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Federal Register

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Federal Register
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 401, 403, 405, 406, 409, 414, 415, 416, 422, 425, 430, 433, 435, 437, 441, 443, 445, 446, 447, 450, 451, 454, 455, 456, and 458

Crop Insurance Regulations, Removal of Miscellaneous Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is removing various outdated provisions in 7 CFR chapter IV that are no longer required in the administration of the Federal crop insurance program.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that would require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The rule 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 or 7 CFR 400.169, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has reviewed its regulations published at 7 CFR chapter IV and determined that the provisions for the late planting agreement option, published at 7 CFR part 400, subpart A are no longer applicable because the crops for which this option was available are now all covered under 7 CFR part 457 and the late planting provisions are incorporated into the policy. The administrative provisions relating to individual yield coverage plans, published at 7 CFR part 400, subpart B are no longer necessary because FCIC utilizes the actual production history of producers to determine guarantees and those provisions are published at 7 CFR part 400, subpart G. Further, the provisions relating to applications, published at 7 CFR part 400, subpart D, are best placed in procedures to allow the maximum flexibility for private insurance companies. The administrative provisions relating to the 1988 disaster program published at 7 CFR part 400, subpart N, are no longer applicable. Section 400.656 at 7 CFR part 400, subpart T, is no longer applicable because these prevented planting provisions are included in 7 CFR part 457. Additionally, § 400.657 at 7 CFR part 400, subpart T, is not applicable because it was effective for the 1995–1997 crop years. FCIC is also removing crop insurance contract provisions in 7 CFR part 401 because insurance for those crops are now available under the crop insurance contract provisions published at 7 CFR part 457.

Since the purpose of this rule is simply to remove those provisions that are no longer necessary in the administration of the Federal crop insurance program, this rule is considered a rule of agency practice or procedure. Therefore, under section 553(b) of the Administrative Procedures

Act, this rule does not need to be published for notice and comment.

List of Subjects in 7 CFR Parts 400, 401, 403, 405, 406, 409, 414, 415, 416, 422, 425, 430, 433, 435, 437, 441, 443, 445, 446, 447, 450, 451, 454, 455, 456, and 458

Crop Insurance.

Final Rule

Accordingly, under the authority of 7 U.S.C. 1506 (l), 1506(p), the Federal Crop Insurance Corporation hereby amends 7 CFR chapter IV as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

Subparts A, B, D, and N—[Removed and Reserved]

2. In part 400, remove and reserve Subparts A, B, D, and N.

Subpart T—[Amended]

3. In part 400, remove and reserve §§ 400.656 and 400.657.

PART 401—[Removed and Reserved]

4. Part 401 is removed and reserved.

PART 403—[Removed and Reserved]

5. Part 403 is removed and reserved.

PART 405—[Removed and Reserved]

6. Part 405 is removed and reserved.

PART 406—[Removed and Reserved]

7. Part 406 is removed and reserved.

PART 409—[Removed and Reserved]

8. Part 409 is removed and reserved.

PART 414—[Removed and Reserved]

9. Part 414 is removed and reserved.

PART 415—[Removed and Reserved]

10. Part 415 is removed and reserved.

PART 416—[Removed and Reserved]

11. Part 416 is removed and reserved.

PART 422—[Removed and Reserved]

12. Part 422 is removed and reserved.

PART 425—[Removed and Reserved]

13. Part 425 is removed and reserved.

PART 430—[Removed and Reserved]

14. Part 430 is removed and reserved.

PART 433—[Removed and Reserved]

15. Part 433 is removed and reserved.

PART 435—[Removed and Reserved]

16. Part 435 is removed and reserved.

PART 437—[Removed and Reserved]

17. Part 437 is removed and reserved.

PART 441—[Removed and Reserved]

18. Part 441 is removed and reserved.

PART 443—[Removed and Reserved]

19. Part 443 is removed and reserved.

PART 445—[Removed and Reserved]

20. Part 445 is removed and reserved.

PART 446—[Removed and Reserved]

21. Part 446 is removed and reserved.

PART 447—[Removed and Reserved]

22. Part 447 is removed and reserved.

PART 450—[Removed and Reserved]

23. Part 450 is removed and reserved.

PART 451—[Removed and Reserved]

24. Part 451 is removed and reserved.

PART 454—[Removed and Reserved]

25. Part 454 is removed and reserved.

PART 455—[Removed and Reserved]

26. Part 455 is removed and reserved.

PART 456—[Removed and Reserved]

27. Part 456 is removed and reserved.

PART 458—[Removed and Reserved]

28. Part 458 is removed and reserved.

Signed in Washington, DC, on March 14, 2002.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 02–6887 Filed 4–4–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV02–916–1 IFR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, container, container marking, and pack requirements for fresh shipments of these fruits, beginning with 2002 season shipments. This rule also continues a modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2002 season only, adds a new standard container, and establishes weight-count standards for Peento (donut) variety peaches. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

DATES: Effective April 6, 2002. Comments received by June 4, 2002, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street,

suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule in the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, lot stamping, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on November 29, 2001, and unanimously recommended that these handling requirements be revised for the 2002 season, which begins about the first or second week of April. The changes: (1) Continue the lot stamping requirements which were in effect for the 2000 and 2001 seasons; (2) authorize shipments of ''CA Utility'' quality fruit to continue during the 2002 season; (3) establish weight-count standards for the Peento (donut) variety peaches; (4) require shippers' names and addresses on all containers; (5) add the Euro five-down returnable plastic container as a standard container, establish a net weight for the container, and exempt the container from the ''well-filled'' requirement; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. USDA reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 2002 crop will be similar in size and characteristics to the 2001 crop, which totaled 21,924,566 containers of nectarines and 24,030,282 containers of peaches.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and before shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the inspector's corresponding working papers or field notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified to by the inspector at the time of the inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp number and date codes to trace fruit in the container back to the orchard where it was harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the ''trace back'' effort, as it is called, would be jeopardized.

Over the last few years, several new containers have been introduced for use by nectarine and peach handlers. These containers are returnable plastic containers (RPCs). Use of RPCs may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional, single-use, containers. Fruit is packed in the containers by the handler, delivered to the retailer, emptied, and returned to a central clearinghouse for cleaning and redistribution to the handler. However, because these containers are designed for reuse, RPCs do not support markings that are permanently affixed to the container. All markings must be printed on cards that slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient reuse of RPCs.

The cards are a concern for the inspection service and the industries because of their unique portability. There is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot

or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' ''trace back'' program.

To address this concern for the 2000 and 2001 seasons, the committees recommended that pallets of inspected fruit in RPCs be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, noted the committees, an audit trail would be created, confirming that the lot stamp number on each container on the pallet corresponds to the lot stamp number on the pallet tag.

The committees and the inspection service presented their concerns to the manufacturers of these types of containers prior to the 2000 season. At that time, one manufacturer indicated a willingness to address the problem by offering an area on the principal display panel where the container markings would adhere to the container. Another possible improvement discussed was for an adhesive for the current style of containers which would securely hold the cards with the lot stamp numbers, yet would be easy for the clearinghouse to remove when the containers are washed. However, the changes were not in effect for the 2000 and 2001 seasons, but were anticipated to be in effect for the 2002 season.

In a meeting of the Returnable Plastic Container Task Force on November 15, 2001, it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic.

For those reasons, the task force recommended to the committees that the regulation in effect for the 2000 and 2001 seasons requiring lot stamp numbers on USDA-approved pallet tags, as well as on individual containers on a pallet, be again required for the 2002 season. The committees, in turn, recommended unanimously that such requirement be extended for the 2002 season, as well.

Thus, §§ 916.115 and 917.150 will be amended to require the lot stamp number to be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet, during the 2002 season.

Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under this rule, the well-filled requirements, container marking requirements, and list of standard containers are revised in accordance with the recommendations of the NAC and PCC.

Well-Filled Requirements

Under paragraphs (a)(1) of §§ 916.350 and 917.442, all containers of nectarines and peaches, respectively, are required to conform to the requirements of standard pack, and volume-filled containers are further required to be ''well-filled.'' ''Well-filled'' means that nectarines and peaches in any volume-filled container must be filled to within one inch of the top of the container.

With the addition of the RPCs, handlers are frequently unable to well-fill those containers without either damaging the fruit inside or making the container too heavy. For this reason, applying the requirements of ''well-filled'' to this container is impractical.

The Returnable Plastic Container Task Force discussed this issue at their meeting on November 15, 2001, and unanimously agreed that the requirement for the Euro five down box to meet the well-filled requirement was difficult for handlers utilizing that RPC, and such requirement should not be applied to that container.

For those reasons, paragraphs (a)(1) of §§ 916.350 and 917.442 will be revised to specify that the Euro five down box is not required to meet the well-filled requirement.

Container Marking Requirements

Sections 916.350 and 917.442 establish certain requirements for marking containers of nectarines and peaches, respectively. Currently, all containers of nectarines and peaches, other than consumer packages mailed directly to consumers, are required to be marked with the name and address of the shipper. While some containers (like bulk containers, master containers of consumer packages, and consumer packages not mailed directly to consumers) are required to have the name and address of the shipper printed on the box, that is not true for other container types.

Requiring the handler to print his or her name and address on each container will ensure that all boxes are properly identified for handler responsibility. Such proper identification will also assist the industry's trace back program by providing additional information for beginning the trace.

The Returnable Plastic Container Task Force discussed this issue at their meeting on November 15, 2001, and unanimously voted to recommend to the NAC and PCC that the requirement for the name and address of the shipper be extended to all types of containers. When the committees met on November 29, 2001, they unanimously voted to do so.

Addition of a New Standard Container

In the rules and regulations for nectarines at § 916.350, current paragraphs (a)(5) and (a)(6), and for peaches at § 917.442, current paragraphs (a)(6) and (a)(7), standard containers, such as the Nos. 22D, 22E, 22G, and 32, are required to be marked with the net weight. Under paragraph (b) in §§ 916.350 and 917.442, such standard containers are defined. Once the use of a container has become common in the industry, such containers are determined to be standard containers. Standard containers represent container types that are recognized by the industry and adopted by the retail trade. As such, it is a practice of the committees to recommend that such containers be added to the list of standard containers together with container marking requirements.

At the November 29, 2001, meeting, the NAC and PCC, acting upon a recommendation from the Returnable Plastic Container Task Force, unanimously recommended that the Euro five down RPC be added to the list of standard containers and have a net weight of 31 pounds, which is to be printed on the end of the container.

Nectarines: For the reasons stated above, paragraph (a)(4) of § 916.350 is redesignated as paragraph (a)(5), and a new paragraph (a)(4) of § 916.350 is added to require all containers of nectarines to be marked with the name and address of the shipper. The markings shall be placed on one outside end of the container in plain sight and in plain letters. Current paragraphs (a)(5) and (a)(6) are redesignated as (a)(6) and (a)(7), and a new paragraph (a)(8) is added to establish a 31-pound net weight for the Euro five down RPC. The net weight shall be marked on one outside end in plain sight and plain letters. Current paragraphs (a)(7), (a)(8), and (a)(9) are thus redesignated as paragraphs (a)(9), (a)(10) and (a)(11). In a conforming change, the reference in current paragraph (a)(4)(ii) to paragraph (a)(4)(i) should be changed to read ''(a)(5)(i),'' due to the redesignation of paragraph (a)(4) to (a)(5).

Peaches: For the reasons stated above, paragraph (a)(4) of § 917.442 is redesignated as paragraph (a)(5), and a new paragraph (a)(4) of § 917.442 is added to require all containers of

peaches to be marked with the name and address of the shipper. The markings shall appear on one outside end of the container in plain sight and plain letters. Current paragraphs (a)(5), (a)(6), and (a)(7) are redesignated as (a)(6), (a)(7), and (a)(8). A new paragraph (a)(9) is added to establish a net weight of 31-pounds for the Euro five down RPC. The net weight shall appear on one outside end of the container in plain sight and plain letters. Current paragraphs (a)(8), (a)(9), and (a)(10) are thus redesignated (a)(10), (a)(11), and (a)(12). In a conforming change, the reference in current paragraph (a)(4)(ii) to paragraph (a)(4)(i) should be changed to read ''(a)(5)(i),'' due to the redesignation of paragraph (a)(4) to (a)(5).

In addition, paragraph (b) of §§ 916.350 and 917.442 will be revised to add the Euro five down container to the list of standard containers. The California Department of Food and Agriculture is expected to assign this container a number, like the 22D or 32 nectarine and peach containers, once the container is added to the California Agricultural Code. At that time, the common name currently used, Euro five down, will be replaced by the assigned number.

Weight-Count Standards for Peaches

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-count standards are established for all varieties of peaches as TABLES 1 and 2 of redesignated paragraph (a)(5)(iv).

According to the PCC, the Peento varieties of donut peaches have traditionally been packed in trays because they have been marketed as a premium variety, which justified the added packing costs.

However, as the volume has increased, the value of the variety has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento varieties to volume-filled containers. Current weight-count standards established for peaches and nectarines were developed for round fruit. Peento type peaches are shaped like donuts, and those weight-count standards are inappropriate. In an effort to standardize the conversion from tray-packing to volume-filling for Peento type peaches, the committee staff conducted weigh-count surveys during the 2001 season to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result, the staff prepared a new weight-count table applicable to only the Peento varieties. The Grade and Size Subcommittee reviewed the weight-counts at their November 15, 2001, meeting and recommended to the PCC that they be implemented for the 2002 season.

The committee staff will continue to conduct further weight-count surveys to ensure that the Peento varieties, which are packed in volume-filled containers, meet the weight-count standards established for tray-packed fruit.

For those reasons, a new Table 3 will be added to redesignated paragraph (a)(5)(iv) of § 917.442, following Tables 1 and 2. In a conforming change, the title of the Tables 1 and 2 will be revised by adding the words ''(except Peento variety peaches)'' between the words ''peaches'' and ''packed.''

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except for a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not ''serious damage.''

This rule revises §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2002 season. (''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting ''CA Utility'' quality requirements have been permitted each season since 1996.

Studies conducted by the NAC and PCC in 1996 indicated that some consumers, retailers, and foreign importers found the lower-quality fruit acceptable in some markets. When shipments of ''CA Utility'' nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of ''CA Utility'' nectarines reached a high of 5 percent (1,131,000 containers) during the 2001 season, but usually represent approximately 4 percent of total nectarine shipments. Shipments of ''CA Utility'' peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of ''CA Utility'' peaches reached a high of 5 percent of all peach shipments (1,031,000 containers) during the 2001 season, but usually represent approximately 4 percent of total peach shipments.

Handlers have also commented that the availability of ''CA Utility'' lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of ''CA Utility.'' This flexibility, the handlers note, results in better quality U.S. No. 1 packs without sacrificing fruit.

The Grade and Size Subcommittee met on November 15 and did not make a recommendation to the NAC and PCC to continue shipments of ''CA Utility'' quality nectarines and peaches. Several subcommittee members raised a number of concerns about ''CA Utility'' quality fruit, including that the fruit is not reaching its intended low income consumer markets and that there are reduced returns to growers on ''CA Utility'' quality fruit. The authorized tolerance of 40 percent U.S. No. 1 fruit in each container of ''CA Utility'' quality was raised, and a suggestion was made that the tolerance should be eliminated so that no U.S. No. 1 fruit would be in a box.

At the full committee meeting, committee staff discussed the benefits of having a ''CA Utility'' quality for nectarines and peaches. Such benefits included improved quality of the fruit itself, improved compliance of marketing order requirements, and increased assessments. Further, elimination of the tolerances for U.S. No. 1 fruit in each container of ''CA Utility'' quality fruit was discussed. It was noted that this would likely result in higher inspection costs to handlers.

Accordingly, based upon the recommendations, paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2002 season, on the same basis as the 2000 and 2001 seasons.

Maturity Requirements

In §§ 916.52 and 917.41, authority is provided to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is ''mature'' as defined in the standards. For most

varieties, ''well-matured'' determinations for nectarines and peaches are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most-recent information available on the individual characteristics of each nectarine and peach variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as TABLE 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2002 handling regulations are the same as those that appeared in the 2001 handling regulations with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for ''well-matured'' nectarines are specified in § 916.356 of the order's rules and regulations. This rule revises TABLE 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for ten varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Fire Sweet, Honey Blaze, Ruby Sweet, September Free, and Spring Sweet varieties to be regulated at the J maturity guide; and the Flame Glo, Gran Sun, Prima Diamond XIII, Red Jewel, and Spring Ray to be regulated at the L maturity guide.

The NAC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for nectarine varieties in production.

Peaches: Requirements for ''well-matured'' peaches are specified in § 917.459 of the order's rules and regulations. This rule revises TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for eleven varieties of peaches. Specifically, SPI recommended adding maturity guides for the Spring Delight variety to be regulated at the G maturity guide; the Super Rich variety to be regulated at the H maturity guide, for the 60EF32 variety to be regulated at the I maturity guide; Brittney Lane, Joanna Sweet, Madonna Sun, Morning Lord, Sweet Dream, Sweet Gem, and Sweet Mick varieties to be regulated at the J maturity guide; and the Sprague Last Chance variety to be regulated at the L maturity guide.

In addition, SPI requested that the Sugar Lady variety of peaches be removed from the maturity guide listing in TABLE 1 of paragraph (a)(1)(iv) of § 917.459. White-fleshed peaches and nectarines would be more accurately assessed by other criteria, including cutting the fruit. The committees unanimously recommended such a change at their meetings.

For those reasons TABLE 1 of paragraph (a)(1)(iv) of § 917.459 will be revised to remove the Sugar Lady variety and its corresponding maturity guide assignment.

The Joanna Sweet peach variety was also recommended to have a one hundred percent surface color requirement for meeting the assigned color chip rather than the current ninety percent. This recommendation is based upon SPI's experience with the maturity characteristics of this variety.

Thus, paragraph (a)(1)(iv) of § 917.459 will be revised to reflect this requirement.

The PCC recommended these maturity guide requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the ''well-matured'' level of maturity for peach varieties in production.

Size Requirements: Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases; and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions and additions to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific minimum size requirements for 13 varieties of nectarines, which were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2001 season. This rule also removes the variety-specific minimum size requirements for 3 varieties of nectarines whose shipments fell below 5,000 containers during the 2001 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Arctic Ice variety of nectarines, recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Arctic Ice variety revealed that 100 percent of the containers met the minimum size of 80 during the 2001 season. Sizes ranged from size 30 to size 80, with 3 percent of the packages in the 30 sizes, 47 percent of the packages in the 40 sizes, 41 percent of the packages in the 50 sizes, 5.4 percent in the 60 sizes, 3.5 percent in the 70 sizes, and .2 percent at size 80. Due to rounding, these numbers add up to slightly more than 100 percent.

A review of other varieties with the same harvesting period indicated that the Arctic Ice variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Arctic Ice variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

Historical data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Prima Diamond VI and the Prince Jim 1 nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 is revised to include the Arctic Ice, Bright Sweet, Grand Sweet, June Lion, Kay Pearl, Prima Diamond XXVIII, Regal Red, September Bright (26P–490), Summer Jewel, Sun Valley Sweet, and Sweet White nectarine varieties.

This rule also revises the introductory text of paragraphs (a)(4) and (a)(6) of § 916.356 to remove 3 varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties

were produced during the 2001 season. Specifically, the introductory text of paragraph (a)(4) of § 916.356 is revised to remove the Arctic Glo nectarine variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to remove the Cole Red and Mid Glo nectarine varieties.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific minimum size requirements for 19 peach varieties that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2001 season. This rule also removes the variety-specific minimum size requirements for 1 variety of peaches whose shipments fell below 5,000 containers during the 2001 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Bev's Red variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Bev's Red variety revealed that 100 percent of the containers met the minimum size of 80 during the 2001 season. The sizes ranged from the 30 sizes to the 80 sizes, with 3.4 percent of the containers meeting the 30 sizes, 15.9 meeting the 40 sizes, 53.8 percent meeting the 50 sizes, 20.4 percent meeting the 60 sizes, 5.5 percent meeting the 70 sizes, and 1.1 percent meeting the size 80.

A review of other varieties with the same harvesting period indicated that the Bev's Red variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Bev's Red variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a) (2) of § 917.459 is revised to include the 91002 peach variety; and the introductory text of paragraph (a)(3) of § 917.459 is revised to include the Snow Kist peach variety; the introductory text of paragraph (a)(5) of § 917.459 is revised to include the Bev's Red, May Sweet, and Sunlit Snow (172LE81) peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to include the Flaming Dragon, Jillie White, Joanna Sweet, July Flame, Prima Peach XXV, Prima Peach XXVII, Princess Gayle, Red Sun, September Flame, Snow Fall, Snow Gem, Spring Gem, Sweet Gem, and 24–SB peach varieties.

This rule also revises the introductory text of paragraph (a)(6) of § 917.459 to remove the Carnival peach variety from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2001 season.

Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) § 917.459.

This rule also corrects the spelling of the peach variety ''Brittney Lane,'' incorrectly spelled as ''Brittany Lane'' in paragraph (a)(5) of § 917.459.

The NAC and PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions.

This rule reflects the committees' and USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that this rule will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruit in the interests of producers, handlers, and consumers.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. In the 2001 season, the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2001 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. In the 2001 season, the average producer

price received was $5.50 per container or container equivalent for nectarines, and $5.25 per container or container equivalent for peaches. A producer would have to produce at least 136,364 containers of nectarines and 142,858 containers of peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2001 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on November 29, 2001, and unanimously recommended that these handling requirements be revised for the 2002 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Continue the lot stamping requirements which were in effect for the 2000 and 2001 seasons; (2) authorize shipments of ''CA Utility'' quality fruit to continue during the 2002 season; (3) establish weight-count standards for Peento (donut) variety peaches; (4) require shippers' names and addresses on all containers; (5) add the Euro five-down returnable plastic container as a standard container, establish a net weight for that container, and exempt that container from the ''well-filled'' requirement; and (6) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

This rule authorizes continuation of the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that were in effect for such containers during the 2001 season for nectarine and peach shipments. The modified requirements of §§ 916.115 and 917.150 mandated that the lot stamp numbers be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation of such requirements for the 2002 season would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and would help the industry by keeping in place the information necessary to facilitate their ''trace-back'' program.

