today's proposal eliminates or relaxes many of the paperwork requirements in the regulations. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

I. Paperwork Reduction Act

We have prepared a document listing the information collection requirements of this proposed rule, and have submitted it for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

We calculate the reporting and recordkeeping burden reduction for this rule as 929,000 hours and $120,000,000. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

J. Executive Order 13211 (Energy Effects)

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste Reporting and recordkeeping requirements.

40 CFR Part 261

Comparable fuels, Syngas fuels, Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 20, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, it is proposed that title 40 of

the Code of Federal Regulations be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart C—Rulemaking Petitions

§ 260.31 [Amended]

2. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

§ 261.4 [Amended]

4. Section 261.4 is amended by removing paragraphs (a)(9)(iii)(E) and (f)(9); and redesignating paragraphs (f)(10) and (f)(11) as (f)(9) and (f)(10).

5. Section 261.38 is amended by removing the last sentence of paragraph (c)(1) introductory text and removing and reserving paragraph (c)(1)(i).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

7. Section 264.16 is amended by revising paragraphs (a)(1), (a)(3) and (d) to read as follows (the *Comment* following paragraph (a)(1) is unchanged):

§ 264.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

* * * * *

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility's contingency plan applicable to their roles in emergency response.

* * * * *

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

* * * * *

Subpart D—Contingency Plan and Emergency Procedures

8. Section 264.52 is amended by revising paragraph (b) to read as follows:

§ 264.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator should consider developing one contingency plan based on the National Response Team's Integrated Contingency Plan Guidance (''One Plan'') which meets all regulatory requirements.

* * * * *

§ 264.56 [Amended]

9. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

10. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the Comment following paragraph (b)(2) is unchanged):

§ 264.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(6) Monitoring, testing, or analytical data, and corrective action data where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252 through 264.254, 264.276, 264.278, 264.280, 264.302 through 264.304, 264.309, 264.347, 264.602, 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, and 264.1082 through 264.1090. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(8) All closure cost estimates, and for disposal facilities, all post-closure cost estimates. This information must be maintained in the operating record until closure of the facility.

* * * * *

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 298.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. This information must be maintained in the operating record until closure of the facility.

* * * * *

11. Section 264.90 is amended by revising paragraph (a)(2) to read as follows:

§ 264.90 Applicability.

(a) * * *

(2) All solid waste management units must comply with the requirements in § 264.101. A surface impoundment, waste pile, land treatment unit, or landfill must comply with the

requirements of §§ 264.91 through 264.100 in lieu of § 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial assurance responsibility requirements of § 264.101 apply to all regulated units.

* * * * *

12. Section 264.98 is amended by revising paragraphs (c), (g)(5)(ii), (g)(6)(i), and (g)(6)(ii) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(c) The owner or operator must conduct and maintain records for a ground-water monitoring program for each chemical parameter and hazardous constituent specified in their permit. The Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents. The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h).

(g) * * *

(5) * * *

(ii) Note in the operating record whether this contamination was caused by a source other than the regulated unit or from an error in sampling, analysis, or evaluation;

* * * * *

(6) * * *

(i) Note in the operating record that statistically significant evidence of contamination was found;

(ii) Enter into the operating record a report demonstrating that a source other than a regulated unit caused the contamination, or that the contamination resulted from an error in sampling, analysis, or evaluation;

* * * * *

13. Section 264.99 is amended:

a. Revising paragraph (g);

b. Removing and reserving paragraph (h)(1);

c. Removing paragraphs (i)(1) and (i)(2) and redesignating paragraphs (i)(3) and (i)(4) as (i)(1) and (i)(2).

The revision reads as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(g) The owner or operator must analyze samples from monitoring wells at the compliance point. The number of wells and samples will be worked out on a case-by-case basis with the Regional Administrator. The specific constituents from Appendix IX of part 264 to be analyzed will also be worked out on a case-by-case basis with the Regional Administrator. This analysis must be done annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

* * * * *

14. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

§ 264.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) During the period of corrective action, the owner or operator shall provide an annual report to the Regional Administrator describing the progress of the corrective action. This report shall include all ground-water monitoring data, and an evaluation of the effect of the continued receipt of non-hazardous wastes on the corrective action.

* * * * *

15. Section 264.120 is revised to read as follows:

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period was done in accordance with the specifications in the post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart I—Use and Management of Containers

16. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Subpart J—Tank Systems

17. Section 264.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager attesting to the tank system's integrity.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include a leak test or other integrity examination that is certified by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, or erosion.

* * * * *

18. Section 264.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 264.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at the time of submittal of part B

information, an assessment, reviewed and certified by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Regional Administrator to approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

* * * * *

19. Section 264.193 is amended:

a. By revising paragraph (a);

b. By revising paragraphs (c)(3) and (c)(4); (the **Note** following paragraph (c)(4) is unchanged);

c. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);

d. By revising paragraph (g) introductory text and paragraph (g)(1);

e. By removing paragraph (h) and redesignating paragraph (i) as (h).

The revisions read as follows:

§ 264.193 Containment and detection of releases.

(a) Secondary containment must be provided for all existing and new tank systems and components.

* * * * *

(c) * * *

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation must be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

* * * * *

(e) * * *

(3) * * *

(iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

* * * * *

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the secondary containment requirements of this section.

(1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:

(i) Comply with the requirements of § 264.196 and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.

(iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b).

* * * * *

20. Section 264.195 is amended by revising paragraph (b) to read as follows (the **Note** following paragraph (b) is unchanged):

§ 264.195 Inspections.

* * * * *

(b) The owner or operator must inspect at least weekly, or less frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

21. Section 264.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

Subpart K—Surface Impoundments

22. Section 264.223 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

§ 264.223 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart L—Waste Piles

23. Section 264.251 is amended by revising paragraph (c) introductory text to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners, and a leachate

collection and removal system above and between the liners.

* * * * *

24. Section 264.253 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and revising paragraph (c) introductory text to read as follows:

§ 264.253 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart M—Land Treatment

§ 264.278 [Amended]

25. Section 264.278 is amended by removing and reserving paragraph (g)(1); removing paragraphs (h)(1) and (h)(2) and redesignating paragraphs (h)(3) and (h)(4) as (h)(1) and (h)(2).

Subpart N—Landfills

26. Section 264.304 is amended by removing paragraphs (b)(1), (b)(2) and (b)(6); redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3); and revising paragraph (c) introductory text, to read as follows:

§ 264.304 Response actions.

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

27. Section 264.314 is amended by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e) and by revising newly designated paragraphs (a) and (e) introductory text to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(e) The placement of any liquid that is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:

* * * * *

Subpart O—Incinerators

§ 264.343 [Amended]

28. Section 264.343 is amended by removing the last sentence of paragraph (a)(2).

Subpart W—Drip Pads

29. Section 264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad, the owner or operator must determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). The owner or operator must obtain an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. The assessment must be updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with the standards of § 264.573 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b). This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 264.573. The plan must be completed no later than two years before the date that all repairs, upgrades, and modifications are complete. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must develop as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager that the drip pad conforms to the drawings.

* * * * *

30. Section 264.573 is amended by revising paragraphs (a)(4)(ii), (g), and (m)(1)(iii) and removing paragraphs (m)(1)(iv) and (m)(3) and removing and reserving paragraph (m)(2) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep on file an assessment of the drip pad reviewed and certified by an independent, qualified, registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The owner or operator must evaluate the drip pad to determine that it meets the requirements of paragraphs (a) through (f) of this section and must obtain a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager and maintain this certification on-site.

* * * * *

(m) * * *

(1) * * *

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs. Records that repairs were completed on schedule must be kept at the facility.

* * * * *

31. Section 264.574 is amended by revising paragraph (a) to read as follows:

§ 264.574 Inspections.