The Returnable Plastic Container Task Force and Grade and Size Subcommittee met on November 15, 2001, and considered possible alternatives to this action. Other alternatives were rejected because it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic, at least for the time being.

For those reasons, the task force recommended to the committees, and the committees voted unanimously, to extend the requirement for the lot stamp number to be printed on the cards on each container and for each pallet to be marked with a USDA-approved pallet tag, also containing the lot stamp number. Such safeguards were put in place to ensure that all the containers on each pallet had been inspected and certified in the event a card on an individual container or containers was removed, misplaced, or lost.

The Returnable Plastic Container Task Force met on November 15 to discuss issues relating to RPCs. At that time, they discussed volume filling of RPCs and its ramifications, specifically of the Euro five down container. They noted that RPCs are favored by many retailers and demanded by others, and that this particular container has become a standard container within the industry. In an effort to meet the demands and preferences for their customers, the Euro five down container has been used in increasing numbers in recent years. However, they noted, to maintain efficient packing operations, some container requirements needed to be reviewed, especially the requirement that all volume-filled RPC containers must be well filled. While the well-filled requirement may work for traditional boxes, the requirement may increase the amount of damage to fruit in RPCs or make the containers unwieldy and heavy. The task force considered leaving the requirement in place. However, given the potential for increased utilization of RPCs, and this container in particular, and the need to provide a quality product to customers, the alternative was rejected.

The Grade and Size Subcommittee met on November 15, 2001, to discuss the container marking requirement, among other things. At that time, it was noted by staff that not all containers are required to have the shipper's name and address printed on them. The subcommittee voted unanimously to recommend to the NAC and PCC that marking requirements be changed to require the shipper's name and address be placed on all containers.

Sections 916.350 and 917.442 establish certain requirements for marking containers of nectarines and peaches, respectively. Currently, all containers of nectarines and peaches, other than consumer packages mailed directly to consumers, are required to be marked with the name and address of the shipper. While some containers (like bulk containers, master containers of consumer packages, and consumer packages not mailed directly to consumers) are required to have the name and address of the shipper printed on the box, that is not true for other container types.

Requiring the handler to print his or her name and address on each container will ensure that all boxes are properly identified for handler responsibility. Such proper identification will also assist the industry's trace back program by providing additional information for beginning the trace.

In addition, the Returnable Plastic Container Task Force also deliberated the issue of making the Euro five down container a standard container and recommending a net weight for that container. It has been the practice of the committees to study the trends in containers used by the industry. Traditionally, corrugated containers have been the shippers container of choice. However, in recent years, the growth of RPCs has increased dramatically. In keeping with that practice, the Task Force determined that the Euro five down container has become an industry standard and may continue to be used by greater numbers of shippers. As such, any other alternative would not be viable.

Coupled with the recommendation to add the Euro five down container to the list of standard containers is the need to recommend an applicable net weight for the container. Assigning an appropriate net weight would foreclose other alternatives.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of ''CA Utility'' quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Since 1996, shipments of ''CA Utility'' have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule authorizes continued shipments of ''CA Utility'' quality nectarines and peaches during the 2002 season.

The Grade and Size Subcommittee met on November 15, 2001, and considered one alternative to this action. They considered not authorizing continued shipments of ''CA Utility'' quality nectarines and peaches. The

subcommittee, ultimately, did not make a recommendation to the NAC and PCC to continue shipments of ''CA Utility'' quality nectarines and peaches.

However, the NAC and PCC unanimously recommended implementation of the authority for continued shipments of ''CA Utility'' quality nectarines and peaches at their November 29, 2001, meeting. The committees voted to continue all requirements that are currently in effect, and then individually discussed any proposed changes, such as grade and size changes. There was discussion regarding shipments of ''CA Utility'' quality nectarines and peaches, based upon information from the Grade and Size Subcommittee, but the committees voted to continue such shipments along with all other requirements currently in effect.

Sections 916.350 and 917.442 establish container, pack, and marking requirements for shipments of nectarines and peaches, respectively. This rule makes changes to the pack and container marking requirements of the orders' rules and regulations to exempt RPCs from the well-filled requirement and add the requirement that all types of containers be marked with the shipper's name and address.

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. Those same maximum number of peaches are also applicable to volume-filled containers, based upon the tray-packed standard. In other words, the weight-count standard is developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that the fruit in the volume-filled container will meet the maximum number of peaches in the 16-pound sample.

When the Grade and Size Subcommittee met on November 15, 2001, they discussed the recent changes in the packing and marketing of Peento (donut) variety peaches. When these varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento varieties to volume-filled containers.

The staff conducted weight-count studies during the 2001 season so that weight-count standards could be developed, thus ensuring that all handlers are packing a standard maximum number of peaches in a 16-pound sample. Since weight-count standards provide a basis for volume filling of containers of other varieties of peaches, the subcommittee recommended that the NAC and PCC establish such standards for these unique varieties.

Sections 916.356 and 917.459 establish minimum maturity levels. This rule makes annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (e.g. color chips), as recommended by Shipping Point Inspection. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity characteristics of nectarines and peaches as experienced over the previous season's inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

Currently, in § 916.356 of the nectarine order's rule and regulations, and in § 917.459 of the peach order's rule and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2002 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre; and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike. Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a significant change in the regulations as they currently exist, would ultimately increase the amount of less acceptable fruit being marketed to consumers, and, thus, would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

The committees make recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including comments of persons at several subcommittee meetings and comments received by committee staff. Such subcommittees include the Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, the Returnable Plastic Container Task Force, and the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees and the task force, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Returnable Plastic Container Task Force, RPC manufacturers are also invited, as well as those handlers who currently use such boxes. Information from these sources assists the committees, subcommittees, and the task force in thoroughly examining and deliberating the issues that affect the entire industry in a public setting.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized through the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually during the

last week of November or first week of December. Like all committee meetings, the November 29, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. In addition, various subcommittee meetings were held on November 15, 2001, and these regulations were reviewed and discussed. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553. it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since early shipments of these fruits are expected to be about the first or second week of April; (2) this rule relaxes grade requirements for nectarines and peaches; (3) the committees unanimously recommended these changes at public meetings and interested persons had an opportunity to provide input; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.115 is revised to read as follows:

§ 916.115 Lot stamping.

Except when loaded directly into railway cars, exempted under § 916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 916.55: *Provided,* That for the period April 6, 2002, to October 31, 2002, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

3. Section 916.350 is amended by:

A. Revising paragraph (a)(1);

B. Redesignating current paragraphs (a)(7), (a)(8), and (a)(9) as (a)(9), (a)(10), and (a)(11); and adding a new paragraph (a)(8);

C. Redesignating current paragraphs (a)(4), (a)(5), and (a)(6) as (a)(5), (a)(6), and (a)(7); and adding a new paragraph (a)(4);

D. Revising redesignated paragraph (a)(5)(ii);

E. Revising paragraph (b); and

F. Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(1) Such nectarines, when packed in any closed package or container, except master containers of consumer packages, individual consumer packages, and Euro five down reusable plastic containers, shall conform to the requirements of standard pack: *Provided,* That nectarines in any such volume-filled container need only be filled to within one-inch of the top of the container.

* * * * *

(4) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the name and address of the shipper.

* * * * *

(5) * * *

(ii) The size of nectarines in molded forms (tray-packs) in experimental containers, and in the No. 22G standard lug boxes, shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box, in accordance with the requirements of standard pack, such as ''80 size,'' ''88 size,'' etc., along with count requirements in paragraph (a)(5)(i) of this section.

* * * * *

(8) Each Euro five down returnable plastic container of loose-filled nectarines shall bear on one outside end in plain sight and in plain letters the words ''31 pounds net weight.''

* * * * *

(b) As used in this section, ''standard pack'' and ''fairly uniform in size'' shall have the same meaning as set forth in the U.S. Standards for Grades of Nectarines (Secs. 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. A No. 12B standard fruit box measures 2⅜ to 7⅛×11½×16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛×13½×16⅛ inches, No. 22E standard lug box measures 8¾×13½×16⅛ inches, No. 22G standard lug box measures 7⅜ to 7½×13¼×15⅞, No. 32 standard box measures 5¾ to 7¼×12×19¾ inches, and Euro five down standard box measures 3½ to 10¾×16×24 inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions). ''Individual consumer packages'' means packages holding 15 pounds or less net weight of nectarines. ''Tree ripe'' means ''tree ripened'' and fruit shipped and marked as ''tree ripe,'' ''tree ripened,'' or any similar terms using the words ''tree'' and ''ripe'' must meet the minimum California Well Matured standards.

* * * * *

(d) During the period April 6, 2002, through October 31, 2002, each container or package when packed with nectarines meeting the ''CA Utility'' quality requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters at least ⅜ inch in height on the visible display panel. Consumer bags or

packages must also be clearly marked on the consumer bags or packages as ''CA Utility,'' along with all other required markings, in letters at least 3/8 inch in height.

* * * * *

4. Section 916.356 is amended by:

A. Revising paragraph (a)(1)introductory text;

B. Revising TABLE 1 of paragraph (a)(1)(iv); and

C. Revising the introductory text of paragraphs (a)(4) and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 3/8 inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 1/2 inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 6, 2002, through October 31, 2002, any handler may handle nectarines if such nectarines meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

(iv) * * *

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
April Glo	H
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Diamond Bright	J
Diamond Jewel	L
Diamond Ray	L
Earliglo	I
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Fire Sweet	J
Flame Glo	L
Flamekist	L
Flaming Red	K
Flavortop	J
Grand Diamond	L
Gran Sun	L
Honey Blaze	J
Honey Kist	I
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Moon Grand	L
Niagra Grand	H
P–R Red	L
Prima Diamond XIII	L
Red Delight	I
Red Diamond	L
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jewel	L
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Ruby Sweet	J
Scarlet Red	K
September Free	J
September Grand	L
September Red	L
Sheri Red	J
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Ray	L
Spring Sweet	J
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Sunburst	J
Sun Diamond	I
Sunecteight (Super Star)	G
Sun Grand	G
Tom Grand	L
Zee Glo	J
Zee Grand	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(4) Any package or container of Arctic Rose, Arctic Star, Diamond Bright, Juneglo, June Pearl, Kay Glo, Kay Sweet, May Diamond, May Grand, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Delight, Red Glo, Rose Diamond, Royal Glo, Scarlet Jewels, Sparkling May, Star Brite, White Sun, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alta Red, Arctic Blaze, Arctic Gold, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Pearl, August Red, August Snow, Big Jim, Bright Pearl, Bright Sweet, Diamond Ray, Early Red Jim, Firebrite, Fire Pearl, Fire Sweet, Flame Glo, Flaming Red, Grand Diamond, Grand Pearl, Grand Sweet, Honey Blaze, Honey Kist, July Pearl, July Red, June Lion, Kay Diamond, Kay Pearl, King Jim, Late Red Jim, P–R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Red Diamond, Red Glen, Red Jim, Regal Pearl, Regal Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, Scarlet Red, September Bright (26P–490), September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Spring Sweet, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunecteight (Super Star),

Sunny Red, Sun Valley Sweet, Sweet White, Terra White, or Zee Glo variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

5. Section 917.150 is revised to read as follows:

§ 917.150 Lot stamping.

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, all exposed or outside containers of peaches, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 917.45: *Provided,* That for the period April 6, 2002, through November 23, 2002, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

* * * * *

6. Section 917.442 is amended by:

A. Revising paragraph (a)(1);

B. Redesignating current paragraphs (a)(8), (a)(9), and (a)(10) as (a)(10), (a)(11), and (a)(12); and adding a new paragraph (a)(9);

C. Redesignating current paragraphs (a)(4), (a)(5), (a)(6), and (a)(7) as (a)(5), (a)(6), (a)(7), and (a)(8); and adding a new paragraph (a)(4);

D. Revising redesignated paragraph (a)(5)(ii);

E. Revising the title of Tables 1 and 2 in redesignated paragraph (a)(5)(iv);

F. Adding new Table 3 after Tables 1 and 2 in redesignated paragraph (a)(5)(iv);

G. Revising paragraph (b); and

H. Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(1) Such peaches, when packed in any closed package or container, except master containers of consumer packages, individual consumer packages, and Euro five down reusable plastic containers, shall conform to the requirements of standard pack: *Provided,* That peaches in any such volume-filled container need only be filled to within one-inch of the top of the container.

* * * * *

(4) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters, the name and address of the shipper.

(5) * * *

(ii) The size of peaches in molded forms (tray-packs) in experimental containers, and in the No. 22G standard lug boxes, shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box, in accordance with the requirements of standard pack, such as ''80 size,'' ''88 size,'' etc., along with count requirements in paragraph (a)(5)(i) of this section.

* * * * *

(iv) * * *

Table 1—Weight-Count Standards for All Varieties of Peaches (Except Peento (Donut) Varieties) Packed in Loose-Filled or Tight-Filled Containers

* * * * *

Table 2—Weight Count Standards for All Varieties of Peaches (Except Peento (Donut) Varieties) Packed in Loose-Filled or Tight-Filled Containers.

* * * * *

TABLE 3—WEIGHT-COUNT STANDARDS FOR PEENTO (DONUT) VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of peaches in a 16-pound sample
80	140
72	128
70	111
64	99
60	93
56	87
54	77
50	80
48	74
44	70
42	68
40	59
36	53
34	50

* * * * *

(9) Each Euro five down returnable plastic container of loose-filled peaches shall bear on one outside end in plain sight and in plain letters the words ''31 pounds net weight.''

* * * * *

(b) As used in this section, ''standard pack'' and ''fairly uniform in size'' shall have the same meaning as set forth in the U.S. Standards for Grades of Peaches (Secs. 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. A No. 12B standard fruit box measures 2⅜ to 7⅛ × 11½ × 16⅛ inches, No. 22D standard lug box measures 2⅞ to 7⅛ × 13½ × 16⅛ inches, No. 22E standard lug box measures 8¾ × 13½ × 16 inches, No. 22G standard lug box measures 7⅜ to 7½ × 13¼ × 15⅞, No. 32 standard box measures 5¾ to 7¼ × 12 × 19¾ inches, and the Euro five down standard box measures 3½ to 10¾ × 16 × 24 inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions). ''Individual consumer packages'' means packages holding 15 pounds or less net weight of peaches. ''Tree ripe'' means ''tree ripened'' and fruit shipped and marked as ''tree ripe,'' ''tree ripened,'' or any similar terms using the words ''tree'' and ''ripe'' must meet the minimum California Well Matured standards.

* * * * *

(d) During the period April 6, 2002, through November 23, 2002, each container or package when packed with peaches meeting ''CA Utility'' quality requirements, shall bear the words ''CA Utility,'' along with all other required container markings, in letters at least ⅜ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as ''CA Utility, '' along with all other required markings, in letters at least ⅜ inch in height.

* * * * *

7. Section 917.459 is amended by:

A. Revising the introductory text of paragraph (a)(1);

B. Revising the introductory text of paragraph (a)(1)(iv);

C. Revising Table 1 of paragraph (a)(1)(iv); and

D. Revising the introductory text of paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures/ which are damaged, but not seriously damaged: *Provided further*, That peaches of the Peento type shall be permitted a 10 percent tolerance for healed, non-serious, blossom-end growth cracks: *Provided further*, That

during the period April 6, 2002, through November 23, 2002, any handler may handle peaches if such peaches meet ''CA Utility'' quality requirements. The term ''CA Utility'' means that not more than 40 percent of the peaches in any container meet or exceed the requirement of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) The Federal or Federal-State Inspection Service shall make the final determinations on maturity through the use of color chips or other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in Table 1 in making maturity determinations for the specified varieties when inspecting to the ''well matured'' level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Joanna Sweet variety of peaches, not less than an aggregate area of 100 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table 1 may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of ''well matured.''

TABLE 1

Column A variety	Column B maturity guide
Angelus	I
August Lady	L
Autumn Flame	J
Autumn Gem	I
Autumn Lady	H
Autumn Rose	H
Blum's Beauty	G
Brittney Lane	J
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Earli Rich	H
Earlitreat	H
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Honey Red	G
Joanna Sweet	J
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Lady Sue	L
Late Ito Red	L
Madonna Sun	J
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
Morning Lord	J
O'Henry	I
Pacifica	G
Prima Gattie 8	L
Queencrest	G
Ray Crest	G
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Sprague Last Chance	L
Springcrest	G
Spring Delight	G
Spring Lady	H
Summer Lady	L
Summerset	I
Summer Zee	L
Suncrest	G
Supechfour (Amber Crest)	G
Super Rich	H
Sweet Dream	J
Sweet Gem	J
Sweet Mick	J
Sweet Scarlet	J
Topcrest	H
Tra Zee	J
Vista	J
Willie Red	G
Zee Lady	L
60EF32	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(2) Any package or container of Earlitreat or 91002 variety peaches unless:

* * * * *

(3) Any package or container of Snow Kist, Super Rich or Topcrest variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Bev's Red, Brittney Lane, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, June Lady, Kern Sun, Kingscrest, May Crest, May Sun, May Sweet, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Snow Prince, Springcrest, Spring Lady, Spring Snow, Sugar May, Sunlit Snow (172LE81), Sweet Scarlet, White Dream, Zee Diamond, 012–094, or 172LE White Peach (Crimson Snow/Sunny Snow) variety peaches unless:

* * * * *

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rose, Autumn Snow, Cal Red, Cassie, Champagne, Coral Princess, Country Sweet, Diamond Princess, Earli Rich, Early Elegant Lady, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, Flaming Dragon, Full Moon, Garnet Jewel, Ivory Princess, Jillie White, Joanna Sweet, John Henry, July Flame, June Pride, Kaweah, Kings Lady, Klondike, Lacey, Late Ito Red, Madonna Sun, Morning Lord, O'Henry, Pretty Lady, Prima Gattie 8, Prima Peach 13, Prima Peach 20, Prima Peach 23, Prima Peach XXV, Prima Peach XXVII, Princess Gayle, Queen Lady, Red Dancer, Red Sun, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Flame, September Snow, September Sun, Sierra Gem, Sierra Lady, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Sprague Last Chance,

Spring Gem, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Supechfour (Amber Crest), Sweet Dream, Sweet Gem, Sweet Kay, Sweet September, Tra Zee, Vista, White Lady, Zee Lady, or 24–SB variety peaches unless:

* * * * *

Dated: March 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–8140 Filed 4–3–02; 9:51 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AG25

Revision of the Skin Dose Limit

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations in 10 CFR part 20 to change the definition and method of calculating Shallow-dose equivalents (SDEs) by specifying that the assigned SDE must be the dose averaged over the 10 square centimeters of skin receiving the highest exposure, rather than 1 square centimeter as stated in the existing regulation. A result of this rulemaking is to make the skin dose limit less restrictive when small areas of skin are irradiated (i.e. more representative of actual health risks) and to address skin and extremity doses from all source geometries under a single limit. This change requires measuring or calculating SDEs from discrete radioactive particles (DRPs) on or off the skin, from very small areas (<1.0 square centimeter) of skin contamination, and from any other source of SDE by averaging the measured or calculated dose over the most highly exposed, contiguous 10 square centimeters for comparison to the skin dose limit of 50 rem (0.5 Sv). The Commission believes that although the less restrictive limit on dose to small areas of the skin might permit more frequent, transient, observable effects such as reddening of the skin, the change nevertheless represents a substantial increase in worker protection because reduced monitoring for DRPs will result in reduced external dose and reduced use of protective clothing will result in fewer industrial hazards in the workplace.

EFFECTIVE DATE: June 4, 2002.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3883; e-mail *AKR@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

With the installation of very sensitive portal monitors in the mid- and late-1980s, many nuclear power plants detected contamination of individuals and their clothing by small, usually microscopic, highly radioactive beta or beta-gamma emitting particles having relatively high specific activity. These particles, known as ''discrete radioactive particles'' (DRPs) and sometimes ''hot particles,'' most commonly contain ^{60}Co or fission products. DRPs apparently become electrically charged as a result of radioactive decay and, therefore, tend to be fairly mobile. DRP movement in the workplace is unpredictable and, thus, worker contamination is difficult to control. A unique aspect of DRPs on or very near the skin is that very small amounts of tissue can be exposed to large, highly nonuniform doses. These intense, localized irradiations may produce deterministic effects, such as reddening of the skin, transient breaks in the skin or necrosis of small areas of the skin, but the stochastic risk of inducing skin cancer due to a DRP exposure is negligible.

In the late-1990s, a materials licensee reported that workers received DRP exposures while manufacturing radiographic sources. In addition to the DRP concern, several events have occurred involving contamination of very small areas (<1.0 square centimeter) of skin, primarily in the handling of solutions of highly concentrated radiopharmaceuticals. Although these contamination events produce relatively large doses to very small areas of skin, they are known to result in insignificant overall health detriments. Nevertheless, under existing provisions in NRC regulations, several of these contamination events were defined as overexposures, and resulted in enforcement actions, with the result that workers could not be assigned work in radiation areas for the balance of the year. These consequences were not commensurate with the actual health detriment.

The principal stochastic risk associated with irradiation of the skin is non-melanoma skin cancer (that is, basal cell and squamous cell skin cancer). The risk of skin cancer following irradiation of the skin by DRPs, or from very small areas of contamination, is not comparable to irradiation of extended areas of the skin because of the very small number of cells involved and the greater potential for high local beta particle dose to kill cells rather than cause transformation to a precancerous stage. In Report No. 106, ''Limit for Exposure to ''Hot Particles'' on the Skin'' (1989), the Congressionally chartered National Council on Radiation Protection and Measurements (NCRP) conservatively estimated the risk of skin cancer following a DRP dose of 50 rem (0.5 Sv) to an area of 2 mm ^{2} to be 7×10^{-7} Gy $^{-1}$ (7×10^{-9} rad $^{-1}$), and the risk of skin cancer mortality to be about 1×10^{-9} Gy $^{-1}$ (1×10^{-11} rad $^{-1}$). Because the risk of stochastic effects (i.e., cancer) from gamma and beta radiation from DRPs has been shown to be negligible for DRP exposures to the skin, induction of skin cancer is of less concern than the potential for deterministic effects.