(a) During construction or installation, liners and cover systems (for example, membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified to meet the requirements in § 264.573 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart AA—Air Emission Standards for Process Vents

§ 264.1036 [Removed and Reserved]

32. Remove and reserve § 264.1036.

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1062 [Amended]

33. Section 264.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2),

respectively; and removing paragraph (d).

§ 264.1062 [Amended]

34. Section 264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

§ 264.1065 [Removed and Reserved]

35. Remove and reserve § 264.1065.

Subpart DD—Containment Buildings

36. Section 264.1100 is amended by revising the introductory text to read as follows:

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

37. Section 264.1101 is amended by revising paragraphs (c)(2), (c)(3)(i)(C) and (c)(4), removing paragraphs (c)(3)(i)(D) and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii) to read as follows:

§ 264.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain certification by an independent qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

(3) * * *

(i) * * *

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

38. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart B—General Facility Standards

39. Section 265.1 is amended by revising paragraph (b) to read as follows (the *Comment* following paragraph (b) is unchanged):

§ 265.1 Purpose, scope, and applicability.

* * * * *

(b) Except as provided in § 265.1080(b), the standards of this part, §§ 264.552, 264.553, and 264.554 of this chapter apply to owners and operators of facilities that treat, store, or dispose of hazardous waste and who have complied with the requirements for interim status under RCRA section 3005(e) and § 270.10 of this chapter.

* * *

40. Section 265.16 is amended by revising paragraphs (a)(1) and (a)(3) and (d) to read as follows:

§ 265.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.

* * * * *

(3) The owner or operator of the facility shall ensure that all personnel potentially involved in emergency response at the facility:

(i) Have received training required by the Occupational Safety and Health Administration at 29 CFR 1910.120(p)(8) or 1910.120(q) as applicable; and

(ii) Have been trained in all elements of the facility's contingency plan applicable to their roles in emergency response.

* * * * *

(d) The owner or operator must maintain at the facility records documenting the training or job experience required under paragraphs (a), (b), and (c) of this section that has been given to and completed by facility personnel.

* * * * *

Subpart D—Contingency Plans and Emergency Procedures

41. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator should consider developing one contingency plan based on the National Response Team's Integrated Contingency Plan Guidance (One Plan) which meets all regulatory requirements.

* * * * *

42. Section 265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i)

43. Section 265.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(6), (b)(8), and (b)(10) to read as follows (the *Comment* following paragraph (b)(6) is unchanged):

§ 265.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years after it is entered into the operating record unless noted otherwise as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility. This information must be kept in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. All of this information must be maintained in the operating record until closure of the facility;

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by

§§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this part. All of this information must be maintained in the operating record until closure of the facility;

* * * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, monitoring data required pursuant to a petition under § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8 of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

Subpart F—Groundwater Monitoring

44. Section 265.90 is amended by revising paragraph (d)(1) and (d)(3) to read as follows:

§ 265.90 Applicability.

* * * * *

(d) * * *

(1) Within one year after [the effective date of the final rule], develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system;

* * * * *

(3) Prepare a report in accordance with § 265.93(d)(4);

* * * * *

45. Section 265.93 is amended:

a. By revising paragraph (c)(1);

b. Redesignating paragraph (d)(1) as paragraph (d) introductory text, and redesignating paragraphs (d)(2) through (d)(7) as (d)(1) through (d)(6), respectively;

c. Revising newly designated paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(3) introductory text, (d)(4), (d)(5), (d)(6), and paragraph (e) and (f).

The revisions read as follows:

§ 265.93 Preparation, evaluation and response.

* * * * *

(c)(1) If the comparisons for the upgradient wells made under paragraph (b) of this section show a significant increase (or pH decrease), the owner or operator must note this in the operating record.

* * * * *

(d) If the analyses performed under paragraph (c)(2) of this section confirm a significant increase (or pH decrease), the owner or operator must:

(1) Develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment program at the facility.

(2) The plan to be developed under § 265.90(d)(1) or paragraph (d)(1) of this section must specify:

* * * * *

(3) The owner or operator must implement the ground-water quality assessment program which satisfies the requirements of paragraph (d)(2) of this section, and, at a minimum, determine:

* * * * *

(4) The owner or operator must make his first determination under paragraph (d)(3) of this section as soon as technically feasible, and prepare a report containing an assessment of the ground-water quality. This report must be kept in the facility operating record.

(5) If the owner or operator determines, based on the results of the first determination under paragraph (d)(3) of this section, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he may reinstate the indicator evaluation program described in § 265.92 and paragraph (b) of this section.

(6) If the owner or operator determines, based on the first determination under paragraph (d)(3) of this section, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he:

(i) Must continue to make the determinations required under paragraph (d)(3) of this section on a quarterly basis until final closure of the facility, if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under paragraph (d)(3) of this section, if the ground-water quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of this subpart, any ground-water quality assessment to satisfy the requirements of paragraph (d)(3) of this section which is initiated prior to final closure of the facility must be completed in accordance with paragraph (d)(4) of this section.

(f) Unless the ground water is monitored to satisfy the requirements of paragraph (d)(3) of this section, at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under § 265.92(e) to determine whether the requirements under § 265.91(a) for locating the monitoring wells continue to be satisfied. If the evaluation shows that § 265.91(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

46. Section 265.94 is amended by revising the section heading and paragraphs (a) introductory text, (a)(2), and (b), to read as follows:

§ 265.94 Recordkeeping requirements.

(a) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must:

* * * * *

(2) Keep records of the following:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in § 265.92(b)(1) for each ground-water monitoring well.

(ii) Concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1).

(iii) Results of the evaluations of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of § 265.93(d)(3), the owner or operator must keep records of the following:

(1) Analyses and evaluations specified in the plan, which satisfies the

requirements of § 265.93(d)(2), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Results of his or her ground-water quality assessment program, which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water.

Subpart G—Closure and Post-Closure

47. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

§ 265.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) The owner or operator must provide annual reports to the Regional Administrator describing the progress of the corrective action program. These reports must include ground-water monitoring data and an analysis of the effect of continued receipt of non-hazardous waste on the effectiveness of the corrective action.

* * * * *

48. Section 265.120 is revised as follows:

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager. Documentation supporting the certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart I—Use and Management of Containers

49. Section 265.174 is revised to read as follows:

§ 265.174 Inspections.

At least weekly, or less frequently as determined by the Director, the owner or operator must inspect areas where containers are stored. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

Subpart J—Tank Systems

50. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) to read as follows (the **Note** following paragraph (b)(5)(ii) is unchanged):

§ 265.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep an assessment reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the tank system's integrity.

* * * * *

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described in paragraph (b)(5)(i) of this section, or an internal inspection and/or other tank integrity examination certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that addresses cracks, leaks, corrosion, and erosion.

* * * * *

51. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 265.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain an assessment by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified registered professional engineer or Certified Hazardous Materials Manager or independent, qualified installation inspector must inspect the system or component for the presence of any of the following items:

* * * * *

52. Section 265.193 is amended:

a. By revising paragraphs (a);

b. By revising paragraph (e)(3)(iii) (the **Note** following paragraph (e)(3)(iii) is unchanged);

c. By revising paragraphs (g) introductory text and (g)(1);

d. Removing paragraph (h);

e. Redesignating paragraph (i) as (h).

The revisions read as follows:

§ 265.193 Containment and detection of releases.

(a) Secondary containment must be provided for all existing and new tank systems and components.

* * * * *

(e) * * *

(3) * * *

(iii) Provided with a built-in, continuous leak-detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

* * * * *

(g) The owner or operator is not required to comply with the requirements of this section if he or she implements alternate design and operating practices and keeps records at the facility describing these practices. Such alternate design and operating practices, together with location characteristics, must prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment, during the active life of the tank system; or, in the event of a release that does migrate to ground or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not be exempted from the

secondary containment requirements of this section.