In 1991, the NRC revised Title 10, part 20 of the Code of Federal Regulations and its occupational dose limit for the skin of the whole body to 50 rem (0.5 Sv) SDE per year to prevent deterministic effects that might result from a lifetime exposure at the dose limit (56 FR 23360; May 21, 1991). This dose limit for the skin is specified in 10 CFR 20.1201(a)(2)(ii), and is intended to prevent damage to areas of the skin that are large relative to areas exposed by DRPs on the skin, and that could compromise skin function or appearance. The NRC noted in that rulemaking that certain issues ''are being resolved in other rulemaking proceedings because of either their scope, complexity, or timing.'' One of the issues that was listed concerned limits and calculational procedures for dealing with the DRP issue. It was recognized that the current skin dose limit was overly conservative for DRP doses and SDEs to very small areas of the skin. The final rule stated that there would be a rulemaking to set limits for skin irradiation by DRPs. This amendment to 10 CFR part 20 responds, in part, to that commitment.

The existing part 20 skin dose limit of 50 rem (0.5 Sv) averaged over 1 square centimeter was intended to apply to a relatively uniform dose to a larger area of skin than that usually exposed by DRPs with the objective of preventing deterministic damage to the skin. Because the NCRP considered this limit to be overly conservative for DRPs on or very near the skin, the NRC announced an interim enforcement discretion

policy in Information Notice (IN) 90–48, ''Enforcement Policy for Hot Particle Exposures'' (55 FR 31113; July 31, 1990). That policy addressed reporting and mitigation if a DRP dose exceeded the existing limit of 50 rem (0.5 Sv) over 1 square centimeter, and stated that the NRC would take enforcement action for overexposures if the DRP beta emission exceeded 75 μCi-hrs (approximately 300–500 rads). To avoid DRP doses greater than 50 rem (0.5 Sv) and the resulting reporting requirement, licensees monitor workers for DRP contamination frequently during the work shift. This results in additional external dose either to the workers, who incur additional exposure time in exiting and reentering the restricted area, or to the radiation protection staff, who must enter the restricted area to perform the monitoring.

In 1988, the NRC contracted with Brookhaven National Laboratory (BNL) to study the health effects of DRPs on the skin and initiated a contract with the NCRP to develop guidance on controlling DRP doses. In NUREG/CR–6531, ''Effects of Radioactive Hot Particles on Pig Skin'' (June 1997), BNL provided data on the probability that irradiation of the skin by DRPs in contact with or near the skin would produce breaks in the skin and demonstrated that these effects would be very unlikely to pose any serious health problems to workers. The BNL work examined the nonuniform, highly concentrated dose to 1 square centimeter from DRPs in contact with or near the skin, and not the dose that would be delivered to the adjacent skin tissue. This BNL data was supported by other reported studies and similar experiments performed by the Electric Power Research Institute (EPRI) as reported in EPRI TR–104781, ''Skin Injuries From Discrete Radioactive Particles'' (1994). Consequently, in Report No. 130, ''Biological Effects and Exposure Limits for ''Hot Particles'' (1999), the NCRP recommended a dose-limiting guideline for DRPs of 50 rads (0.5 Gy) averaged over the most highly exposed 10 square centimeters.

In October 1998, the NRC staff submitted a rulemaking plan (SECY–98–245) entitled ''Protection Against Discrete Radioactive Particle (DRP) Exposures (10 CFR Part 20).'' In that plan the NRC staff proposed establishing a constraint of 300 rads (3 Gy) over 1 square centimeter as a program design guideline or action level, and a limit of 1000 rads (10 Gy) over 1 square centimeter for DRPs on or near the skin. The existing skin dose limit would have been retained for all other skin doses. The intent of that proposed amendment was to reduce the additional external dose incurred by workers in monitoring for DRP contamination during work shifts and to reduce unnecessary regulatory burden by adopting more realistic thresholds for DRP dose control and reporting requirements. In a staff requirements memorandum (SRM) dated December 23, 1998, the Commission directed the NRC staff to proceed with rulemaking as proposed, but to use 500 rads (5 Gy) per 1 square centimeter as the dose limit to be consistent with the recommendations in NCRP Report No. 106.

In March 1999, several industry experts who had reviewed the publicly available rulemaking plan and SRM suggested that the planned action would not accomplish one of the intended objectives, that is, to reduce the frequency of worker monitoring. The industry concern argued against use of a DRP dose constraint with a 500-rem (5.0-Sv) limit, and supported use of the NCRP-recommended skin dose limit that is adopted in this rule. Specifically, the industry concern stated that, of all DRP events, fewer than 10 percent are on, or near enough to, the skin for the proposed constraint and limit to apply. Most DRP events (> 90 percent) are on clothing or hair, or are far enough away from the skin (and most likely moving) so that the dose to the skin is more uniform and spread over a larger area. In that case, the existing 50-rem (0.5-Sv) skin dose limit would be applicable. This information suggested that a reduction in DRP monitoring frequency, and the associated external dose, could not be realized for most DRP exposures, because of the need to prevent exceeding the existing skin dose limit. Because the licensee may not know in advance whether the DRP is on the skin or moving, the licensee would need to assume that the existing skin dose limit was applicable.

The justification for proposing a constraint, or action level, of 300 rads (3.0 Gy) over 1 square centimeter was in large part to reduce the additional external dose incurred by plant staff from frequent monitoring to avoid having to report a DRP dose that exceeded the existing 50-rem (0.5-Sv) skin dose limit. If more than 90 percent of DRPs are off the skin and irradiate a relatively large area, the existing skin dose limit would be controlling and the constraint would only rarely be used. The NRC staff concluded that little relief from monitoring dose would result from implementing the constraint and the 500-rad (5-Gy) limit. In a memorandum to the Commission dated October 27, 1999 (COMSECY–00–0009), the NRC staff explained why the constraint with a limit of 500 rads (5 Gy) would not accomplish this intended objective, and recommended further work to identify an effective regulatory approach. In an SRM dated March 16, 2000, the Commission directed the NRC staff to contract with the NCRP to provide additional technical support on this issue.

In December 1999, the NCRP had published Report No. 130, ''Biological Effects and Exposure Limits for 'Hot Particles'.'' In that report the NCRP recommended that the dose to skin at a depth of 70 μm (7 mg/cm ^{2}) from hot particles on skin (including the ear), hair, or clothing be limited to no more than 50 rads (0.5 Gy) averaged over the most highly exposed 10 square centimeters of skin.

The averaging area of 10 square centimeters, recommended by the NCRP, is applicable to both the case when a DRP is on the skin or a very small area of skin is contaminated, and the case when a DRP is on clothing and moving about exposing an area on the order of 10 square centimeters or more. In the former case, averaging the very localized dose over 10 square centimeters results in a dose value that more appropriately reflects the risk associated with exposure of a small area. In the latter case, averaging a relatively uniform dose to the entire 10 square centimeters results in a dose limit that is equivalent to the current 50 rem over 1 square centimeter. Thus, the limit decreases as the exposed skin area increases to 10 square centimeters, consistent with the expectation that the risk of an effect increases with increasing area of skin exposed to a given dose level. This averaging area is also consistent with the skin dose limiting system adopted by the Department of Energy in 10 CFR part 835.

In an effort to find the least burdensome regulatory requirement for controlling DRP doses, as well as other skin doses, while maintaining an adequate level of worker protection, the NRC staff requested that the NCRP consider the advisability of applying its proposed limit for DRP exposures to all skin dose geometries. In March 2001, the NCRP published Statement No. 9, ''Extension of the Skin Exposure Limit for Hot Particles to Other Sources of Skin Irradiation,'' which can be found on the NCRP Website at *www.ncrp.com/statemnt.html*. In this statement, the NCRP recommended that the absorbed radiation dose to skin at a depth of 70 μm (7 mg/cm $_2$) from any source of irradiation be limited to 50 rads (0.5 Gy) averaged over the most highly exposed 10 square centimeters of skin.

Dr. John Baum, Ph.D., an NRC consultant, reviewed the health effects implications of the NCRP recommendation. Dr. Baum wrote a technical paper entitled ''Analysis of Potential Radiobiological Effects Related to a Unified Skin Dose Limit,'' that was published in the June 2001 issue (pp. 537–543) of the peer-reviewed journal *Health Physics*. In this paper, Dr. Baum estimated the probabilities and severity of both stochastic and deterministic effects for a wide range of exposure scenarios based on the research done by BNL and other research facilities, as well as information found in NCRP Report Nos. 106 and 130. Published data from experimental and epidemiological studies, as well as calculations of radial- and depth-dose distributions, show that skin exposures at the dose limit of 50 rem (0.5 Sv) SDE averaged over 10 cm^2 could result in stochastic risks of $<6.6 \times 10^{-10}$ rem^{-1} and $<3.2 \times 10^{-7}$ rem^{-1} for fatal and nonfatal skin cancers respectively, confirming that stochastic risks at the proposed limit are small.

Given exposures at the proposed skin dose limit, that is, 50 rem (0.5 Sv) averaged over 10 square centimeters, Dr. Baum estimated that the worst-case deterministic effects are a 5-percent probability of erythema if all of the dose (500 rem) were delivered to an area of 2.5 square centimeters, and a 50-percent probability that measurable dermal thinning would be observable if all of the dose were delivered to an area of <0.5 square centimeters. At this dose, no acute cell killing or skin ulceration was predicted for DRPs 3 or more millimeters off the skin because the dose is distributed over too large an area. The worst case probability of producing a barely detectable scab as a result of acute cell killing was estimated to be 10 percent for ^{60}Co or activated fuel DRPs located about 0.4 mm off the skin. Additional discussion of implications of the health effects associated with the proposed unified skin dose limit can be found in the regulatory analysis developed for this rulemaking.

The NRC published a proposed rule in the **Federal Register** on July 12, 2001 (66 FR 36502). That rule proposed changing the method of calculating SDEs to the skin or the extremities by specifying in 10 CFR 20.1201(c) that the assigned SDE must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. Shortly after publishing the proposed rule, the NRC monitored a discussion of the rule that took place on a publicly accessible radiation protection bulletin board (RADSAFE). Comments were favorable regarding the intent and justification of the rule. However, radiation protection practitioners in the field raised several technical questions regarding implementation guidance. Although this exchange does not technically constitute public comment, the NRC staff has decided to note that parallel to this rulemaking, an effort is underway to contract for a major revision to the VARSKIN II computer code. This revision is expected to address calculations that will accommodate the new skin dose limit and address the technical questions raised in the RADSAFE discussion of the rule.

II. Analysis of Public Comments and Staff Response

The NRC received nine letters of public comment, all supporting the proposed rule. Mallinckrodt, a subsidiary of Tyco Healthcare, commented that it is in favor of the proposed revision of the skin dose limit and agrees with the NCRP's recommendations because the new rule encompasses SDE from all sources into one limit. The Council on Radionuclides and Radiopharmaceuticals (CORAR), an association of NRC and Agreement State licensees that use unsealed sources of radioactive materials, fully supported the proposed rule. CORAR stated that the new limit would be more protective of workers, and more comparable to current annual limits for deep dose and lens of the eye dose than the current limit, would establish a skin dose limit on a risk-informed basis, and would simplify the regulations.

CORAR requested clarification regarding the limit on deep-dose equivalent (DDE) to the extremities. No such limit exists. DDE, which § 20.1201(a)(1) limits to 5 rem (50 mSv) in a year, is defined as applying to external whole-body exposure, and the whole body is defined as excluding the extremities. The SDE limit of 50 rems (0.50 Sv) averaged over 10 square centimeters is considered to adequately protect against any associated DDE to the less-radiosensitive deep tissues of the extremities.

CORAR noted that the NRC should allow licensees to estimate doses for the actual skin thickness involved, rather than a tissue depth of 0.007 cm as required. The NRC staff is not considering any changes to this requirement. For most areas of the body the specified depth defines the most radiosensitive tissue or leads to a conservative dose calculation if the sensitive tissue is deeper. Calculation of SDE at a depth of 0.007 cm is considered an important component of an acceptable radiation protection program, and will continue to be required to demonstrate compliance with the skin and extremity dose limits.

CORAR proposed that the NRC provide clarification of the limit in the event that multiple SDEs were delivered to the same skin area during the year. The NRC staff believes that the annual limit of 50 rems (0.50 Sv), modified by the requirement in § 20.1201(c) that the assigned SDE must be for the ''* * * contiguous 10 square centimeters of skin receiving the highest exposure,'' makes it clear that multiple exposures to the same area during the record year would be additive for comparison to the limit. This interpretation is consistent with the recommendations stated in NCRP Statement No. 9, ''Extension of the Skin Dose Limit for Hot Particles to Other External Sources of Skin Irradiation'' (March 30, 2001).

An individual commenter, a certified health physicist, noted the need to revise the whole-body limits specified in 10 CFR part 20 to use effective-dose equivalent (EDE) rather than deep-dose equivalent (DDE). The commenter suggested that the risk associated with the DDE from a DRP at 1 centimeter was not comparable to the risk associated with DDE to the whole body. The NRC staff agrees that consideration should be given to adopting the EDE concept in its system of dose limitation. However, that issue is not relevant to the rule changes addressed in this final rule. The skin dose limit concerns only SDE, and the assertion that the associated DDE has minimal stochastic risk would be even more accurate if an EDE were used. The rule, as promulgated, is believed to reduce unnecessary regulatory burden, while providing increased worker protection. The NRC staff is separately addressing questions regarding EDE and the use of weighting factors for determining whole-body doses.

The Nuclear Energy Institute (NEI) solicited comments from its industry radiation protection members and submitted a letter of strong support for the rulemaking. NEI noted that the rule has a strong scientific basis, reflects NCRP recommendations that were based on replicated research studies, and incorporates a risk-based approach that will permit licensees to select protective measures that optimize worker safety. The commenter observed that the rule change is an easily implemented simplification that will permit reduction of external radiation exposure and result in an overall improvement in worker safety.

NEI noted that the rule would change the way licensees estimate the dose to the skin, but would not change existing

dose reporting requirements and guidance. The NRC staff agrees that no changes in reporting requirements are needed to implement this final rule.

Virginia Electric and Power Company (Dominion), Southern California Edison, Exelon Nuclear Generation Company, and the Tennessee Valley Authority (TVA) submitted letters referencing the NEI submittal and expressing strong agreement with NEI's comments and support for the rule. The Strategic Teaming and Resource Sharing (STARS) group of nuclear power plants also submitted comments supporting the proposed rule as published.

III. Summary and Discussion of the Changes

The Commission is amending § 20.1003, § 20.1201(a)(2)(ii), and § 20.1201(c), as follows.

Section 20. 1003—Definitions

In § 20.1003, ''Definitions'', the definition of SDE is revised to delete the words ''averaged over an area of 1 square centimeter.'' The purpose of these words was to specify the area over which the dose to the skin was to be measured or calculated for comparison to the limit. The revision to require averaging over 10 square centimeters for measuring and recording SDE is found in § 20.1201(c), along with other procedural requirements.

Section 20. 1201—Occupational Dose Limits for Adults

10 CFR 20.1201, ''Occupational Dose Limits for Adults,'' is changed in two places. 10 CFR 20.1201(a)(2)(ii) is changed to clarify that the SDE limit of 50 rem (0.5 Sv) is the dose limit to the skin of any extremity, as well as the skin of the whole body. The Commission believes that this specification makes it clear that the only dose limit for the extremities is an SDE limit on the dose delivered at a depth of 0.007 cm (7 mg/cm ^{2}), not a deep dose limit.

10 CFR 20.1201(c) is amended to specify that the assigned SDE must be the dose averaged over the 10 contiguous square centimeters of skin receiving the highest exposure.

Although the NCRP recommended limiting the dose from DRPs in the ear and on the eye, the NRC staff believes that these are special cases only with respect to measuring or calculating the dose, and that this revised skin dose limit, together with the existing limit for dose to the lens of the eye, is adequate to control DRP doses to these areas.

It is also important to note that previously it was considered relevant to distinguish between doses from DRPs that were on or off the skin. With this final rule, this distinction is only relevant to dosimetric considerations, and the proposed limit is independent of source or exposure geometry.

The NRC staff has elected to retain rem and Sievert as the units for the skin dose limit. According to data published in reports of the International Commission on Radiation Protection (ICRP), the unit for dose equivalent, rem (Sv), is acceptable for deterministic effects, especially at lower doses. The highest relative biological effectiveness (RBE) values for deterministic effects in the skin are all less than the Q values, or dose weighting factors that are used to convert dose in rads (Gy) to dose equivalent in rem (Sv). The use of dose equivalent in rem (Sv) units is conservative and has the advantage that all of the dose limits will be in the same units. In addition, regulations promulgated by the Department of Energy, use the rem and Sievert for SDE.

NCRP Statement No. 9 referred to NCRP Report No. 130 (1999) for guidance on good practices, and recommended that in addition to numerical limits, the exposed area of skin should be observed for 4 to 6 weeks whenever the DRP dose at a depth of 70 μm exceeds 10 rads (0.1 Gy) averaged over the most highly exposed 10 square centimeters of skin. The observational level of 10 rads (0.1 Gy) is well below the new limit of 50 rem (0.5 Sv), and is essentially equivalent to the current skin dose limit, at which no clinically significant effects have ever been reported. For those reasons, the NRC's final rule does not incorporate the NCRP recommendation for medical observation.

The objective of this rulemaking is to establish a uniform, risk-informed skin dose limit for all sources of SDE, including DRPs, and small area contamination that, while it continues to provide adequate protection of workers, trades a higher risk of occurrence of temporary effects to the skin, such as reddening, for a reduction in the risk of whole-body dose and cancer, allows licensees to reduce whole-body exposures and nonradiological health risks such as heat stress to workers subject to unnecessary DRP monitoring, and provides a common limit for SDE from all external sources of ionizing radiation. The rule also reduces the unnecessary regulatory burden on licensees to report skin exposures that have insignificant health implications.

The former statement of the skin and extremity dose limit, along with the former definition of SDE, required that skin doses be averaged over 1 square centimeter. The new rule requires averaging the SDEs delivered to the most highly exposed, contiguous, 10 square centimeters. It is important to discuss the consequences of this change in the context of different source geometries.

In the case of large-area exposures of the skin from surface contamination or other external sources, areas on the order of 10 square centimeters or more would be likely to receive a relatively uniform dose. There is little difference to be expected in recorded doses from the former requirement that would attempt to identify the most highly exposed 1 square centimeter and the new approach that would require averaging doses to the skin over the most highly exposed, adjacent 10 square centimeters. The recorded doses would be identical for the large-area (10 square centimeters or more) exposures that form the great majority of skin dose events.

Under the new rule, exposed areas of the skin that are less than 10 square centimeters are treated in a less restrictive manner. For example, a dose of 250 rem (2.5 Sv) to each of 2 square centimeters results in a 50-rem (0.5-Sv) SDE when averaged over 10 square centimeters. A dose as high as 500 rem (5.0 Sv) will be permitted to 1 square centimeter and will be recorded as 50 rem (0.5 Sv) when averaged over 10 square centimeters. This change effectively permits higher doses to small areas of skin than were formerly permitted by the regulations.

Although, as previously noted, the Commission is establishing a skin dose limit that in some source geometries is likely to permit more frequent occurrence of observable, though transient, deterministic effects, it is expected that the less restrictive limit will permit a reduction in the overly conservative use of protective clothing and other devices intended to prevent contamination and skin doses. As a result, workers should experience reduced exposure to nonradiological health hazards such as heat stress, and be subject to fewer industrial accidents caused by impaired motion. By reducing the overly conservative use of protective equipment, work should be performed more efficiently. Reduced time in the restricted area is expected, along with a concomitant reduction in whole-body dose and stochastic risks. The Commission intends this change to reduce overly conservative efforts to prevent skin contaminations thereby decreasing stress and reducing whole-body doses. Numerous studies of the impacts on worker efficiency and safety resulting from the use of protective clothing and equipment have been

published in the journal, *Health Physics,* in *Radiation Protection Management*, and by the Electric Power Research Institute (EPRI). A recent discussion of this issue and specific references can be found in NUREG/CR–0041, ''Manual of Respiratory Protection Against Airborne Radioactive Material'' (January 2001).

A final geometry of interest is that where DRPs are on or very near the skin, such that a relatively small volume of tissue receives a large dose, resulting in cell killing and possible observable breaks in the skin. Under the former dose limit, a DRP could deliver 50 rem (0.5 Sv) to an area of 1 square centimeter that when averaged over 1 square centimeter would yield a recorded dose of 50 rem (0.5 Sv). Under the new rule, the NCRP-recommended limit, a dose of 500 rem (5.0 Sv) delivered to 1 square centimeter, when averaged over 10 square centimeters, would yield a recorded dose of 50 rem (0.5 Sv). Thus, for DRPs on the skin, and other small area exposures, the rule change is in effect a tenfold relaxation of the former limit and may permit some increased number of observable, transient deterministic effects to the skin. This new limit would be approximately equivalent to the emission criterion of 75 μCi-hr that was used in the interim enforcement policy stated in IN 90–48. The worst case of 500 rem (5.0 Sv) to 1 square centimeter is estimated to result in a 50–percent chance of an observable but transient erythema, and a 15- to 20-percent chance of an observable break in the skin. NRC records include only one DRP dose that was calculated to exceed 500 rem (5.0 Sv), and no effects were observed in that case.