(1) The owner or operator who uses these alternate tank design and operating practices and who has a release must:

(i) Comply with the requirements of § 264.196 of this chapter and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground or surface water.

(iii) If contaminated soil cannot be removed or decontaminated, the owner or operator must comply with the requirements of § 264.197(b) of this chapter.

* * * * *

53. Section 265.195 is amended by revising paragraph (a) to read as follows (the **Note** following paragraph (a) is unchanged):

§ 265.195 Inspections.

(a) The owner or operator must inspect at least weekly, or less frequently as determined by the Director. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

54. Section 265.196 is amended by removing paragraph (d); redesignating paragraphs (e) and (f) as paragraphs (d) and (e), respectively; and revising newly designated paragraph (e), to read as follows (the **Note** following newly designated paragraph (e) is unchanged):

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(e) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (d) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer or Certified Hazardous Materials Manager that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

* * * * *

Subpart K—Surface Impoundments

55. Section 265.221 is amended by revising paragraph (a) to read as follows:

§ 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of a surface impoundment unit must have two or more liners, and a leachate collection and removal system between the liners. The leachate collection and removal system must be operated in accordance with § 264.221(c) of this chapter, unless exempted under § 264.221(d), (e), or (f) of this chapter.

* * * * *

56. The second section designated as § 265.223 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as paragraphs (b)(1) through (b)(3), respectively;

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.223 Response actions.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart L—Waste Piles

57. Section 265.259 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.259 Response actions.

(a) The owner or operator of waste pile units subject to § 265.254 must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

Subpart M—Land Treatment

§ 265.276 [Amended]

58. Section 265.276 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Subpart N—Landfills

59. Section 265.301 is amended by revising paragraph (a) to read as follows:

§ 265.301 Design and operating requirements.

(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between the liners. The leachate collection and removal system must be operated in accordance with § 264.301(d), (e), or (f) of this chapter.

* * * * *

60. Section 265.303 is amended:

a. By revising the first sentence of paragraph (a);

b. Removing paragraphs (b)(1), (b)(2), and (b)(6) and redesignating paragraphs (b)(3) through (b)(5) as (b)(1) through (b)(3), respectively; and

c. Revising paragraph (c) introductory text.

The revisions read as follows:

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must develop a response action plan. * * *

* * * * *

(c) To make the leak and/or remediation determinations in paragraphs (b)(1), (2), and (3) of this section, the owner or operator must:

* * * * *

61. Section 265.314 is amended by removing paragraphs (a), redesignating paragraphs (b) through (g) as paragraphs (a) through (f), and revising newly designated paragraphs (a) and (f) introductory text to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator

of the landfill demonstrates to the Regional Administrator or the Regional Administrator determines that:

* * * * *

Subpart W—Drip Pads

62. Section 265.441 is amended by revising paragraph (a), (b), and (c) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad, the owner or operator must determine whether it meets the requirements of this subpart, except for the requirements for liners and leak detection systems of § 265.443(b). The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager attesting to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete.

(b) The owner or operator must develop a plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with the requirements of § 265.443. The plan must be reviewed and certified by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Regional Administrator or State Director the as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer or a Certified Hazardous Materials Manager attesting that the drip pad conforms to the drawings.

* * * * *

63. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) and removing paragraph (m)(1)(iv), removing and reserving paragraph (m)(2), and removing paragraph (m)(3) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep an assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and a certification of this by an independent, qualified, registered professional engineer or a Certified Hazardous Materials Manager must be obtained and kept on-site.

* * * * *

64. Section 265.444 is amended by revising paragraph (a) to read as follows:

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections. Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by an independent, qualified registered professional engineer or a Certified Hazardous Materials Manager. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1061 [Amended]

65. Section 265.1061 is amended by removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2), respectively; and removing paragraph (d).

66. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

67. Section 265.1100 is amended by revising the introductory text to read as follows:

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

68. Section 265.1101 is amended by removing paragraphs (c)(3)(i)(D), and (c)(3)(iii) and removing and reserving paragraph (c)(3)(ii); and revising paragraphs (c)(2), (c)(3)(i)(C), and (c)(4)to read as follows:

§ 265.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep a certification by an independent, qualified registered professional engineer or Certified Hazardous Materials Manager that the containment building design meets the requirements of paragraphs (a) through (c) of this section.

(3) * * *

(i) * * *

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary containment system, and establish a schedule for accomplishing the clean-up and repairs. Records that repairs were completed on schedule must be kept at the facility.

(ii) [Reserved]

(4) Inspect and record in the facility's operating record at least once every seven days, or less frequently as determined by the Director data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. In all cases, inspections must occur at least monthly. Director decisions about less frequent inspections will be based on an evaluation of the compliance record of a facility.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

69. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

70. Section 266.102 is amended by revising paragraph (e)(10) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(e) * * *

(10) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

* * * * *

71. Section 266.103 is amended by revising paragraphs (b)(2)(ii)(D), (d), and (k) to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(D) When best engineering judgment is used to develop or evaluate data and make determinations, it must be done by an independent qualified, registered professional engineer or Certified Hazardous Materials Manager, and a certification of his or her determinations must be provided in the certification of precompliance.

* * * * *

(d) *Periodic recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

* * * * *

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for three years.

* * * * *

72. Section 266.111 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 266.111 Standards for direct transfer.

* * * * *

(e) * * *

(2) *Requirements prior to meeting secondary containment requirements.* (i) For existing direct transfer equipment that does not have secondary containment, the owner or operator shall determine whether the equipment is leaking or is unfit for use. The owner or operator shall obtain and keep on file at the facility a certified assessment from a qualified, registered professional engineer or Certified Hazardous Materials Manager that attests to the equipment's integrity.

* * * * *

Subpart M—Military Munitions

73. Section 266.205 is amended by revising paragraph (a)(1)(v) to read as follows:

§ 266.205 Standards applicable to the storage of solid waste military munitions.

(a) * * *

(1) * * *

(v) The owner or operator must provide notice to the Director within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of this section.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

74. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

75. Section 268.7 is amended by revising paragraphs (b)(6) and (d)(1); removing paragraphs (a)(1) and (a)(6); and redesignating paragraphs (a)(2) through (a)(5) as (a)(1) through (a)(4) and (a)(7) through (a)(10) as (a)(5) through (a)(8):

§ 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.

* * * * *

(b) * * *

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of 40 CFR 266.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

* * * * *

(d) * * *

(1) A one-time notification, including the following information, must be prepared and placed in the facility's on site files.

* * * * *

76. Section 268.9 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) A generator of hazardous waste must determine, following the requirements of § 262.11 of this chapter, or if applicable, § 264.13 of this chapter, and including the ability to use knowledge of the waste, if the waste has to be treated before it can be land disposed.

(1) This is done by determining if the hazardous waste meets the treatment standards in §§ 268.40, 268.48, and 268.49. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed. These methods of treatment are specified in § 268.40, and are described in detail in § 268.42, Table 1. Wastes with required treatment methods do not need to meet concentration levels.

(2) For purposes of this part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part 261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section.

(3) If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewater treated by CMBST, RORGS, or POLYM of § 268.42, Table 1), the generator must meet treatment standards for all underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files. The notification and certification must be updated if the process or operation generating the waste changes and/or if

the subtitle D facility receiving the waste changes.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

77. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

78. Section 270.16 is amended by revising paragraph (a) to read as follows:

§ 270.16 Specific part B information requirements for tank systems.

* * * * *

(a) An assessment by an independent, registered professional engineer or a Certified Hazardous Materials Manager of the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this chapter.