On the basis of extensive research performed at BNL and elsewhere, the NCRP stated in Report No. 130 that ''if (DRP) exposures are maintained below the recommended limits, few, if any, deterministic biological effects are expected to be observed, and those effects would be transient in nature. If effects from a hot-particle exposure are observed, the result is an easily treated medical condition involving an extraordinarily small stochastic (cancer) risk. Such occurrences would be indicative of the need for improvement in radiation protection practices, but should not be compared in seriousness to exceeding whole-body exposure limits.'' In other words, the NCRP concluded that skin dose from DRPs resulted in relatively insignificant health effects, and that it was more important to prevent whole body, external exposure that might cause cancer.

Reactor licensees currently monitor workers frequently during each work shift to prevent exceeding the interim 50 rem (0.5 Sv) reporting threshold for doses from DRPs. The industry estimates that up to 5 person-rem (0.05 person-Sv) of whole-body dose per outage could be attributed to this monitoring. Workers are brought out of the workplace to be monitored, thereby incurring nonproductive exit-entry doses, or technicians enter the restricted area to monitor workers for DRPs. The new, less restrictive skin dose limit will eliminate the need to perform this DRP monitoring during work shifts for all but the highest activity DRPs, [1] especially those having a high gamma component. The NRC believes that the possibility of some additional number of observable, transient deterministic effects, such as a small break in the skin, is justified by the reduction of the whole-body dose and stochastic risks associated with monitoring for DRPs.

NRC's Radiation Exposure Information Reporting System (REIRS) database includes reports of nearly 15,000 individual DRP doses since 1990. Fewer than 10 have exceeded the current 50-rem (0.5-Sv) reporting limit. It is unlikely that this revision of the skin dose limit will result in any large increase in the number of DRP doses. The as-low-as-is-reasonably-achievable (ALARA) principle will continue to apply to any occupational doses, so the revised skin dose limit should not permit a large number of high DRP doses. It would be unacceptable for a licensee to permit large numbers of high DRP exposures on a continuing basis without attempting some mitigating procedures or engineering controls.

The Commission believes that the less restrictive limit on dose to small areas of skin might permit more observable, transient, deterministic effects, but nontheless represents a substantial increase in worker protection because reduced use of protective clothing will result in a less hazardous workplace and less frequent monitoring for DRP contamination will result in reduced whole-body occupational dose. This represents a shift in emphasis toward a risk-informed approach that would possibly permit more frequent deterministic effects in order to avoid the physical stress and whole-body doses associated with monitoring workers and the use of protective measures. All of the public comments received on the proposed rule supported this tradeoff.

[1] For example, one recent event at a nuclear power plant involved a ^{60}Co DRP with an activity of about 75 mCi. The DDE estimated from this particle (had it been on the skin) was calculated to be about 10 rem/hr per mCi. For particles in this activity range, the DDE limit of 5 rem per year can be exceeded in less than 1 minute, and the new skin dose limit could be exceeded in even less time.

IV. Enforcement

On July 31, 1990 (55 FR 31113), the Commission published a policy statement entitled ''Hot Particle Enforcement Policy,'' presenting criteria for enforcement discretion in cases that involve occupational skin dose due to radiation exposure from a hot particle. This policy was intended to be applicable until 10 CFR part 20 was revised to include new limits applicable to these cases. Given that 10 CFR part 20 is being revised, on the effective date of this rule, this policy will no longer be in effect.

V. Issue of Compatibility for Agreement States

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' which became effective on September 3, 1997 (62 FR 46517), NRC program elements, including regulations, are assigned compatibility categories. In addition, NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC.

Compatibility Category A includes those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis.

Compatibility Category B includes those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner.

Compatibility Category C includes those program elements that do not meet the criteria of Category A or B but represent essential objectives that an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements.

Compatibility Category D includes those program elements that do not meet any of the criteria of Category A, B, or C above and, thus, do not need to

be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) includes program elements that are not required for compatibility (i.e., Category D), but that have been identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this category that embody the essential objectives of the NRC program elements because of particular health and safety considerations.

Compatibility Category NRC includes those program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the Atomic Energy Act (AEA) or provisions of Title 10 of the *Code of Federal Regulations.* These program elements should not be adopted by Agreement States.

The modifications to §§ 20.1003 and 20.1201, which contain definitions and basic radiation protection standards that are necessary to understand radiation protection concepts, are designated as compatibility Category A. Therefore, the Agreement State program element should be essentially identical to the NRC's in order to ensure uniformity in skin dose determinations on a nationwide basis.

The proposed amendments and compatibility determinations were provided to the States for review and comment. No comments were received objecting to the new rule or the compatibility determinations.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is amending its definition of SDE. This action does not constitute the establishment of a standard that contains generally applicable requirements. The NRC is, however, adopting the recommendations of the NCRP regarding acceptable limits on radiation dose to the skin of occupationally exposed workers.

VII. Environmental Assessment: Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this amendment is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

An environmental assessment has determined that the amendment addresses technical and procedural improvements in the provisions for measuring or calculating the dose to the skin for comparison to the skin dose limit for the whole body or for the extremities. None of the impacts associated with this rulemaking have any effect on any places or entities outside of a licensed site. This rulemaking is expected to decrease the need for use of protective equipment by nuclear power plant workers and others who are potentially exposed to skin contamination. No changes are expected in existing licensee programs and procedures designed to mitigate the production and spread of DRPs in the workplace and to prevent the unauthorized release of radioactive materials off site. It is expected that there will be no change in radiation dose to any member of the public as a result of the revised regulation. The amendment is expected to result in a reduction in external occupational dose to workers onsite. The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. The NRC requested public comments and the views of the States on the environmental assessment for this rule. No comments were received that addressed changes to the environmental assessment.

The environmental assessment is available for inspection in the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

VIII. Paperwork Reduction Act Statement

This final rule decreases the burden on licensees reporting under § 20.2202(b)(iii) on discrete radioactive particles and other small area skin overexposures. The burden reduction for this information collection is estimated to average 40 hours per report. Fewer than 10 reports have been received by the NRC over the past 12 years. Licensees must also revise policies and procedures for measuring discrete radioactive particles. The burden for these revisions is estimated to average .5 hours per power reactor licensee. Because the burden for these information collection changes is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

IX. Regulatory Analysis

The NRC has prepared a regulatory analysis for this amendment. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The anticipated impact of the changes will not be significant because the revised regulation essentially represents a continuation of current practice. The benefits of the rule are that it permits averaging doses to the skin over the most highly exposed 10 square centimeters, incorporates an NCRP recommendation for a less-restrictive skin dose limiting procedure, and permits reduced use of protective equipment known to expose workers to workplace stresses and unnecessary whole-body radiation dose.

XI. Backfit Analysis

Although the NRC has concluded that this amendment constitutes a reduction in unnecessary regulatory burden, the implementation of these changes will require revisions to licensee procedures, thereby constituting a potential backfit under 10 CFR 50.109(a)(1). Under § 50.109(a)(2), a backfit analysis is required unless the rule meets one of the exceptions listed in § 50.109(a)(4). This rule meets the exception at § 50.109(a)(4)(iii) in that it redefines the level of adequate protection embodied in the occupational dose limit for doses to the skin of the whole body and to the skin of the extremities. In addition, implementation of this rule is expected to increase industrial safety for workers substantially.

Section III, Summary and Discussion of the Changes, discusses the changes to the definition of SDE and the provision for averaging SDE over the most highly exposed 10 square centimeters. This

change raises the skin dose limit for DRPs on or near the skin and for small-area (< 1.0 square centimeter) contaminations. This change makes it possible for licensees to measure or calculate skin doses for comparison to the 50-rem (0.5–Sv) limit that, when averaged over 10 square centimeters, result in dose values that more appropriately reflect the risk associated with small area exposures according to the NCRP. The increased limit in the case of DRPs will eliminate the need to frequently monitor workers for DRP contamination during work shifts for all but the highest activity DRPs, especially those having a high gamma component. This reduced monitoring will eliminate most of the whole-body dose and stochastic risk associated with monitoring to avoid exceeding the former, more restrictive skin dose limit. In addition, the relaxed skin dose limit, based on NCRP recommendations, should clarify that the consequences of transient skin contamination are less significant than the radiological and nonradiological risks that workers incur as a result of licensees' efforts to avoid skin contamination. The overly conservative use of multiple layers of protective clothing and other devices worn to prevent skin contamination cause exposure to nonradiological hazards such as heat stress, as well as a reduction in worker efficiency estimated by industry to be as much as 15 to 25 percent, which, in turn, increases whole-body dose. With the new rule licensees will be able to choose to use less protective gear at the cost of more frequent skin contamination, but with the benefit of less physical stress and reduced whole-body dose to workers.

The 1991 Federal Register Notice of final rulemaking on 10 CFR Part 20 (56 FR 23360; May 21, 1991) made it clear that the skin dose limit would be addressed in subsequent rulemaking. The Commission also said that even had the 1991 changes, primarily to dose limits, not contributed to substantial increase in occupational health and safety, such changes would also amount to a redefinition of the level of adequate protection. This change in the skin and extremity dose limit will reduce worker exposure to external dose and the associated cancer risks, and reduce worker exposure to non-radiological hazards imposed by use of overly conservative protective equipment.

In conclusion, the Commission believes that this rule change constitutes a reduction in unnecessary regulatory burden, redefines the level of adequate protection, and should substantially increase worker safety. The changes, therefore, do not require a backfit analysis under § 50.109(a)(4)(iii).

XII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recording requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1003 the definition of *Shallow-dose equivalent* (H_s is revised to read as follows:

§ 20.1003 Definitions

* * * * *

Shallow-dose equivalent (H_s), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2).

* * * * *

3. In § 20.1201 the introductory text of paragraph (a)(2), and paragraphs (a)(2)(ii) and (c), are revised to read as follows:

§ 20.1201 Occupational Dose Limits for Adults

(a) * * *

(2) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities, which are:

* * * * *

(ii) A shallow-dose equivalent of 50 rem (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

* * * * *

(c) The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, lens-dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

* * * * *

Dated at Rockville, Maryland, this 1st day of April, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–8246 Filed 4–4–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 330, 331, 341, 346, 355, 358, 369, and 701

[Docket Nos. 98N–0337, 96N–0420, 95N–0259, and 90P–0201]

RIN 0910–AA79

Over-the-Counter Human Drugs; Labeling Requirements; Partial Delay of Compliance Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; partial delay of compliance dates.

SUMMARY: The Food and Drug Administration (FDA) is providing a partial delay of the compliance dates for certain products subject to its final rule that established standardized format and content requirements for the labeling of over-the-counter (OTC) drug products (Drug Facts Rule). That final rule requires all OTC drug products to comply with new format and labeling requirements within prescribed implementation periods. The agency intends in a future issue of the **Federal Register** to propose an amendment to the Drug Facts Rule to modify the labeling requirements for ''convenience-size'' OTC drug products. This final rule

postpones the compliance dates under the Drug Facts Rule for certain convenience-size OTC drug products pending the outcome of the future rulemaking.

DATES:

Effective Date: This rule is effective May 6, 2002.

Compliance Dates: For compliance dates, see section II of the **SUPPLEMENTARY INFORMATION** section of this document. Submit written comments by July 5, 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: Gerald M. Rachanow or Cazemiro R. Martin, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA published a final rule establishing standardized format and standardized content requirements for the labeling of OTC drug products (Drug Facts Rule). Those requirements are codified in § 201.66 (21 CFR 201.66).

Section 201.66(a) states that the content and format requirements in § 201.66 apply to the labeling of all OTC drug products. This includes products marketed under a final OTC drug monograph, products marketed under an approved new drug application (NDA) or abbreviated new drug application (ANDA) under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), and products for which there is no final OTC drug monograph or approved NDA/ANDA.

In the Drug Facts Rule and in subsequent notices, the agency provided different dates by which OTC drug products had to comply with the new requirements. These dates varied according to the regulatory status of the products (64 FR 13254 at 13273 and 13274).

A. The Original Compliance Dates in the Drug Facts Rule

1. Products in the OTC Drug Review

When the Drug Facts Rule was issued on March 17, 1999, products marketed under final OTC drug monographs were required to comply with the final rule by April 16, 2001. Products for which a final monograph became effective on or after April 16, 1999, had to comply as of: (1) The applicable implementation date for that final monograph; (2) the next major revision to any part of the label or labeling after April 16, 2001; or (3) April 18, 2005, whichever occurred first.

Combination drug products in which all of the active ingredients were the subject of a final monograph or monographs had to comply with the Drug Facts Rule as of April 16, 2001. Combination products in which one or more active ingredients were the subject of a final monograph, and one or more ingredients were still under review as of the effective date of the final rule, had to comply as of the implementation date for the last applicable final monograph for the combination, or as of April 16, 2001, whichever occurred first. Combination products in which none of the active ingredients was the subject of a final monograph or monographs as of the effective date of the Drug Facts Rule had to comply as of: (1) The implementation date of the last applicable final monograph for the combination; (2) the next major revision to any part of the label or labeling after April 16, 2001; or (3) April 18, 2005, whichever occurred first.

2. Products Marketed Under NDAs and ANDAs

Products that were the subject of an approved drug application (NDA or ANDA) that was approved before April 16, 1999, had to comply with the Drug Facts Rule as of April 16, 2001. Products that became the subject of an approved NDA or ANDA on or after April 16, 1999, were required to comply with the Drug Facts Rule at the time of approval (64 FR 13254 at 13273).

3. Additional Provisions

In addition, any OTC drug product not described in sections I.A.1 and I.A.2 of this document had to comply with the final rule as of: (1) The next major revision to any part of the label or labeling after April 16, 2001; or (2) April 18, 2005, whichever occurred first.

Products (including combinations) marketed under a final OTC drug monograph or monographs, or under an NDA or ANDA, with annual sales of less than $25,000 had to comply with the Drug Facts Rule as of April 16, 2002. This extra time was intended to provide marketed products with a low level of distribution 1 additional year to comply with the Drug Facts Rule.

The agency provided a chart that summarized the time periods within which the various categories of marketed OTC drug products were required to comply with the Drug Facts Rule (64 FR 13254 at 13274). Unless otherwise stated, all time periods in the chart began on the effective date of the Drug Facts Rule.

B. Correction Notice

In the **Federal Register** of April 15, 1999 (64 FR 18571), the agency published a correction to the Drug Facts Rule and changed its effective date from April 16, 1999, to May 16, 1999. While the agency did not explicitly discuss the implementation plan and compliance dates for the final rule (or the chart at 64 FR 13274), the correction had the effect of changing the compliance dates for the final rule as follows: (1) The April 16, 1999, compliance date became May 16, 1999; (2) the April 16, 2001, compliance date became May 16, 2001; (3) the April 16, 2002, compliance date became May 16, 2002; and (4) the April 18, 2005, compliance date became May 16, 2005.

C. Extension of Compliance Dates

1. Citizen Petitions Requesting Additional Implementation Time

Following publication of the Drug Facts Rule and the April 15, 1999, correction, the Consumer Healthcare Products Association (CHPA) and the Cosmetic, Toiletry, and Fragrance Association (CTFA) submitted citizen petitions (Refs. 1 and 2) requesting a 2-year extension of time for compliance with the Drug Facts Rule. Both associations requested an extension of the May 16, 2001, compliance date to May 16, 2003, and the May 16, 2002, compliance date to May 16, 2004. They also urged FDA to modify the labeling requirements of the Drug Facts Rule for single-use and convenience-size packages, and the petitions requested a categorical exemption for small packages. Neither requested a change to the May 16, 2005, compliance date. CHPA also requested that FDA stay the final rule for those products that had to comply with the Drug Facts Rule immediately.

The agency answered these citizen petitions on February 4, 2000 (Refs. 3 and 4) and denied the petitioner's request for a 2-year extension of the final rule. However, the agency concluded that a 1-year delay of the May 16, 2001, compliance date to May 16, 2002 (and a corresponding delay of the May 16, 2002, compliance date for products with annual sales of less than $25,000 to May 16, 2003) was justified.

2. Notice of Delay of Compliance

In the **Federal Register** of June 20, 2000 (65 FR 38191), the agency published a final rule providing a partial extension of the compliance dates for the Drug Facts Rule, per the February 4, 2000, responses to the citizen petitions. In this final rule, the agency also restated the implementation chart that appeared in the Drug Facts Rule (64 FR 13254 at 13274), and updated it to show the new compliance dates (65 FR 38191 at 38193). In addition, the agency amended language in the chart to clarify the applicable compliance dates when relabeling was required by another rule in addition to the Drug Facts Rule. Finally, the Drug Facts Rule also required labeling revisions in 21 CFR parts 201, 330, 331, 341, 346, 355, 358, 369, and 701 (64 FR 13254 at 13291, 13292, and 13294 to 13297). The June 20, 2000, final rule delayed the May 16, 2001, and May 16, 2002, compliance dates for those revisions for 1 additional year, respectively.

II. Single-Use and Convenience-Size Packages

After FDA published its delay of compliance dates, CHPA requested a meeting to discuss class exemptions for OTC drug convenience-sizes in selected OTC categories, and it proposed several definitions of ''convenience-size'' (Ref. 5). The agency responded in a subsequent letter (Ref. 6) that CHPA's proposed definitions of ''convenience-size'' were so broad as to preclude a meaningful discussion. The agency explained that CHPA's proposed definitions of ''convenience-size'' could include many widely-used products that generally have not been (and are not) regarded as ''convenience-sizes'' (for example, packages containing 12 tablets or 4 ounces of cough/cold products, and 1-ounce tubes of topical antifungal drug products). The agency noted that adoption of an overly broad definition for ''convenience-size,'' with allowance for significant deviations from the general requirements of the rule, could circumvent the intent of the Drug Facts Rule and potentially undermine the interest of the public health and safety. The agency added that, under § 201.66(d)(10), the Drug Facts Rule already provides some flexibility in the labeling of small packages.

Thereafter, Lil' Drug Store Products, Inc., (Lil') submitted a citizen petition (Ref. 7) asking FDA to define ''convenience-size'' OTC drug products and to modify the labeling and content requirements of the Drug Facts Rule with respect to such products. Lil' proposed that ''convenience-size'' OTC drug products be defined as packages sold to the public that contain one or two doses of an OTC drug product. Lil' also proposed that ''dose'' be defined as a manufacturer's recommended serving. In addition, Lil' requested that FDA modify the requirements of § 201.66 for ''convenience-size'' OTC drug products by permitting a reduced version of OTC Drug Facts labeling to appear on the external packaging of such products, while requiring fully compliant Drug Facts labeling on the inside of the package through the use of package inserts or inner-package printing. Lil' stated that the labeling on the external packaging would: (1) Still include medically relevant information, (2) remain consistent with the retail environment in which ''convenience-size'' OTC drug products are sold, and (3) still adequately enable consumers to make the unique purchasing decision associated with their use. Lil' described its ''convenience-size'' products as recognized, brand-name, quality OTC drug products packaged in small doses and made available to the consumer at his or her point of need. Lil' also stated that these products are a low cost (they typically retail for less than $.99) alternative to traditional multidose OTC drug packages, and they are mostly marketed in convenience stores that primarily sell products with efficient-size packaging and significant brand loyalty and awareness.

In its response (Ref. 8) to the Lil' citizen petition, FDA stated that it had carefully reviewed the data and information in the petition and agreed that some accommodation for these ''convenience-size'' packages might be appropriate. However, FDA determined that additional comments from other interested persons should be considered before making a final decision, because a number of other manufacturers, repackers, and distributors would be affected by a change to the Drug Facts Rule and would likely want to comment on any proposed FDA course of action.

FDA therefore stated that it intended to prepare, for publication in a future issue of the **Federal Register**, a proposed rule that would, if finalized, amend the Drug Facts Rule by defining ''convenience-size'' OTC drug packages and addressing Drug Facts labeling requirements for such products. The proposed rule would also provide all interested parties an opportunity to comment on the viability, desirability, and impact of the proposed rule, and to respond to specific questions posed by the agency.

Accordingly, at this time, FDA is announcing a partial delay of the compliance dates for the Drug Facts Rule in § 201.66 for all OTC drug products that: (1) Contain no more than two doses of an OTC drug; and (2) because of their limited available labeling space, would require more than 60 percent of the total surface area available to bear labeling to meet the requirements set forth in § 201.66(d)(1) to (d)(9) and therefore qualify for the labeling modifications currently set forth in § 201.66(d)(10). For purposes of this notice, ''dose'' is defined as the maximum single serving for an adult (or a child for products marketed only for children) as specified in the product's directions for use. FDA is aware that the scope of this delay may extend to some products that are also currently marketed as ''sample'' or ''trial'' sizes. FDA is amending the June 20, 2000, implementation chart to add a footnote number ''1'' next to the header ''Time Periods,'' which reads as follows:

TABLE 1.—RESTATED IMPLEMENTATION CHART

Products	Time Periods[1]
Single entity and combination products subject to drug marketing applications approved before May 16, 1999.	By May 16, 2002 (or by May 16, 2003, if annual sales of the product are less than $25,000).
Single entity and combination products subject to drug marketing applications approved on or after May 16, 1999.	Immediately upon approval of the application.
Single entity products subject to an OTC drug monograph finalized before May 16, 1999.	By May 16, 2002 (or by May 16, 2003, if annual sales of the product are less than $25,000).
Single entity products subject to an OTC drug monograph finalized on or after May 16, 1999.	Within the period specified in the final monograph. However, if a monograph has not been finalized as of May 16, 2002, then the product must comply as of the first major labeling revision after May 16, 2002, or by May 16, 2005, whichever occurs first.

TABLE 1.—RESTATED IMPLEMENTATION CHART—Continued

Products	Time Periods[1]
Combination products subject to an OTC drug monograph or monographs in which all applicable monographs were finalized before May 16, 1999.	By May 16, 2002 (or by May 16, 2003, if annual sales of the product are less than $25,000).
Combination products subject to an OTC drug monograph or monographs in which at least one applicable monograph was finalized before May 16, 1999, and at least one applicable monograph is finalized on or after May 16, 1999.	Within the period specified in the last applicable monograph to be finalized, or by May 16, 2002 (or by May 16, 2003, if annual sales of the product are less than $25,000), whichever occurs first, unless the last applicable monograph to be finalized specifies a later date.
Combination products subject to an OTC drug monograph or monographs in which all applicable monographs are finalized on or after May 16, 1999.	Within the period specified in the last applicable monograph to be finalized. However, if the last monograph is not finalized as of May 16, 2002, then the product must comply as of the first major labeling revision after May 16, 2002, or by May 16, 2005, whichever occurs first.
All other single entity and combination OTC drug products (e.g., products in the OTC drug review that are not yet the subject of proposed OTC drug monographs).	If a monograph has not been finalized as of May 16, 2002, then the product must comply as of the first major labeling revision after May 16, 2002, or by May 16, 2005, whichever occurs first.

[1] Time delayed until further notice for OTC drug products that contain no more than two doses of an OTC drug product and, because of their limited total surface area available to bear labeling, qualify for the labeling modifications set forth in § 201.66(d)(10).

FDA based the scope of this delay on Lil's petition, which defined ''convenience-size'' as a product containing one or two doses of an OTC drug. Since the petition did not explicitly address the issue of package size, FDA decided to adopt the threshold set forth in § 201.66(d)(10), because it is the one section of the current Drug Facts Rule that differentiates OTC drug packages based on size. The agency believes that the scope of this delay reflects the current marketplace in that the delay includes most, if not all, OTC drug products that are currently sold as ''convenience-size.''

The delay in the compliance dates for the OTC drug packages described in this notice will remain in effect until a final rule issues with respect to the labeling of such OTC drug products or until such time as the agency issues further notice. In either case, the delay enables manufacturers of the packages described in this notice to continue marketing those products in their present labeling formats pending resolution of this issue. The labeling of such packages still needs to comply with the act and all other applicable regulatory requirements. Notwithstanding this delay in compliance dates, manufacturers who wish to do so may still relabel the affected products in the Drug Facts format, particularly when existing labeling is exhausted and relabeling would occur in the normal course of business, using any of the alternative design techniques described in the final rule (64 FR 13254 at 13268).

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. The agency is delaying the compliance date of § 201.66 for products that meet the specific criteria described in this notice because the agency intends to publish a proposal to amend § 201.66 by defining ''convenience-size'' drug packages and addressing Drug Facts labeling requirements for such packages. There will be an opportunity to comment on the new compliance date for such products within the proposed amendment to § 201.66. In addition, given the imminence of the current compliance dates, seeking prior public comment on this delay is contrary to the public interest in the orderly issuance and implementation of regulations. Notice and comment procedures in this instance would create uncertainty, confusion, and undue financial hardship because, during the time that the agency would be proposing to extend the compliance date for § 201.66, those companies affected would have to be preparing to relabel to comply with the May 16, 2002, compliance date. In accordance with 21 CFR 10.40(e)(1), FDA is also providing an opportunity for comment on whether this delay should be modified or revoked.

III. Analysis of Impacts

The economic impact of the Drug Facts Rule was discussed in the final rule (64 FR 13254 at 13276 to 13285). This partial delay of the compliance dates provides additional time for companies to relabel certain products to comply with the final rule. CHPA, in its request for a meeting (Ref. 5), stated that ''convenience-sizes'' represent less than 1 percent of the retail market. The partial delay for the products described in this notice will also reduce label obsolescence as companies will have additional time to use up more existing labeling. Thus, delaying the compliance dates for implementation for these specific products will significantly reduce the economic impact of the final rule on manufacturers of these products.

FDA has examined the impacts of this final rule (partial delay of the compliance dates) under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. This final rule is not a significant regulatory action as defined

by the Executive order and so is not subject to review under the Executive order. As discussed in this section, FDA has determined that this final rule will 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 this final rule because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to provide a partial delay of the compliance dates by which manufacturers need to relabel their ''convenience-size'' products, as defined in this final rule. Accordingly, under the Regulatory Flexibility Act, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

IV. The Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

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

VI. Federalism

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

VII. References

The following references are 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. Comment No. CP2, Docket No. 98N–0337.

2. Comment No. CP1, Docket No. 99P–4617.

3. Letter from W. K. Hubbard, FDA, to B. N. Kuhlik and M. S. Labson, Covington & Burling, coded PAV2, Docket No. 98N–0337.

4. Letter from W. K. Hubbard, FDA, to E. E. Kavanaugh, CTFA, coded PAV1, Docket No. 99P–4617.

5. Letter from R. W. Soller, CHPA, to C. Ganley, FDA, dated October 3, 2000, Docket No. 98N–0337.

6. Letter from C. Ganley, FDA, to R. W. Soller, CHPA, dated December 22, 2000, Docket No. 98N–0337.

7. Comment No. CP1, Docket No. 01P–0207.

8. Letter from S. Galson, FDA, to J. M. Nikrant, Lil' Drug Store Products, Inc., coded LET 1, Docket No. 01P–0207.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this final rule by July 5, 2002. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers 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.

This final rule (partial delay of compliance dates) is issued under sections 201, 501, 502, 503, 505, 510, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, and 371) and under authority of the Commissioner of Food and Drugs.

Dated: March 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8193 Filed 4–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Addition of Persons to Appendix A to 31 CFR Chapter V

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V to add the names of two organizations designated as persons whose property and interests in property have been blocked under the authority of the Secretary of the Treasury pursuant to Section 1(a)(ii) of Executive Order 13219 of June 26, 2001.

EFFECTIVE DATE: April 2, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

Appendix A to 31 CFR chapter V lists the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers with respect to whom transactions are subject to the various economic sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (''OFAC'').

On June 26, 2001, President Bush issued Executive Order 13219 (66 FR 34777, June 29, 2001), imposing economic sanctions on persons who threaten international stabilization efforts in the Western Balkans region. In an annex to the order, President Bush identified twenty-three individuals and five organizations with respect to which transactions are subject to those sanctions. Those individuals and organizations have already been incorporated into appendix A as blocked persons identified by the term ''[Balkans]'' (66 FR 57371, November 15, 2001).

On November 28, 2001, the Albanian National Army (ANA) (a.k.a. AKSH) and the National Committee for the

Liberation and Protection of Albanian Lands (KKCMTSH), were determined by the Director of OFAC, under the delegated authority of the Secretary of the Treasury, to meet the criteria set forth under Section 1(a)(ii) of Executive Order 13219 for persons with respect to which transactions are subject to the economic sanctions set out under the Order. All property and interests in property, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, that are owned or controlled by these organizations are with limited exceptions blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. This blocking includes, but is not limited to, the prohibition of the making or receiving by a United States person of any contribution or provision of funds, goods, or services to or for the benefit of these organizations.

Designations of these organizations blocked pursuant to the Order are effective upon the date of determination by the Director of OFAC. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Because this rule involves a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301, 50 U.S.C. 1601–1651, 50 U.S.C. 1701–1706, and E.O. 13219 of June 26, 2001, the appendices to 31 CFR chapter V are amended as set forth below:

Appendices to Chapter V

Appendix A—[Amended]

1. Appendix A to 31 CFR chapter V is amended by adding the following names of organizations inserted in alphabetical order:

AKSH (see ALBANIAN NATIONAL ARMY) [BALKANS]
ALBANIAN NATIONAL ARMY (a.k.a. ANA; a.k.a. AKSH) [BALKANS]
ANA (see ALBANIAN NATIONAL ARMY) [BALKANS]
KKCMTSH (see NATIONAL COMMITTEE FOR THE LIBERATION AND PROTECTION OF ALBANIAN LANDS) [BALKANS]
NATIONAL COMMITTEE FOR THE LIBERATION AND PROTECTION OF ALBANIAN LANDS (a.k.a. KKCMTSH) [BALKANS]

Dated: January 2, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 31, 2002.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–8358 Filed 4–2–02; 4:29 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL11

Board of Veterans' Appeals Rules of Practice: Claim for Death Benefits by Survivor

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Rules of Practice at the Board of Veterans' Appeals (Board) to clarify that the general rule that the Board is not bound by prior dispositions during the veteran's lifetime of issues involved in the survivor's claim does not apply to claims for ''enhanced'' Dependency and Indemnity Compensation (DIC). This amendment is necessary to eliminate confusion between the Board's current rule and another rule relating to DIC for survivors of certain veterans rated totally disabled at the time of death.

DATES: Effective Date: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans benefits.

In a document published in the **Federal Register** on December 21, 2001 (66 FR 65861), VA proposed to amend the Board's practice rule concerning claims for death benefits by survivors of veterans. The Board's rule states that, with certain exceptions, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime. We proposed to add an exception to clarify that this rule does not apply to claims for ''enhanced'' DIC under 38 U.S.C. 1311(a)(2).

This amendment is necessary to comply with the order of the United States Court of Appeals for the Federal Circuit in *National Organization of Veterans' Advocates, Inc.* v. *Secretary of Veterans Affairs*, 260 F.3d 1365 (Fed. Cir. 2001) (*NOVA*). In the case, the court noted that § 20.1106 was apparently inconsistent with another VA regulation, 38 CFR 3.22. The court ordered VA to issue regulations to either remove or explain the apparent inconsistency.

The public comment period ended on January 22, 2002. We received comments from three veterans service organizations. Two commenters submitted comments concerning both the proposed rule and a final rule published in the **Federal Register** of January 21, 2000 (65 FR 3388), revising the VA adjudication regulation at 38 CFR 3.22. Although any revision of § 3.22 would be beyond the scope of the proposed rule, we will address the comments concerning § 3.22 in this notice because the interpretation stated in § 3.22 is closely related to the proposed rule, as indicated in our December 2001 notice of proposed rule making (NPRM) and the Federal Circuit's *NOVA* decision.

Based on the rationale set forth in the proposed rule and in this document, we adopt the provisions of the proposed rule as a final rule.

Consistent Interpretation of 38 U.S.C. 1318(b) and 1311(a)(2)

In the *NOVA* decision, the Federal Circuit concluded that 38 CFR 3.22 and 38 CFR 20.1106 stated apparently inconsistent interpretations of virtually identical statutes codified at 38 U.S.C. 1318(b) and 38 U.S.C. 1311(a)(2), respectively. Both statutes authorize payment of certain DIC benefits to survivors of veterans who were, at the time of death ''entitled to receive'' disability compensation for a service-connected disability that was rated totally disabling for a specified number of years immediately preceding death. The court concluded that § 3.22 interprets 38 U.S.C. 1318(b) as providing that the question of whether the veteran was ''entitled to receive'' such benefits would be governed by VA decisions during the veteran's lifetime, except where such decisions are found to contain a clear and unmistakable error (CUE). The court concluded that § 20.1106 interprets 38 U.S.C. 1311(a)(2), as requiring VA to disregard all decisions during the veteran's lifetime. The court directed VA to conduct rulemaking to either revise one

of its regulations to harmonize its interpretation of the statutes or to explain the basis for the apparent inconsistency in its interpretation of those statutes.

One commenter asserts that VA has failed to explain why the current regulations, as construed by the court, are not correct, and has failed to explain why it is necessary to revise § 20.1106. This comment appears to suggest that VA should retain its current regulations despite the apparent inconsistency identified in the *NOVA* case. VA does not agree. As stated in our December 2001 NPRM, we believe that 38 U.S.C. 1318(b) and 1311(a)(2) must be construed in the same manner. As the Federal Circuit noted in *NOVA*, both statutes contain ''virtually identical language.'' The court further stated that it is a well-established rule of statutory construction that identical language in different parts of a statute is intended to have the same meaning, and that ''[t]hat rule applies with equal force where, as here, the words at issue are used in two different sections of a complex statutory scheme and those two sections serve the same purpose, namely, the award of DIC benefits to survivors.'' Further, as stated in our December 21, 2001 NPRM, the legislative history of section 1311(a)(2) makes clear that it was modeled on section 1318(b) and intended to have the same meaning. VA finds no basis for departing from the usual rule that identical statutory language must be given the same meaning. Accordingly, we make no change based on this comment.

Two of the commenters submitted comments concerning both the proposed rule and VA's January 2000 final rule amending 38 CFR 3.22. Because we have concluded that the governing statutes should be interpreted consistently, and because the commenters present the same comments with respect to both the December 2001 proposed rule and the January 2000 final rule, our response to each comment applies to both § 20.1106 and § 3.22, except as otherwise indicated below.

Effect of the NOVA Decision and the Chenery Doctrine on the Validity of 38 CFR 3.22

One commenter asserts that § 3.22 must be revised because the basis for that rule was held to be invalid by the Federal Circuit in the *NOVA* case. In *NOVA*, the Federal Circuit concluded that the language of 38 U.S.C. 1318 was ambiguous as to whether DIC could be awarded where a veteran was ''hypothetically'' entitled to total disability compensation for ten or more years preceding death even though the veteran could not have been actually entitled to such benefits. The commenter asserts that § 3.22 is based solely on a conclusion by VA that the language of 38 U.S.C. 1318 unambiguously prohibits DIC entitlement in such cases. Relying on the principle in *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U.S. 80 (1943), that an agency action may be upheld solely on the basis stated by the agency, the commenter argues that § 3.22 is rendered invalid by the Federal Circuit's conclusion that 38 U.S.C. 1318(b) is ambiguous.

VA does not agree with this characterization of the basis for § 3.22. The January 2000 final rule notice did not conclude that the language of 38 U.S.C. 1318 unambiguously precludes DIC based on a veteran's ''hypothetical'' entitlement to the underlying benefits. Rather, we stated that the statute was ''most reasonably interpreted'' as prohibiting DIC on that basis. Our conclusion was based on an analysis of the language and legislative history of the statute and the broader context of related provisions of title 38, United States Code, rather than upon a conclusion that the statutory language alone compelled this result.

The statute authorizes payment of DIC in two circumstances: (1) Where a veteran was ''in receipt of'' compensation at the time of death for a service-connected disability that was rated totally disabling for ten years immediately preceding death or for five years from date of discharge to date of death, or (2) where the veteran was ''entitled to receive'' compensation at the time of death for such disability. In its January 2000 rule, VA concluded that the statute was unambiguous only with respect to the first of these bases. We stated that ''[t]he phrase 'in receipt of * * * compensation' unambiguously refers to cases where the veteran was, at the time of death, actually receiving compensation for service-connected disability rated totally disabling for the required period.'' 65 FR 3389.

With respect to the second basis of DIC entitlement under 38 U.S.C. 1318(b), we did not conclude that the statutory language was unambiguous. Instead, we merely stated that ''VA has concluded that the phrase ''entitled to receive * * * compensation'' is most reasonably interpreted as referring to cases where the veteran had established a legal right to receive compensation for the required period under the laws and regulations governing such entitlement, but was not actually receiving the compensation.'' 65 FR 3389. VA explained that this interpretation was based on analysis of the language and legislative history of 38 U.S.C. 1318(b) and the broader statutory context established by related provisions of title 38, United States Code. 65 FR 3389–91. Because our interpretation was not based on the premise that the language of 38 U.S.C. 1318(b) is unambiguous, our interpretation is not inconsistent with the NOVA decision.

VA further disagrees with the commenter's suggestion that the *Chenery* standard applies to interpretations such as that contained in § 3.22. In the *Chenery* case, the Supreme Court stated that ''a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.'' 332 U.S. at 196. This principle has been held inapplicable to interpretive rules ''because the question of interpretation of a federal statute is not 'a determination or judgment which an administrative agency alone is authorized to make.' '' *North Carolina Comm'n of Indian Affairs* v. *Secretary of Labor*, 725 F.2d 238, 240 (4th Cir.), *cert. denied*, 469 U.S. 828 (1984); *see also American Postal Workers Union, AFL–CIO* v. *United States Postal Serv.*, 707 F.2d 548, 561 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1100 (1984) (''In contrast to agency decisions made pursuant to adjudication and legislative rulemaking, interpretative rules may be sustained on grounds other than those assigned by the agency''). In the *NOVA* decision, the Federal Circuit concluded that § 3.22 is an interpretive rule ''which does no more than interpret the requirements of section 1318.'' 260 F.3d at 1377. Accordingly, the *Chenery* standard does not govern review of the interpretation in § 3.22.

Statutory Basis of Clear and Unmistakable Error Requirement

One commenter asserts that VA's interpretation of 38 U.S.C. 1318(b) and 1311(a)(2) is inconsistent with the language of those statutes. Section 1318(b) authorizes payment of DIC to the survivor of a veteran who, at the time of death was ''in receipt of or entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation at the time of death for a service-connected disability that either (1) was continuously rated totally disabling for a period of 10 or more years immediately preceding death; or (2) if so rated for a lesser period, was so rated continuously for a period of not less than 5 years from the date of such veteran's discharge or other release from

active duty.'' In similar fashion, section 1311(a)(2) provides that a person otherwise entitled to DIC may receive an additional monthly amount of DIC in cases where the veteran ''at the time of death was in receipt of or was entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death.''

VA has interpreted the phrase ''entitled to receive'' to refer to circumstances where a veteran had established a legal right to receive compensation for a service-connected disability rated totally disabling for the specified number of years prior to death, but for some reason was not actually receiving compensation at the time of death. In 38 CFR 3.22(b), we identified seven circumstances in which this requirement would be satisfied. In six of those circumstances, the veteran would have received a total disability rating from VA during his or her lifetime and the rating would have been in effect for the specified number of years prior to death, but the veteran would not have received payment for one of the reasons identified in § 3.22(b). The seventh circumstance is where the veteran did not have a total service-connected disability rating for the specified number of years during his or her lifetime, but would have held a total disability rating for such period if not for clear and unmistakable error (CUE) in a VA decision during the veteran's lifetime. 38 CFR 3.22(b)(3).

The commenter asserts that § 3.22 is invalid because the language of 38 U.S.C. 1318(b) ''does not limit the survivor to only a CUE theory of recovery as the VA announces in its rulemaking''. This comment mischaracterizes the interpretation stated in § 3.22, which clearly provides that CUE is not the only means of establishing entitlement to DIC. As stated above, § 3.22(b) identifies several methods other than a showing of CUE whereby a claimant may establish entitlement to DIC under 38 U.S.C. 1318, where the veteran was not receiving compensation during his or her lifetime.

The commenter further asserts that ''[u]nder the plain language of the statute, a survivor is given the opportunity to show that the veteran would have been entitled to receive a different decision on a claim made during the veteran's lifetime.'' We understand this comment to allege that the plain language of 38 U.S.C. 1318(b) entitles a survivor to a de novo determination of a veteran's entitlement to benefits, without regard to whether there was CUE in a decision denying service connection or denying a total disability rating during the veteran's lifetime. VA does not agree. As this commenter noted in another comment, the Federal Circuit in its *NOVA* decision concluded that the language of 38 U.S.C. 1318(b) is ambiguous as to whether Congress intended to authorize DIC in cases where VA lacked authority to pay benefits to the veteran during his or her lifetime but a survivor alleges that the veteran was ''hypothetically'' entitled to have received certain benefits. *NOVA*, 260 F.3d at 1377.

One commenter asserts that VA has failed to explain the meaning of the language of 38 U.S.C. 1318(b). Another commenter states that ''[t]he natural reading of § 1318(b) is that a survivor is given the opportunity to demonstrate—under any potential legal or factual theory of entitlement—that the deceased veteran was entitled to a total rating for the 10 year period before death.'' Although the scope of this commenter's proposed interpretation of 38 U.S.C. 1318(b) is not clear, we infer that the commenter is advocating the same interpretation alleged by the petitioners in the *NOVA* case. In that case, the petitioners alleged that it was irrelevant whether the veteran was actually entitled to receive benefits for the specified period preceding death under the statutes and regulations defining VA's authority to pay such benefits. Rather, the petitioners asserted that even if the veteran had never filed a claim for VA benefits or if VA had denied a total disability rating to the veteran, a survivor could receive DIC under 38 U.S.C. 1318(b) by showing that the veteran was ''hypothetically'' entitled to a total disability rating for ten or more years prior to death.

In its January 2000 final-rule notice and its December 2001 NPRM, VA explained the bases for its conclusion that 38 U.S.C. 1318(b) and 1311(a)(2) authorize DIC only if the veteran's entitlement to benefits was established by ratings during the veteran's lifetime or is established by a finding that there was CUE in a decision during the veteran's lifetime that prevented the veteran from receiving total disability compensation for the specified period. The commenter has identified no error in the explanation stated in those notices. One commenter asserts that VA's interpretation is incorrect for the reason that 38 U.S.C. 1318(b) and 1311(a)(2) do not contain the terms ''clear and unmistakable error.'' However, the fact that the statutes do not expressly enumerate each circumstance that would satisfy the statute's requirements does not preclude VA from identifying those circumstances in its regulations interpreting those statutes. It is obvious that 38 U.S.C. 1318(b) and 1311(a)(2) do not expressly refer to CUE or to any of the other bases identified by VA as circumstances where a veteran may be considered to have been ''entitled to receive'' compensation. Because the statutory language is ambiguous, VA has reviewed the relevant statutory context and the legislative history and concluded that the statutes are most reasonably construed to require that the veteran's entitlement to benefits have been established under the statutes and regulations specifying VA's authority to pay benefits to veterans for any period. The bases for this conclusion, already stated in our January 2000 final-rule notice and our December 2001 NPRM, are summarized below.