* * * * *

79. Section 270.17 is amended by revising paragraph (d) to read as follows:

§ 270.17 Specific part B information requirements for surface impoundments.

* * * * *

(d) A certification by a qualified engineer or Certified Hazardous Materials Manager of the structural integrity of each dike. For new units, the owner or operator must submit a statement by a qualified engineer or a Certified Hazardous Materials Manager that construction will be completed in accordance with the plans and specifications.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

80. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

81. Section 271.1 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	*	* *	* *
[Date of publication of final rule in the Federal Register (FR)].	Office of Solid Waste Burden Reduction Project.	[FR page numbers]	[Date of X months from date of publication of final rule].
* *	*	* *	* *

82. Section 271.21 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
* *	* *	* *
* *	* *	* *
Resource Conservation and Recovery Act Burden Reduction Initiative		
* *	* *	* *

[FR Doc. 02–191 Filed 1–16–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
January 17, 2001

Part III

The President

Notice of January 15, 2002—Continuation of the National Emergency With Respect to Sierra Leone and Liberia

Federal Register
Vol. 67, No. 12
Thursday, January 17, 2001

Presidential Documents

Title 3—

The President

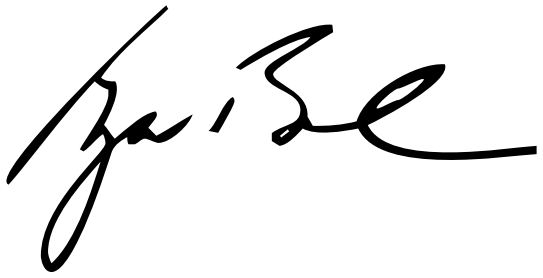
Notice of January 15, 2002

Continuation of the National Emergency With Respect to Sierra Leone and Liberia

On January 18, 2001, by Executive Order 13194, the President declared a national emergency with respect to Sierra Leone pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the insurgent Revolutionary United Front (RUF) in Sierra Leone and pursuant to which the United States imposed a general ban on the direct and indirect importation of all rough diamonds from Sierra Leone to the United States, except those imports controlled through the Certificate of Origin regime of the Government of Sierra Leone. On May 22, 2001, I issued Executive Order 13213, which expanded the scope of the national emergency to include actions of the Government of Liberia in support of the RUF and prohibited the importation of all rough diamonds from Liberia.

Because the actions and policies of the RUF continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on January 18, 2001, as expanded on May 22, 2001, and the measures adopted on those dates to deal with that emergency must continue in effect beyond January 18, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sierra Leone and Liberia.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 15, 2002.

[FR Doc. 02–1455
Filed 1–16–02; 10:50 am]
Billing code 3195–01–P

Federal Register

Thursday,
January 17, 2001

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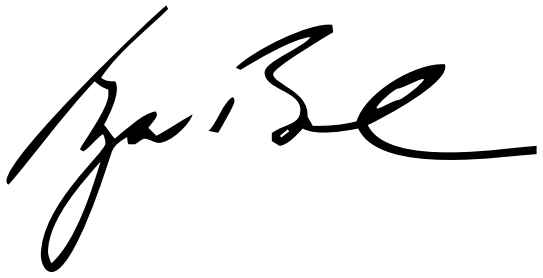

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 1202/P.L. 107–119

Office of Government Ethics Authorization Act of 2001 (Jan. 15, 2002; 115 Stat. 2382)

S. 1714/P.L. 107–120

To provide for the installation of a plaque to honor Dr. James Harvey Early in the Williamsburg, Kentucky Post Office Building. (Jan. 15, 2002; 115 Stat. 2383)

S. 1741/P.L. 107–121

Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001 (Jan. 15, 2002; 115 Stat. 2384)

S. 1793/P.L. 107–122

Higher Education Relief Opportunities for Students Act of 2001 (Jan. 15, 2002; 115 Stat. 2386)

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