38 U.S.C. 1318(b) requires not only that the veteran have been ''entitled to receive'' compensation at the time of death, but that the veteran have been entitled to receive such compensation for ''a service connected disability that was rated totally disabling for a continuous period of ten or more years immediately preceding death.'' 38 U.S.C. 1311(a)(2) contains a similar requirement, but specifies a period of eight, rather than ten years immediately preceding death. The requirement that the disability have been continuously ''rated'' totally disabling for a specified number of years prior to death suggests that Congress intended to authorize DIC in cases where the veteran had established entitlement to a total disability rating for such period, as distinguished from cases where a veteran theoretically could have established entitlement to a total rating for such period but had not done so. If Congress intended to permit DIC in cases where the veteran had not obtained a total disability rating, there would have been no reason for Congress to require that the disability have been ''rated'' totally disabling for a ''continuous period'' of ten or more years immediately preceding death. Rather, Congress could have achieved that objective more clearly by omitting the term ''rated'' and thereby authorizing DIC whenever the veteran's disability is shown to have been totally disabling for a specified period, irrespective of whether it had been rated as such. Because every term of a statute must be presumed to have meaning and effect, we conclude that the term ''rated'' reflects Congress' intent to authorize DIC only in cases where a

total disability rating was in effect for the specified period during the veteran's lifetime.

The requirements that the veteran have been ''entitled to receive'' disability compensation at the time of death and that the disability have been continuously ''rated'' totally disabling for a specified period are most reasonably construed in the connection with the statutory provisions in title 38, United States Code, prescribing the circumstances under which a veteran may be entitled to receive total disability compensation for any period. Inasmuch as Congress has established numerous specific provisions governing VA's authority to award such benefits for any period, it would be anomalous if the terms ''entitled to receive'' and ''rated'' in 38 U.S.C. 1318(b) and 1311(a)(2) were construed to refer to entitlement and ratings established by some other unspecified means outside the established statutory scheme.

Generally, if a veteran had not established entitlement to a total disability rating for the specified period during his or her lifetime, VA would be precluded from awarding a retroactive total-disability rating for such period posthumously. This is because VA benefits generally may be awarded only prospectively from the date on which VA receives a claim for such benefits and because final VA decisions denying service connection or awarding less than a total disability rating are generally final and not subject to retroactive correction. *See* 38 U.S.C. 5110, 7104(b), 7105(c); 38 CFR 3.104, 3.105. Accordingly, if ratings during the veteran's lifetime did not establish the veteran's entitlement to a total disability rating for the specified period prior to death, the veteran generally could not have been ''entitled to receive'' compensation at the time of death for a disability that was continuously ''rated totally disabling'' for such period.

A limited exception to this general rule applies where it is shown that a clear and unmistakable error was committed in VA decisions on a veteran's claim. Where such error is established, VA may correct the error and, as a matter of law, the decision correcting the error ''has the same effect as if the decision had been made on the date of the prior decision.'' 38 U.S.C. 5109A(b); 7111(b); 38 CFR 3.105(a). Pursuant to these statutes, a posthumous decision correcting CUE and assigning a total disability rating for a retroactive period of ten or more years prior to a veteran's death has precisely ''the same effect'' as if a decision during the veteran's lifetime had awarded a total disability rating for that period. In such cases, the veteran must be deemed, as a matter of law, to have been ''entitled to receive'' compensation at the time of death for a disability that was continuously ''rated totally disabling'' for the specified period.

This analysis of 38 U.S.C. 1318(b) and 38 U.S.C. 1311(a)(2) in relation to the surrounding statutory context points strongly in favor of the conclusion that the statute authorizes DIC only if the veteran's entitlement to a total disability rating for the specified period had been established during the veteran's lifetime or is established by posthumous correction of CUE. We note that the Federal Circuit expressed reservations about certain aspects of this analysis. In a footnote in the *NOVA* case, the court stated that reliance on the statutory requirement that the disability have been ''rated'' totally disabling for a specified number of years prior to death would ''logically also preclude the filing of a claim based on clear and unmistakable error in the initial rating decision.'' *NOVA*, 260 F.3d at 1377 n.12. In our view, however, according significance to the term ''rated'' would not preclude DIC in cases involving posthumous correction of CUE. By statute, a total disability rating assigned in the context of correcting a CUE must have the same effect as if the corrected decision had been issued on the date of the prior decision. 38 U.S.C. 5109A(b), 7111(b). In such cases, a veteran's disability must be deemed as a matter of law to have been ''rated'' totally disabling for the pre-death period covered by the corrected decision. In contrast, where a veteran had never claimed compensation or where VA denied a total rating and CUE is not shown, there would be no legal authority for concluding that the veteran's disability was ''rated'' totally disabling for the specified number of years prior to death. Accordingly, sections 1318(b) and 1311(a)(2) may be viewed as authorizing DIC in such cases only if the term ''rated'' is found to have no meaning and effect in the statute. Our interpretation comports with the statutory scheme for awarding veterans' benefits and is consistent with the well-established rule that a statute must be construed so that none of its terms or phrases is rendered meaningless. *See United States* v. *Menasche*, 348 U.S. 528, 538–39 (1955).

This contextual analysis of the statutes finds strong support in the legislative history of 38 U.S.C. 1318(b). The phrase ''entitled to receive'' was added to 38 U.S.C. 1318(b) in response to an opinion by VA's General Counsel concluding that a prior version of that statute precluded DIC awards in cases where the veteran did not have a total disability rating for ten years immediately preceding death, even though the veteran would have held a total disability rating for that period if not for CUE committed by VA. In amending the statute, Congress explained that its intent was ''to provide that the requirement that the veteran have been in receipt of compensation for a service-connected disability rated as total for a period of 10 years prior to death (or for 5 years continuously from the date of discharge) is met if the veteran would have been in receipt of such compensation for such period but for a clear and unmistakable error regarding the award of a total disability rating.'' Explanatory Statement of Compromise Agreement, 128 Cong. Rec. H7777 (1982), reprinted in 1982 U.S.C.C.A.N. 3012, 3013. Similarly specific statements appear in reports of the House and Senate Veterans Affairs Committees, and nothing in the legislative history suggests any different scope or purpose for this statutory language. Thus, Congress clearly intended to authorize DIC in cases where retroactive correction of CUE results in assignment of a total disability rating for the specified period preceding the veteran's death.

By clearly stating its intent that DIC may be awarded if there was CUE in the prior final decision that prevented the veteran from receiving total disability compensation for the specified period, Congress necessarily indicated that the prior decisions would remain final and controlling in the absence of CUE. The detailed discussion of CUE in the legislative history would have been unnecessary and illogical if Congress had intended VA to ignore any final decisions during the veteran's lifetime. Accordingly, the legislative history discussing CUE cases comports with our contextual analysis of 38 U.S.C. 1318(b) and 1311(a)(2).

We note further that Congress's stated purpose for providing DIC in cases of certain non-service-connected deaths was to ensure a level of income to survivors in circumstances where totally-disabled veterans and their families had depended on VA disability compensation for support during the veteran's lifetime. Prior to 1978, DIC was payable only for service-connected deaths. In 1978, Congress enacted Public Law 95–479 to permit DIC in cases where the death was not service connected but the veteran, at the time of death, was in receipt of compensation for a service-connected disability that was rated totally disabling for a continuous period of ten or more years immediately preceding death. The

Senate Committee on Veterans' Affairs explained the purpose of this legislation as follows:

> The appropriate Federal obligation to these survivors should, in the Committee's view, be the replacement of the support lost when the veteran dies. For example, assume that a veteran who is totally blind from service-connected causes dies at the age of 55 from a heart attack, having been so disabled from the age of 22—a period of 33 years. During that period, his wife and he depended upon his disability compensation for income support, but, because his death is not service connected, she would not receive DIC.

S. Rep. No. 1054, 95th Cong., 2nd Sess. 28 (1978), reprinted in, 1978 U.S.C.C.A.N. 3465, 3486. As explained above, Congress amended the statute in 1982 to include CUE cases. The 1982 amendment does not significantly undermine the general purpose to replace the benefit payments lost when a totally-disabled veteran dies, but recognizes a limited exception based on the concern that ''the existence of a clear and unmistakable error should not defeat entitlement to the survivors' benefits.'' S. Rep. No. 550, 97th Cong., 2d Sess., 35 (1982), reprinted in 1982 U.S.C.C.A.N. 2877, 2898. In contrast, the interpretation suggested by the commenter would significantly undermine the statute's purpose by extending benefits to survivors of veterans who had never even applied for VA disability compensation or who had been denied total disability compensation under circumstances not involving CUE.

For the foregoing reasons and the reasons stated in our January 2000 final-rule notice and our December 2001 notice of proposed rule making, we conclude that analysis of the language and history of 38 U.S.C. 1318(b) and 1311(a)(2), and consideration of the pertinent statutory context in title 38, United States Code, clearly establish that those statutes authorize DIC in cases where the veteran's entitlement to total disability compensation for the specified number of years prior to death was established by ratings during the veteran's lifetime or by correction of CUE in such decisions, which, by operation of statute, has the same effect as if the veteran's entitlement had been established by ratings during the veteran's lifetime.

Effect of Principle of Resolving Interpretive Doubt in Favor of Veterans

Two commenters assert that § 3.22 is invalid because VA's final-rule notice of January 2000 failed to consider the principle stated in *Brown* v. *Gardner,* 513 U.S. 115, 118 (1994), that ''interpretive doubt is to be resolved in the veteran's favor.'' For the reasons explained below, we do not believe that this principle requires any change in VA's interpretation of 38 U.S.C. 1318(b) and 1311(a)(2).

In the *NOVA* case, the Federal Circuit concluded that the text of 38 U.S.C. 1318(b) is ambiguous. However, the existence of textual ambiguity, alone, does not conclusively establish that there is ''interpretive doubt'', nor does it require reference solely to the principle stated in *Gardner* without consideration of other indicators of legislative intent. In interpreting any statute, ''[t]he goal is to identify ''that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law.' '' *Smith* v. *Brown,* 35 F.3d 1516, 1523 (Fed. Cir. 1994) (quoting *West Va. Univ. Hosps.* v. *Casey,* 499 U.S. 83, 100–01 (1991)). The process of identifying the meaning of any statute requires consideration of the statute's language, the context of the surrounding statutory scheme, and the history of the statutory language, in addition to canons of statutory construction such as that cited by the commenters. *Smith,* 35 F.3d at 1523–24. The Federal Circuit has explained the analysis as follows:

> We must first carefully investigate the matter to determine whether Congress's purpose and intent on the question at issue is judicially ascertainable. We do so by employing the traditional tools of statutory construction; we examine the statute's text, structure, and legislative history, and apply the relevant canons of interpretation. If we ascertain that Congress had an intention on the precise question at issue, that intention is the law and must be given effect, and the only issue is whether the agency acted in accordance with that intent.

Boyer v. *West,* 210 F.3d 1351, 1355 (Fed. Cir. 2000) (quoting *Delverde, SRL* v. *United States,* 202 F.3d 1360, 1363 (Fed. Cir. 2000)).

For the reasons explained previously, we conclude that the language, context, and legislative history of 38 U.S.C. 1318(b) and 38 U.S.C. 1311(a)(2), viewed together, clearly evince Congress's intent to authorize DIC in cases where the veteran's entitlement to total disability compensation for the specified number of years prior to death was established by ratings during the veteran's lifetime or by correction of CUE in such decisions. We have considered the principle that interpretive doubt should be resolved in favor of veterans. However, ''clear evidence of legislative intent prevails over other principles of statutory construction.'' *Johns-Manville Corp.* v. *United States,* 855 F.2d 1556, 1559 (Fed. Cir. 1988), *cert. denied,* 489 U.S. 1066 (1989); *see also National R.R. Passenger Corp.* v. *National Ass'n of R.R. Passengers,* 414 U.S. 453, 458 (1974) (''even the most basic principles of statutory construction must yield to clear contrary evidence of legislative intent.''); *Smith* v. *Brown,* 35 F.3d at 1526 (claimant ''cannot rely upon the generous spirit that suffuses the law generally to override the clear meaning of a particular provision''). Where congressional intent is clear from examination of the statutory language, context, and history, resort to canons of statutory construction is therefore unnecessary. *See Smith,* 35 F.3d at 1525–26. VA has concluded that the language, context, and history of 38 U.S.C. 1318(b) and 1311(a)(2) clearly establish Congress' intent that decisions during the veteran's lifetime will govern the issue of a survivor's entitlement to DIC unless it is shown that there was CUE in such decisions warranting retroactive assignment of a total disability rating for the specified period. Because we conclude that any textual ambiguity in section 1318(b) is resolved by the evidence of congressional intent provided by the legislative history and statutory context, there is no basis for applying the principle of resolving interpretive doubt in the veteran's favor.

Effect of Procedural and Substantive Requirements Governing CUE Claims

One commenter argues that § 3.22 is unreasonable to the extent it requires a showing of CUE in cases where the veteran's entitlement was not established during his or her lifetime, because the CUE requirement imposes ''virtually insurmountable barriers on establishing entitlement to DIC benefits under [38 U.S.C.] 1318(b). The specific ''barriers'' identified by the commenter are the following: (1) CUE requires a showing that either the correct facts as they were known at the time of the prior decision were not before the adjudicator or that statutory and regulatory provisions extant at that time were incorrectly applied; (2) CUE must be an outcome determinative error in the prior decision; (3) a determination of CUE must be based on the record and law existing at the time of the prior decision; and (4) CUE must be pleaded with ''some degree of specificity''. In claims where CUE is alleged in a prior final decision of the Board of Veterans' Appeals, the commenter cites the following additional concerns: (1) A claimant's right to retain paid counsel is limited by statute and regulation; (2) a CUE claimant may not submit additional evidence to show CUE; (3) personal hearings on CUE claims are authorized only for ''good cause'; (4) a

previously decided CUE claim may not be reopened based on new and material evidence; (5) the ''benefit of the doubt'' rule for weighing evidence does not apply to CUE claims; (6) the statutory requirement that VA notify claimants of the information and evidence necessary to substantiate a claim does not apply to CUE claims; and (7) once a claim of CUE in a decision has been finally decided, a claimant cannot thereafter raise a new CUE attack on the same decision.

The ''barriers'' identified by the commenter are substantive and procedural requirements applicable to all CUE claims, not just those pertinent to DIC claims under 38 U.S.C. 1318(b) and 1311(a)(2). These requirements derive from regulations and judicial precedents concerning CUE claims generally. Inasmuch as this comment argues that requirements relating to CUE claims should not be applied to claims under 38 U.S.C. 1318(b) and 1311(a)(2), it is essentially the same as the previously-addressed comment asserting that those statutes cannot reasonably be construed to require a showing of CUE in any circumstance. As explained above, VA does not agree. Having concluded that Congress intended to require a showing of CUE in cases where the veteran's entitlement was not established by ratings during his or her lifetime, we find no basis for concluding that persons seeking to show CUE for purposes of establishing DIC entitlement under 38 U.S.C 1318(b) or 1311(a)(2) are exempt from the generally applicable legal requirements governing all CUE claims, and the commenter has identified no basis for such a distinction.

The same commenter asserts that § 3.22 is invalid because VA has failed to consider whether it is reasonable to impose the procedural and substantive requirements associated with CUE claims upon individuals seeking DIC under 38 U.S.C. 1318(b). This comment provides no basis for changing VA's interpretation of 38 U.S.C. 1318(b) and 1311(a)(2). In interpreting those statutes, VA's role is limited to discerning the meaning of the statutes through analysis of their language, context, and history. VA may not alter the meaning of the statutes or ignore congressional intent based on an analysis as to whether a different course of action would be more reasonable. Such an analysis involves policy determinations that are inappropriate in the context of interpreting a federal statute. *See Splane* v. *Secretary of Veterans Affairs,* 216 F.3d 1058, 1063 (Fed. Cir. 2000).

The statement that the CUE requirements present ''virtually insurmountable barriers'' to DIC entitlement may be viewed as suggesting that VA's interpretation yields absurd results that Congress could not have intended. We do not agree that these requirements impose ''virtually insurmountable barriers'' to establishing DIC entitlement. Most of the procedural and substantive requirements identified by the commenter have been upheld by the Federal Circuit as reasonable requirements implementing the statutory provisions governing CUE claims. *See Disabled American Veterans* v. *Gober,* 234 F.3d 682 (Fed. Cir. 2000); *Yates* v. *West,* 213 F.3d 1372 (Fed. Cir. 2000); *Bustos* v. *West,* 179 F.3d 1378 (Fed. Cir. 1999). Although the standards for establishing CUE are generally more demanding than the standards for showing error in a direct appeal of a VA decision, they are not insurmountable. The United States Court of Appeals for Veterans Claims has noted the heightened standards reasonably reflect the fact that CUE involves a collateral attack on a final decision. *See Fugo* v. *Brown,* 6 Vet. App. 40, 44 (1993).

We note that the provisions in section 1318(b) permitting payment of DIC in cases involving posthumous correction of CUE were added in 1982 as a liberalizing change, which extended DIC to cases that were previously excluded from that statute. Prior to the 1982 amendment, the statute (then codified at 38 U.S.C. 410(b)) authorized DIC only if the veteran was actually ''in receipt of'' compensation at the time of death for a service-connected disability that was rated totally disabling for a continuous period of ten or more years immediately preceding death. As we previously stated, the purpose of that statute was to provide a source of income to survivors in circumstances where a totally-disabled veteran and his or her family had depended on VA disability compensation during the veteran's lifetime. In revising the statute, Congress clearly stated that its intent was to authorize payment of DIC in cases where a clear and unmistakable VA error was the only obstacle to the veteran's receipt of total disability compensation for the specified period. Thus, rather than imposing an impermissibly high burden on DIC claimants, the statutory language at issue actually extended DIC entitlement to individuals who were previously ineligible for such benefits.

Further, as we have previously stated, Congress' purpose in enacting section 1318(b) was to provide income to survivors to replace the VA disability compensation they depended on as a source of income during the veteran's lifetime. In 1982 Congress extended DIC to circumstances where CUE by VA deprived the veteran and his family of this income during his or her lifetime. We believe it was reasonable for Congress to provide DIC as a replacement for income that the veteran and his or her family received, or that VA incorrectly withheld, during the veteran's lifetime, without extending this benefit to the much broader class of circumstances suggested by the commenter.

There is nothing absurd or unfair in the requirement that the veteran's entitlement to a total disability rating be established in accordance with the statutes and regulations governing the award and duration of total disability ratings. Under this standard, the findings necessary to support an award of DIC under 38 U.S.C. 1318(b) are made by reference to an established factual record and the existing statutory scheme governing entitlement to veterans benefits. In contrast, the alternative suggested by the commenter—i.e., requiring VA to make a de novo determination after a veteran's death as to whether the veteran hypothetically could have received a total disability rating for ten or more years prior to death—would entail potentially difficult burdens in developing evidence concerning the nature and extent of a now-deceased veteran's disability over past periods. Moreover, such findings would necessarily require VA to ignore the statutes and regulations governing the effective dates of disability ratings, which limit VA's authority to assign retroactive disability ratings. There would likely be significant difficulty and uncertainty concerning the assignment of retroactive effective dates for such ratings in the absence of any applicable statutory or regulatory standard. It is reasonable to infer that Congress did not intend to adopt this burdensome and ill-defined standard, particularly since it would go well beyond Congress's stated purpose of providing for DIC in cases where the veteran would have met the statutory criteria but for a CUE committed by VA.

Effect of VA Statutes and Regulations Governing Finality of Decisions, Notice of Decisions, and Procedural Rights of Claimants

Our January 2000 final rule and our December 2001 NPRM stated that final rating decisions issued during a veteran's lifetime will be binding for purposes of determining a survivor's right to enhanced DIC benefits under 38 U.S.C. 1318(b) and 1311(a)(2) unless it is shown that there was CUE in such decisions. One commenter asserts that decisions rendered on a veteran's claim

cannot be considered final and binding with respect to the claimant's survivors, because the survivors were not parties to the veteran's claim. The commenter relies on the following statutes and regulations: 38 U.S.C. 5101, 5104, 5108, 7104(b), and 7105(b)(1) and (c); 38 CFR 3.1(q), 3.103(b) and (f), 3.151, 3.152, 19.25, 19.29(b), 20.3(c), (f), and (g), 20.201, and 20.1103. In general, those provisions require that VA decide ''claims'' presented by a ''claimant'; that VA provide the claimant with notice of its decision and notice of the right to appeal; that if a claimant files an appeal, VA ordinarily must provide a statement of the case to the claimant; and that the Board of Veterans' Appeals must decide all appealed claims. Pursuant to 38 U.S.C. 7105(c) and 38 CFR 20.1103, if a claimant does not timely appeal a regional office decision, the decision is considered final.

The commenter states that ''[a]lthough a survivor's DIC claim under 1311(a) or 1318(b) may be, in some respects, factually derivative of the veteran's prior claim, [the survivor's claim] cannot by definition be considered final until its merits have been decided by VA.'' We believe this comment confuses the procedural issue of a survivor's right to a decision on his or her DIC claim with the substantive issue of what facts the survivor must establish to demonstrate entitlement to DIC. With respect to the first issue, a DIC claim filed by a survivor under 38 U.S.C. 1318(b) or 1311(a)(2) will be adjudicated by VA in accordance with the statutory and regulatory provisions cited by the commenter. The survivor will be notified of VA's decision on the DIC claim and will be notified of the right to appeal that decision. A decision concerning the survivor's claim for DIC benefits will not be considered final until VA has notified the claimant of that decision and either the appeal period has expired or a final decision on any appeal has been rendered. Accordingly, contrary to the commenter's assertion, nothing in our interpretation of the statutes operates to deny a DIC claimant the procedural rights accorded by statute and regulation.

With respect to the second issue, 38 U.S.C. 1318(b) and 1311(a)(2) require, as a condition of entitlement to DIC, a showing that the veteran was in receipt of or entitled to receive compensation for a service-connected disability that was continuously rated totally disabling for a specified number of years prior to the veteran's death. As previously explained, these statutes are most reasonably interpreted as providing that VA decisions during the veteran's lifetime govern that factual issue unless CUE is shown. The procedural statutes and regulations cited by the commenter do not alter our interpretation.

The commenter asserts that the procedural statutes and regulations governing decisions and notice do not provide that decisions during a veteran's lifetime will be binding on the veteran's survivors. We agree, and we note that 38 CFR 20.1106 states that decisions during a veteran's lifetime generally do not govern a survivor's claim for death benefits. However, 38 U.S.C. 1318(b) and 1311(a)(2) themselves clearly require that decisions during a veteran's lifetime will govern for the specific purpose of determining a survivor's entitlement to DIC under those two statutes, because the survivor's entitlement is predicated on extent and duration of ratings assigned during the veteran's lifetime or those that would have been assigned absent CUE. The clearly expressed legislative intent in section 1318(b) and 1311(a)(2) governs our interpretation of those statutes and overrides any contrary inference based on the statutory and regulatory provisions of a more general nature cited by the commenter.

To the extent the commenter suggests that the cited procedural statutes and regulations prohibit our interpretation of 38 U.S.C. 1318(b) and 1311(a)(2), we disagree. In enacting statutes providing benefits to veterans and their survivors, Congress has broad authority to prescribe the circumstances under which such benefits may be paid. *See Atkins* v. *Parker,* 472 U.S. 115, 129 (1984) (Congress has ''plenary power to define the scopes and duration of the entitlement to * * * benefits, and to increase, decrease, or terminate those benefits based on its appraisal of the relative importance of the recipients' needs and the resources available to fund the program''). Congress could, as it did prior to 1982, limit DIC to cases where the veteran had actually received compensation for total service-connected disability for ten or more years prior to death. Similarly, Congress may extend DIC benefits to cases where the veteran's disability had been rated totally disabling for ten or more years prior to death or would have been so rated if not for CUE by VA, as the statutes now provide. Nothing in the procedural statutes or regulations cited by the commenter imposes any limitation on Congress' authority to prescribe the circumstances under which DIC may be paid to a veteran's survivor. Accordingly, we do not believe that any change in our interpretation is warranted by this comment.

Effect of Principles of Collateral Estoppel

One commenter asserts that requiring DIC claimants to show CUE in cases where the veteran's entitlement to the required benefits was not established by ratings during the veteran's lifetime is contrary to judicial principles of collateral estoppel. Collateral estoppel, also known as issue preclusion, is a judicially-developed doctrine providing that ''[w]hen an issue of fact or law is actually litigated and determined by a valid final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.'' Restatement (Second) of Judgments § 27 (1982). The commenter asserts that decisions during the veteran's lifetime cannot be considered controlling in a survivor's claim for DIC because the survivor was not a party to the prior decision.

For the same reasons expressed in response to the previous comment, we conclude that this comment provides no basis for changing our interpretation. In 38 U.S.C. 1318(b) and 1311(a)(2), Congress has provided that decisions during a veteran's lifetime will govern a survivor's entitlement to DIC under those statutes unless CUE is shown. This requirement is imposed by 38 U.S.C. 1318(b) and 1311(a)(2) themselves. Nothing in the judicial doctrine of collateral estoppel imposes a limit on Congress's authority to define the scope of any benefit it provides or to condition DIC entitlement on a showing that the veteran had received a total disability rating for the specified period or would have obtained such a rating if not for CUE in a VA rating decision. *See Mathews* v. *DeCastro,* 429 U.S. 181, 185 (1976) (''Governmental decisions to spend money to improve the public welfare in one way and not another are 'not confided to the courts. The discretion belongs to Congress unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment.' '') (quoting *Helvering* v. *Davis,* 301 U.S. 619, 640 (1937)). Accordingly, we will make no change based on this comment.

Alleged Change in VA's Interpretation of 38 U.S.C. 1311(a)(2)

One commenter states that the proposed rule is arbitrary and capricious and an abuse of VA's discretion because it conflicts with our prior interpretation of 38 U.S.C. 1311(a)(2) as identified by the Federal

Circuit in the *NOVA* case. VA does not agree. In *NOVA,* the Federal Circuit concluded that VA has authority to revise its interpretive rules, even where such rules have previously been relied on and interpreted by a court. 260 F.3d at 1373–74. Further the court's remand order expressly stated that VA may revise one of its interpretive rules. The commenter's assertion that the proposed rule is inconsistent with VA's prior interpretation of 38 U.S.C. 1311(a)(2) does not, in itself, establish any error in the proposed rule.

The same commenter also takes issue with the statement in the December 2001 NPRM that the proposed rule does not constitute a change in VA's interpretation of 38 U.S.C. 1311(a)(2). The commenter asserts that this statement is inconsistent with the language of § 20.1106 and the Federal Circuit's decisions interpreting that regulation. This comment provides no basis for changing the proposed rule, because, as noted above, VA has authority to revise its interpretation of section 1311(a)(2) regardless of whether the revision constitutes a change in interpretation or merely a clarification of VA's prior interpretation. Nevertheless, we reiterate that proposed rule does not change the manner in which VA has interpreted and applied 38 U.S.C. 1311(a)(2). In the *NOVA* case and in an earlier decision in *Hix* v. *Gober,* 225 F.3d 1377 (Fed. Cir. 2000), the Federal Circuit concluded that § 20.1106 interprets 38 U.S.C. 1311(a)(2) in a manner that prohibits consideration of decisions rendered during a veteran's lifetime. This conclusion was based on the fact that § 20.1106 states that, except with respect to claims under 38 U.S.C. 1318 and certain other claims, VA will decide issues involved in a survivor's claim for death benefits without regard to any prior disposition of those issues during the veteran's lifetime. Because this regulation states an exception for claims under section 1318 but not for claims under section 1311(a)(2), the Federal Circuit concluded that it represents a determination by VA that decisions during a veteran's lifetime must be ignored in claims under section 1311(a)(2). VA concedes that this is a reasonable reading of the language in § 20.1106. However, as explained in the NPRM, the language of § 20.1106 was not based on any such determination by VA and does not accurately reflect VA's interpretation of 38 U.S.C. 1311(a)(2).

As we explained in the NPRM, VA issued § 20.1106 for the express purpose of allowing the Board ''to review 'de novo' service connection cause of death cases.'' 45 FR 56093 (1980). That regulation was intended to apply only in cases where entitlement to DIC was dependent on a finding that the condition causing the veteran's death resulted from service. It was not intended to apply to claims, such as those under 38 U.S.C. 1318(b) or 1311(a)(2), where entitlement to DIC is dependent on the veteran having been in receipt of or entitled to receive certain benefits for a specified period during the veteran's lifetime. In 1992, VA amended § 20.1106 to expressly state that that rule did not apply to claims under 38 U.S.C. 1318(b). Congress enacted 38 U.S.C. 1311(a)(2) several months after VA amended that regulation. If VA had again amended § 20.1106 to include express reference to section 1311(a)(2), the apparent inconsistency identified in the *NOVA* decision would have been avoided. However, as stated in the NPRM, VA's failure to issue a further amendment following the enactment of 38 U.S.C. 1311(a)(2) was a matter of inadvertence rather than a product of a VA determination that section 1311(a)(2) permits or requires VA to ignore decisions rendered during a veteran's lifetime.

In similar fashion, the same commenter asserts that the NPRM ''pretends that the Federal Circuit did not interpret [section] 20.1106 to allow for 'hypothetical determinations.' For the reasons stated above, we conclude that this comment is incorrect and, in any event, would provide no basis for changing the proposed rule even if it were correct. In the NPRM, we stated that ''[t]he *NOVA* court concluded that 38 CFR 20.1106 interprets * * * 38 U.S.C. 1311(a)(2) to require a posthumous determination of the veteran's 'entitlement' to compensation without regard to whether VA rating decisions during the veteran's lifetime established such entitlement.'' We acknowledge that the Federal Circuit interpreted § 20.1106 to permit DIC under 38 U.S.C. 1311(a)(2) based on a veteran's ''hypothetical'' entitlement to compensation. As explained in the NPRM, however, we are revising § 20.1106 because the Federal Circuit's determination is inconsistent with VA's intent in issuing § 20.1106 and does not actually reflect VA's interpretation of 38 U.S.C. 1311(a)(2).

Compliance with NOVA Order

One commenter asserts that VA has failed to comply with the Federal Circuit's remand order in the *NOVA* case. The commenter states that the Federal Circuit ordered VA to ''provide a reasonable explanation for its decision to interpret sections 1311 and 1318 in different ways''. The commenter further states that ''[w]hile it is true that the Federal Circuit's remand gave the Agency the opportunity to revise 38 CFR 20.1106 to be consistent with the revised version of 38 CFR 3.22, the Agency's Public Notice fails to explain why the amendment to 20.1106 is necessary.'' We disagree with this comment.

In the *NOVA* case, the Federal Circuit directed VA to conduct expedited rule making either to provide a reasonable explanation for the decision to interpret 38 U.S.C. 1311 and 1318 in different ways, or to revise § 3.22 to harmonize it with § 20.1106, or to revise § 20.1106 to harmonize it with § 3.22. As stated in the NPRM, VA chose the latter of those three options. Having decided to revise § 20.1106, VA was not obligated by the *NOVA* order to provide an explanation for any decision to interpret sections 1311 and 1318 in different ways. Indeed, as previously stated in the NPRM and this document, VA has concluded that those statutes must be interpreted in the same manner.

The December 2001 NPRM and this document clearly explain why revision of § 20.1106 is necessary. Briefly stated, we have concluded that revision of § 20.1106 is necessary because 38 U.S.C. 1311 and 1318 must be construed in the same manner, because the Federal Circuit has concluded that § 3.22 and § 20.1106 currently do not interpret those statutes in the same manner, and because VA has concluded that the Federal Circuit's interpretation of § 20.1106 is inconsistent with our intent in issuing that regulation and is inconsistent with our interpretation of 38 U.S.C. 1311(a)(2).

Suggestion That VA Seek Clarification From Congress

One commenter recommends that VA seek clarification from Congress concerning its intent in enacting 38 U.S.C. 1318(b) and 1311(a)(2). For the reasons stated in the January 2000 final rule, the December 2001 NPRM, and this notice, we conclude that the meaning of those statutes is clear from examination of the language and history of the statutes and their context in the statutory scheme established by Congress. Accordingly, we find no basis for the extraordinary step of asking Congress to clarify its intent in enacting the statutes at issue.

Revision of 38 CFR Part 3

One commenter recommends that we move the provisions of 38 CFR 20.1106 to 38 CFR part 3, or that we add a new provision to part 3 containing provisions similar to those in § 20.1106. We make no change to the proposed

rule based on this comment, although we will consider issuing additional rules in the future consistent with this comment.

Section 20.1106 is located in subpart L of part 20 of title 38, Code of Federal Regulations. Part 20 of title 38 contains the Rules of Practice of the Board of Veterans' Appeals. Subpart L of part 20 contains the Board's rules concerning the finality of decisions of the Board and VA regional offices. Section 20.1106 provides that, with certain exceptions, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime. This rule has been stated in the Board's rules of practice since 1980. In 1992, we amended the rule to clarify that it did not apply to claims under 38 U.S.C. 1318. This final rule will further amend § 20.1106 to clarify that the rule does not apply to claims under 38 U.S.C. 1311

Part 3 of title 38, Code of Federal Regulations, contains substantive and procedural rules governing adjudication of claims for disability compensation, pension, DIC and other benefits. Part 3 includes 38 CFR 3.22, which states VA's interpretation of 38 U.S.C. 1318, and 38 CFR 3.5(e), which essentially reiterates the statutory provisions of 38 U.S.C. 1311(a)(2) without elaboration. However, part 3 does not include a rule stating the principle in § 20.1106 that, except in cases under 38 U.S.C. 1311 and 1318 and certain other statutes, issues in DIC claims generally will be decided without regard to any prior disposition of such issues during the veteran's lifetime.

The commenter states that the principle stated in § 1106 would apply to all VA decisions on DIC claims, whether such decisions are made by the Board or by a VA regional office. Accordingly, the commenter asserts that those principles should be stated in part 3.

VA agrees that the principle stated in § 20.1106 applies to DIC claims before either a VA regional office or the Board. The principles stated in § 20.1106 reflect VA's interpretation of the statutory provisions applicable to DIC claims before both VA regional offices and the Board. VA has consistently applied that interpretation to DIC claims decided at both regional-office and Board levels, and will continue to do so. However, we will make no change to the proposed rule based on this comment.

In the *NOVA* case, the Federal Circuit concluded that there was an apparent conflict between 38 CFR 3.22 and 38 CFR 20.1106. The court directed VA to conduct expedited rule making to revise either of those regulations or to explain the basis for the apparent inconsistency. The court further directed VA to stay all proceedings involving claims under 38 U.S.C. 1318 pending the completion of such rule making. As stated in our December 2001 NPRM, VA concluded that it was necessary to revise § 20.1106 to remove the apparent inconsistency cited by the court.

In view of the time limit imposed by the court for completing rule making and the fact that DIC claims have been stayed until this rule making is completed, we limited our proposed rule to addressing the apparent inconsistency identified by the Federal Circuit and did not propose additional changes to part 3, such as those recommended by the commenter. We believe it is appropriate to retain the Board's longstanding rule of practice in subpart L of part 20 of title 38, Code of Federal Regulations, because that rule pertains to subject matter addressed by that subpart.

Nevertheless, we understand the commenter's concern that it would be logical to include a provision similar to § 20.1106 in part 3 of title 38 of the CFR, to make clear that the same principles apply to claims before VA regional offices. We will make no change to part 3 in this final rule, because any such change would be beyond the scope of the proposed rule. However, we will consider whether to issue additional rules in the future consistent with this comment.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, inasmuch as this final rule applies to individual claimants for veterans' benefits and does not affect such entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: March 29, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. Section 20.1106 is revised to read as follows:

§ 20.1106 Rule 1106. Claim for death benefits by survivor-prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2), 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 7104(b))

[FR Doc. 02–8201 Filed 4–4–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7155–9]

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production plants which were promulgated on April 12, 2001 under authority of section 112 of the Clean Air Act (CAA). The amendments will clarify the startup, shutdown, and malfunction requirements for owners or operators subject to the Vegetable Oil NESHAP. The amendments will also clarify the applicability of the NESHAP General Provisions.

DATES: This direct final action rule will be effective on June 4, 2002 without further notice, unless significant adverse comments are received by May 6, 2002.

If significant adverse comments are received we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–59, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, submit comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–59, Room M–1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. We request that a separate copy of each public comment also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Minerals and Inorganic Chemicals Group (C504–05), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5262, electronic mail (e-mail): *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this direct final rule without proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket

The docket is an organized and complete file of the administrative record compiled developing this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to help you to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A)) of the CAA.) You may obtain the regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. We may charge a reasonable fee for copying docket materials. You may also obtain docket indexes by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at *http://www.epa.gov/airprogm/oar/docket/faxlist.html.*

Worldwide Web

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

Regulated Entities

If your facility produces vegetable oil from corn germ, cottonseed, flax, peanuts, rapeseed (for example, canola), safflower, soybeans, or sunflower, it may be a ''regulated entity.'' Categories and entities potentially regulated by this action include:

Category	NAICS	Examples of regulated entities
Industry	311223	Cottonseed oil mills.
	311222	Soybean oil mills.
	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	311119	Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats.
	311211	Flour and other grain mill product mills.
	311221	Wet corn milling.
Federal government	.....	Not affected.
State/local/tribal government	.....	Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2832 of the rule. If you have any questions regarding the applicability of these amendments to a particular entity, consult the appropriate EPA Regional Office representative.

Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available after the effective date by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit no later than June 4, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

I. Why Are We Publishing These Amendments as a Direct Final Rule?

On May 26, 2000, we proposed National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (65 FR 34252). The proposed rule included requirements for limiting emissions during vegetable oil production, including requirements during startup, shutdown, and malfunction (SSM) of vegetable oil production processes. As with all NESHAP, the regulatory development process included an examination of which specific provisions in the General Provisions at 40 CFR part 63, subpart A, should be applicable to sources subject to subpart GGGG. Based on a review of the General Provisions promulgated on March 16, 1994 (59 FR 12408), we determined that 40 CFR 63.6(e), which contains various procedures related to operation and maintenance and SSM, would apply to sources subject to subpart GGGG.

Based on public comments, we made one major change to the proposed regulation, which was to allow the use of an accounting month rather than a calendar month to determine solvent losses and quantities of oilseed processed by an affected source. There were no substantive public comments on the proposed SSM provisions and they were not changed in the final rule. On April 12, 2001, we promulgated National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (66 FR 19006).

On March 23, 2001 (66 FR 16318), we proposed amendments to the General Provisions to part 63. The proposed amendments included several changes to the SSM requirements. Among others, these changes included proposed 40 CFR 63.6(e)(3)(iii) requiring records related to malfunctions; proposed 40 CFR 63.6(e)(3)(iv) which requires reporting of actions inconsistent with the startup, shutdown, and malfunction plan (SSMP); and proposed 40 CFR 63.6(e)(3)(viii) which requires reporting modifications to the SSM plan in the semiannual report. In addition, the proposed changes to the General Provisions SSMP clarify that the title V permit must require that an SSMP be prepared and followed but the SSMP is not itself part of the title V permit.

In the preamble to the proposed General Provisions amendments, we specifically requested comment on ''any conflicts * * * that result solely from applying these proposed amendments to the General Provisions to promulgated part 63 subparts.'' One commenter identified such a conflict between SSM provisions of the Vegetable Oil Production NESHAP and those provisions in the General Provisions. Specifically, the commenter noted that proposed 40 CFR 63.6(e)(3)(iii), which requires records related to malfunctions under 40 CFR 63.10(b), should not apply to subpart GGGG, as subpart GGGG states that 40 CFR 63.10(b)(2)(ii) through (iii) relating to malfunction records do not apply. Also, proposed 40 CFR 63.6(e)(3)(iv), which requires reporting of actions inconsistent with the SSMP if the emissions exceed the relevant standard, does not comport with subpart GGGG. The Vegetable Oil Production NESHAP require reporting of such actions regardless of whether the standard was exceeded. The commenter also specifically noted that proposed 40 CFR 63.6(e)(3)(viii), the requirement to report modifications to the SSM plan in the semiannual report, should not apply to sources subject to subpart GGGG, as subpart GGGG does not require a semiannual report.

We agree with the commenter that these proposed provisions conflict with those in the promulgated Vegetable Oil Production NESHAP. As we proposed to codify in 40 CFR 63.1(a)(4)(i), each relevant part 63 standard should identify explicitly whether each provision in subpart A is or is not included in each standard. This regulatory language is based on our conviction that each NESHAP must determine which of the General Provisions do or do not make sense for a particular source category. It was not our intent to alter the SSMP requirements of the Vegetable Oil Production NESHAP.

We have discussed the implications of the General Provisions amendments with the commenter and as a result are editing subpart GGGG to correct the inconsistencies. These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil Production NESHAP affected sources.

II. What Are the Amendments to the Final Rule?

With this direct final action, we are amending several provisions related to SSM requirements. Specifically, we are amending the explanation column of Table 1 of 40 CFR 63.2870 as it applies to 40 CFR 63.6(e) to state, ''implement your plan as specified in § 63.2852.'' Table 1 also now indicates that 40 CFR 63.6(e)(3)(iii), (iv) and (viii) do not apply to Vegetable Oil Production NESHAP affected sources.

We are also amending the first sentence of 40 CFR 63.2861(d) to clarify that owner/operators must submit an immediate SSM report if an SSM is handled differently from the procedures in the SSM plan and the emission standards are exceeded.

We are also amending the third sentence of 40 CFR 63.2852 to clarify that the SSMP does not have to be incorporated into the title V permit.

These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil Production NESHAP affected sources.

Please note that these changes are contained within the Vegetable Oil Production NESHAP and that they are being made for consistency with the General Provisions amendments, where appropriate. The Vegetable Oil Production NESHAP, however, also contains specifically tailored SSMP provisions for this industry and one should look expressly to that rule for the applicable SSMP provisions.

III. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, we have determined that these amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, this action was

not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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 direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this direct final rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

These rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments are known to own or operate solvent extraction for vegetable oil production facilities. Thus, Executive Order 13175 does not apply to these rule amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''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 the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to the Executive Order because it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because they are not significant regulatory actions under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or in the private sector in any 1 year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments, because they contain no requirements that apply to such governments or impose obligations on them. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act, As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final amendments on small entities, EPA has concluded 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. sections 603 and 604. Thus, an agency may conclude 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 all of the small entities subject to the rule. The amendments better clarify and make the startup, shutdown, and malfunction plan consistent with the amended part 63 subpart A; the effect is to clarify that sources do not have to modify their title V permit each time the SSMP is changed. We have therefore concluded that today's direct final rule will relieve regulatory burden for all small entities.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. The OMB has previously approved the information collection requirements for the subject facilities under the Paperwork Reduction Act (OMB Control No. 2060–0471). The amendments contained in this direct final rule will have no net impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

I. 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 (March 7, 1996) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

This action does not involve the use of any new technical standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to this direct final rule.

J. The Congressional Review Act

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

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.

Dated: March 5, 2002.

Christine Todd Whitman,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart GGGG—[AMENDED]

2. Section 63.2852 is amended by revising the first three sentences to read as follows:

§ 63.2852 What is a startup, shutdown, and malfunction plan?

You must develop a written SSM plan in accordance with § 63.6(e)(3) and implement the plan, when applicable. You must complete the SSM plan before the compliance date for your source. You must also keep the SSM plan on-site and readily available as long as the source is operational.* * *

3. Section 63.2861 is amended by revising the first sentence of paragraph (d) introductory text to read as follows:

§ 63.2861 What reports must I submit and when?

* * * * *

(d) *Immediate SSM reports.* If you handle a SSM during an initial startup period subject to § 63.2850(c)(2) or (d)(2) or a malfunction period subject to § 63.2850(e)(2) differently from procedures in the SSM plan and the relevant emission requirements in § 63.2840 are exceeded, then you must submit an immediate SSM report. * * *

* * * * *

4. Table 1 of § 63.2870 is amended by revising the entry to § 63.6(e) to read as follows:

§ 63.2870 What parts of the General Provisions apply to me?

* * * * *

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
* *	*	*	*	* *
§ 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii).	Operation and maintanance requirements.	.....	Yes	Implement your SSM plan, as specified in § 63.2852.
§ 63.6(e)(3)(v)(iii)	Operation and maintenance requirements.	.....	No	Implement your plan, as specified in § 63.2852.
§ 63.6(e)(3)(iv)	Operation and maintenance requirements.	.....	No	Report SSM and in accordance with § 63.2861(c) and (d).

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.6(e)(3)(viii)	Operation and maintenance requirements.		Yes	Except, report each revision to your SSM plan in accordance with § 63.2861(c) rather than § 63.10(d)(5) as required under § 63.6(e)(3)(viii).
*	*	*	*	* * *

[FR Doc. 02–5862 Filed 4–4–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; CC Docket No. 96–98; CC Docket No 96–116; FCC 02–73]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission), on its own motion, reconsiders its findings in the *Numbering Resource Optimization Third Report and Order,* regarding the local number portability (LNP) and thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs). Specifically, the Commission reverses its clarification that the requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff, (202) 418–7705 or e-mail at *pslipako@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration in CC Docket No. 99–200 (Third Order on Reconsideration*), FCC 02–73, adopted on March 13, 2002 and released on March 14, 2002. The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW, Washington, DC 20554. The complete text may also be obtained through the world wide web at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders,* or may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of the Third Order on Reconsideration in CC Docket No. 99–200

1. On its own motion, the Commission reconsiders its findings in the *Numbering Resource Optimization Third Report and Order,* 67 FR 6431 (Feb. 12, 2002), regarding the local number portability (LNP) and thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs). Specifically, the Commission reverses its clarification that these requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP.

2. In the *Numbering Resource Optimization Third Report and Order,* the Commission extended LNP and thousands-block number pooling requirements to all carriers in the largest 100 MSAs, and gave non-compliant carriers six months from the effective date of the order to deploy LNP. This decision was driven by questions raised when certain state commissions began implementing thousands-block number pooling trials and discovered that some LECs had not deployed LNP in some of the largest 100 MSAs. Apparently, some carriers and state commissions differed on the current status of the LNP requirements. Specifically, they were not sure whether LNP is required for all carriers within the 100 largest MSAs, or only for those carriers that receive a request from a competing carrier. Thus, the Commission sought to clarify the issue.

3. In attempting to clarify the issue, however, the Commission reversed the decision on LNP deployment reached by the Commission in the *Number Portability First Order on Reconsideration,* 62 FR 18280 (April 15, 1997), without providing an adequate opportunity for comment on this specific issue. The Commission now reverses this clarification and provides interested parties an opportunity to comment on whether carriers should be required to deploy LNP and participate in thousands-block number pooling in the 100 largest MSAs, regardless of whether they have received a specific request to provide LNP from another carrier.

4. Pursuant to sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this *Third Order on Reconsideration* in CC Docket 99–200 is hereby *adopted.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8249 Filed 4–4–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000831250–0250–01; 032602D]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reopening of Directed Fishery for Pacific Mackerel

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

ACTION: Reopening of the directed fishery for Pacific mackerel.

SUMMARY: NMFS announces the reopening of the directed fishery for Pacific mackerel in the U.S. exclusive economic zone off the Pacific coast at 12 midnight local time (l.t.) on March 31, 2002. A significant portion of the Pacific mackerel harvest guideline remains unharvested; therefore, the incidental catch allowance that has been in effect

since November 21, 2001, is removed, and any landing of Pacific mackerel may consist of 100 percent Pacific mackerel. This action is taken to help ensure that the harvest guideline is attained, but not exceeded.

DATES: Effective at 12 midnight l.t. March 31, 2002, through 12 midnight l.t. June 30, 2002.

ADDRESSES: The data used as the basis for this action is available for public inspection at the Office of the Acting Regional Administrator, Rodney R. McInnis, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: On July 25, 2001, NMFS announced a harvest guideline of 13,837 metric tons (mt) for Pacific mackerel for the fishing season July 1, 2001, through June 30, 2002 (66 FR 38571). A directed fishery of 6,000 mt was established, which, when attained, would be followed by an incidental catch allowance of 45 percent of Pacific mackerel in a landing of any coastal pelagic species. If a significant amount of the harvest guideline remained unused before the end of the fishing season on June 30, 2002, the directed fishery would be reopened. This approach was taken because of concern about the low harvest guideline's potential negative effect on the harvest of Pacific sardine if the fishery for Pacific mackerel had to be closed. The two species occur together often and could present bycatch problems.

On November 8, 2001, 6,079 mt of Pacific mackerel had been landed; therefore, the 45 percent incidental rate was implemented on November 21, 2001 (66 FR 54166, November 27, 2001). On March 5, 2002, 7,252 mt of Pacific mackerel had been landed, with 6,585 mt of the harvest guideline remaining. To help ensure that the harvest guideline will be achieved, beginning on April 1, 2002, the 45 percent incidental landing restriction will be removed. If the harvest guideline of 13,837 mt is projected to be reached before June 30, 2002, the directed fishery will be closed and an appropriate incidental landing restriction imposed.

For the reasons stated here and in accordance with the FMP and its implementing regulations at 50 CFR 660.509, the directed fishery for Pacific mackerel will be reopened at 12 midnight l.t. on March 31, 2002, after which time any landing of Pacific mackerel may consist of 100 percent Pacific mackerel.

Classification

This action is required by 50 CFR 660.509 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide opportunity for prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), as providing prior notice and opportunity for comment would be impracticable and unnecessary. It is impracticable because the fishery must be opened immediately in order to achieve the harvest guideline. It is unnecessary because this is a minor inseason action and the public had an opportunity to comment on the process that established the season openings and closings.

Since this action will give Pacific mackerel fishermen an opportunity to land the remaining harvest guideline, it relieves a restriction under 5 U.S.C. 553(d)(1).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 1, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8186 Filed 4–1–02; 3:28 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010511123–2076–02; I.D. 031102C]

RIN 0648–AP84

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagics Fisheries; Hawaii-based Pelagic Longline Restrictions

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

ACTION: Emergency interim rule; notification of restrictions; request for comments.

SUMMARY: NMFS issues an emergency interim rule applicable to any vessel registered for use under a Hawaii longline limited access permit (Hawaii longline vessel). This rule prohibits longline fishing north of 26° N. lat. and the retention or landing of more than 10 swordfish per trip by Hawaii longline vessels that fish north of the equator. This interim emergency rule is intended to prevent additional takings of loggerhead sea turtles.

DATES: This emergency interim rule is effective April 5, 2002, through June 8, 2002. Comments must be received no later than 5 p.m., Hawaiian standard time, on May 20, 2002.

ADDRESSES: Written comments on this action must be mailed to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814-4700; or faxed to 808–973–2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of an Environmental Assessment and Regulatory Impact Review (RIR) prepared for this action may be obtained from Dr. Charles Karnella, PIAO. See also http://swr.nmfs.noaa.gov to view the Final Environmental Impact Statement (FEIS) on the implementation of the Fishery Management Plan for Pelagic Fisheries of the Western Pacific (FMP).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: On June 12, 2001, NMFS issued an emergency interim rule (66 FR 31561) implementing temporary measures for the Hawaii-based pelagic longline fishery (Hawaii longline fishery) to avoid the likelihood of jeopardy to sea turtles and reduce adverse effects to the short-tailed albatross. Those measures are consistent with NMFS' March 29, 2001, biological opinion (BiOp) on the FMP and with the U.S. Fish and Wildlife Service's November 28, 2000, BiOp on the Effects of the Hawaii-based Domestic Longline Fleet on the Short-tailed Albatross (*Phoebastria albatrus*). The consultations culminating in the two BiOps have been reinitiated and are expected to be completed by July 2002. The June 12, 2001, emergency interim rule was extended for 180 days on December 10, 2001 (66 FR 63630). The actions taken to protect sea turtles comply with a March 30, 2001, Order Modifying Injunction (Court Order) issued by the Court in *Center for Marine Conservation* v. *NMFS* CV No. 99–00152. Specific information on the protective measures in the BiOps and background information on the Court Order were published in several **Federal Register** documents (64 FR 72290, December 27, 1999; 65 FR 16346, March 28, 2000; 65 FR 37917, June 19, 2000; 65 FR 51992, August 25, 2000; 65 FR 66186, November 3, 2000; 66 FR 1110, February 22, 2001; 66 FR 31561, June 12, 2001; and 66 FR 63631, December 10, 2001), and that information is not

repeated here. NMFS anticipates that separate final rules implementing the protective measures of the BiOps for the Short-tailed albatross and for sea turtles will be in place before the expiration of the June 12, 2001, emergency interim rule on June 9, 2002.

This emergency interim rule prohibits Hawaii longline vessels from fishing north of 26° N. lat., and from retaining or landing more than 10 swordfish per fishing trip, if any fishing during the trip occurred north of the equator. The 10-swordfish trip limit is intended to ensure that swordfish are not the target of fishing operations, as required by the June 12, 2001, emergency interim rule.

Although no loggerhead turtles were observed taken in the Hawaii longline fishery from April 1 through December 31, 2001, recently, three incidental takes of loggerhead turtles were reported by NMFS observers on Hawaii longline vessels during fishing operations north of 30° N. lat. One of these takes resulted in the death of the turtle. In addition, a leatherback turtle was reportedly taken and released alive on one of the trips during which a loggerhead turtle was taken. This level of observed takes indicates, through simple extrapolation, that the level specified in the incidental take statement for loggerhead turtles issued with NMFS' March 29, 2001, BiOp has been exceeded. Additionally, several vessels fishing north of 30° N. lat. have returned with moderate to large numbers of swordfish. Before these vessels began fishing in these northern waters (approximately north of 25°–26° N. lat.), there had been no report of a take of a loggerhead turtle since the March 30, 2001, Court Order was issued.

Observer data show that nearly all of the takes of loggerhead turtles incidental to Hawaii longline fishing operations historically occurred north of about 28° N. lat. The recently observed takes fall into this pattern, all having occurred north of 30° N. lat. NMFS believes that the prohibition of shallow longline sets (which fishermen typically use for catching swordfish), if adhered to, will avoid or minimize the takes of loggerhead turtles in the Hawaii longline fishery. NMFS has information suggesting that the recent loggerhead turtle takes occurred during fishing trips in which the vessels might have failed to follow the existing turtle conservation regulations. However, given the incidental takes of loggerhead turtles reported, NMFS has decided to take emergency action to immediately close waters north of 26° N. lat. and to impose a swordfish trip limit to ensure the protection of loggerhead turtles. The limit on swordfish landings from a trip is based on vessel logbook data from trips made by Hawaii longline vessels during which tuna were the target species. Based on available data, 95 percent of trips targeting tuna returned with 10 or fewer swordfish. Thus, setting the limit at 10 swordfish per trip accounts for the vast majority of tuna trips during which swordfish were caught. This limit will help minimize bycatch during tuna trips.

The prohibitions contained in this emergency interim rule are expected to result in a geographical separation of Hawaii longline vessels from loggerhead turtles and to remove economic incentives to make shallow longline sets. The prohibitions of this emergency interim rule facilitate enforcement. NMFS can enforce the trip limit dockside as a vessel offloads its catch, and the closure north of 26° N. lat. can be monitored using the vessel monitoring system (VMS); VMS units have been placed on each Hawaii longline vessel and document the position of each vessel while fishing. The provisions of this emergency interim rule will allow NMFS to implement the protective measures of the Court Order, both BiOps, and the earlier emergency interim rule in a more effective manner. In addition, NMFS intends to issue a proposed rule to make the new 10–swordfish trip limit permanent.

Recent, Unforeseen Events or Recently Discovered Circumstances

Only in the past month has NMFS detected fishing by multiple vessels north of 30° N. lat., with unanticipated large bycatches of swordfish and the consequent takes of loggerhead turtles. When promulgating the June 12, 2001, emergency rule, based on the operational patterns of the Hawaii longline fleet during the previous 10 to 11 months, NMFS did not anticipate that some vessels would fish in the northern area of the Hawaii longline fishery. The March 30, 2001, Court Order included discussion of implementing management measures through regulations to reduce adverse impacts on sea turtles. NMFS is publishing this emergency interim rule in order to afford additional protection to sea turtles while NMFS prepares permanent measures, including the 10–swordfish trip limit, that NMFS will promulgate through proposed and final rulemaking.

Emergency action is also required to comply with the terms and conditions of the BiOp issued on March 29, 2001, by NMFS, to avoid the likelihood of jeopardy to endangered loggerhead turtles and to ensure that no irretrievable or irreversible commitment of resources is made which would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Immediate Benefits

NMFS anticipates that this rule will principally benefit loggerhead turtles by geographically separating them from the Hawaii longline fleet, thereby significantly reducing the likelihood that the Hawaii longline fleet will take additional loggerhead turtles. The prohibition on retaining or landing more than 10 swordfish per trip is likely to benefit all sea turtle species that interact with Hawaii longline vessels by reducing overall fishing effort in the more near-surface waters of the area in which the swordfish sector of the Hawaii-based longline fleet operates, thus minimizing interactions with sea turtles. This emergency interim rule may also benefit seabirds because it will ban longline fishing north of 26° N. lat., thus eliminating the potential for the Hawaii longline fishery to take seabirds that historically occur in larger numbers north of approximately 25° N. lat.

Classification

The Assistant Administrator (AA) finds that this emergency interim rule, which is being implemented under section 305(c) of the Magnuson-Stevens Act, is needed to implement the reasonable and prudent alternative and the terms and conditions of the BiOp on sea turtles, facilitate effective enforcement, and ensure compliance with ESA sections 7(a)(2) and 7(d). Under section 305(c) of the Magnuson-Stevens Act, this emergency interim rule may remain in effect for no more than 180 days after the date this rule is published, unless extended for one additional period of no more than 180 days.

This emergency interim rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an FEIS for the FMP that describes the impact on the human environment of fishing under the FMP, and an EA for this rule, as required by the National Environmental Policy Act. NMFS also prepared several RIRs, covering this and related actions, that assess the net national benefits of protecting sea turtles. This emergency interim rule is of limited duration and is expected to result in a reduction in sea turtle and seabird interactions and mortalities caused by the Hawaii longline fishery. The Hawaii longline fishery averaged annual ex-vessel gross revenues of $40.7 million between 1994–1998. The economic impacts of

these measures, which are of limited duration, cannot be precisely estimated due to a lack of data but are expected to be less than $3.5 million. Copies of the EA, FEIS, and RIRs are available (see **ADDRESSES**).

The AA finds, for good cause, under 5 U.S.C. 553(b)(B), that providing prior notice and opportunity for public comment is impracticable and not in the public interest, given that the action implements mandatory protective measures to address the recent takes of loggerhead turtles above 30° N. lat. Until these measures are implemented, this fishery will continue to take sea turtles. Allowing the fishery to continue while accepting public comments is contrary to the public interest in protecting and minimizing the take of endangered and threatened sea turtles, because it would likely result in additional loggerhead turtle takes and could jeopardize their continued existence. Further, failure to act quickly to stop these takes could require the complete closure of the fishery under the terms of the BiOp, creating additional economic hardship on individuals participating in the fishery. Similarly, the AA finds good cause, under 5 U.S.C. 553(d)(3), not to delay the effectiveness of this rule for 30 days, given the recent takes of loggerhead turtles above 30° N. lat. In response to the recent reports of incidental takes of loggerhead turtles by Hawaii longline vessels during fishing operations north of 30° N. lat., this rule is intended to immediately close waters above 26° N. lat. and to impose a swordfish trip limit to protect loggerhead turtles. Delay in implementation of these measures is likely to result in additional loggerhead turtle takes. Accordingly, the AA is making this emergency interim rule effective the date of publication in the **Federal Register**.

Because this emergency interim rule is not required to be published with notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: April 1, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.22, paragraph (nn) is suspended and new paragraphs (vv) and (ww) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(vv) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.34(b), (c), (g), (h), and (i).

(ww) Catch and retain, or land, more than 10 swordfish (Xiphias gladius) per trip from any vessel registered for use under a Hawaii longline limited access permit when any fishing during the trip occurred north of the equator.

3. In § 660.34, a new paragraph (i) is added to read as follows:

§ 660.34 Hawaii emergency longline fishing restrictions.

* * * * *

(i) A vessel registered for use under a Hawaii longline access permit may not use longline gear to fish for Pacific pelagic management unit species north of 26° N. lat.

[FR Doc. 02–8333 Filed 4–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 040102E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West YakutatDistrict of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) specified for the West Yakutat District in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 2, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in the West Yakutat District, Statistical Area 640, was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) as 1,165 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC of pollock in the West Yakutat District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,115 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the pollock TAC in the West Yakutat District constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to

the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the pollock TAC in the West Yakutat District constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8301 Filed 4–2–02; 3:02 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 66
Friday, April 5, 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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 01–091–1]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Determination of Residual Free Formaldehyde Content of Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations for the determination of residual free formaldehyde in veterinary biologics. This amendment would specify that such determinations be made using the ferric chloride method, and that the residual free formaldehyde content be measured in grams per liter . We are proposing this amendment because the ferric chloride method has been adopted as an international standard by scientific experts and regulatory authorities in the United States, Canada, Japan, and the European Union. The effect of the proposed amendment would be to reduce the differences in technical requirements for veterinary biologics among regulatory agencies in different countries and further ensure the safety and shelf life of veterinary biologics by adopting a method which has been standardized and accepted internationally.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by June 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–091–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–091–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–091–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, 4700 River Road Unit 148, Riverdale, MD, 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) prescribe standard requirements for the preparation and testing of veterinary biological products. Standard requirements consist of test methods, procedures, and criteria that define the standards for purity, safety, potency, and efficacy for a given type of veterinary biological product. When a standard procedure for testing veterinary biological products is validated and approved by the Animal and Plant Health Inspection Service (APHIS) for general use, it is proposed for codification in the regulations. Sections 113.100 and 113.200 of the regulations prescribe the requirement for determination of residual free formaldehyde content in inactivated bacterial products and killed virus vaccines, respectively.

In this document, we are proposing to amend the regulations for determination of residual free formaldehyde content in inactivated bacterial products and killed virus vaccines.

Typically, pathogenic microorganisms or toxins are used in the formulation of veterinary biologics. In order to ensure that such products are safe and free from undue local and systemic reactions and cannot replicate and cause disease in the host, the microorganisms may be inactivated or killed. Formalin solution (formaldehyde) is one of several chemical compounds that may be used to inactivate the microorganisms or toxins used in the formulation of veterinary biologics. However, because of its toxicity, excess formaldehyde that remains in the product after inactivation is complete may cause undesirable secondary effects when the product is administered to the host, or result in residues in meat intended for human consumption. Therefore, in order to minimize the undesirable secondary effects associated with the use of formaldehyde as an inactivation agent, excess levels of formaldehyde that persist in veterinary biologics after inactivation is complete must be neutralized. Neutralization of excess formalin:

- Ensures that residual formalin will not inactivate other products used in combination,
- Prolongs product shelf life, and
- Provides an extra margin of safety relative to local and/or systemic reactions and residues in meat for human consumption.

Sodium bisulfite is the chemical compound most veterinary biologics manufacturers use to neutralize residual free formaldehyde in their products. After neutralization is complete, the level of free formaldehyde remaining in the neutralized preparation must be determined. Of the several methods that may be used to estimate residual free formaldehyde content in formalin-inactivated veterinary biologics that are treated with sodium bisulfite, the ferric chloride titration method and the basic fuchsin reagent method are the most accurate. The basic fuchsin test is currently specified in §§ 113.100 and 113.200 of the regulations under the general requirements for inactivated bacterial products and the general requirements for killed virus vaccines, respectively. However, it may not be the

best method for all products. Studies show that the basic fuchsin test may overestimate the amount of residual free formaldehyde in formalin-inactivated vaccine neutralized with sodium bisulfite, based on the calculated amount of sodium bisulfite needed to neutralize the volume of formaldehyde added to the product during inactivation.

Those same studies showed that the ferric chloride method estimated the amount of residual free formaldehyde in formalin-inactivated vaccine neutralized with sodium bisulfite to be closer to the amount that would be determined by calculation based on the volume of formaldehyde added during inactivation. Other countries that receive these products as exports have required vaccine manufacturers to test for residual free formaldehyde content by other methods in addition to using the basic fuchsin test. Some manufacturers may be using two or more test methods in order to satisfy the regulatory requirements of other countries.

Therefore, in an attempt to harmonize requirements for determination of residual free formaldehyde in veterinary biologics, the International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) is recommending that regulatory authorities cooperating in the VICH initiative adopt a harmonized procedure for determination of residual free formaldehyde content that is based on the ferric chloride method. (VICH is a unique project that brings together regulatory authorities of the United States, the European Union, and Japan and representatives from the animal health industry in the three regions to harmonize technical requirements for veterinary products as a means of reducing the differences in technical requirements for veterinary drugs and biologics among regulatory agencies in different countries.) The ferric chloride method described in this proposed rule was validated by a collaborative study involving 11 laboratories in the United States, Canada, Japan, and the European Union.

APHIS is proposing to implement the recommendations of the VICH by amending the regulations in §§ 113.100 and 113.200 concerning general requirements for inactivated bacterial products and general requirements for killed virus vaccines. We are proposing to require bulk or final container samples of completed inactivated bacterial products and killed virus vaccines from each serial to be tested for residual free formaldehyde content using the ferric chloride method in place of the basic fuchsin test that is currently specified. We are also proposing that the maximum allowable residual free formaldehyde content of veterinary biologics be measured in grams per liter (g/L) instead of the currently specified equivalent percent or parts per million. Under the present regulations, inactivated bacterial products which are found satisfactory using the viricidal activity test prescribed in § 113.35 are not required to be tested pursuant to § 113.100. This provision would remain unchanged.

Licensed biologics manufacturers currently use the basic fuchsin method for determining residual free formaldehyde content of products that they produce. However, they are allowed to use alternative methods when they are more suited to a particular product being tested or to satisfy the regulatory requirements prescribed by other countries.

The ferric chloride method for determination of residual free formaldehyde content proposed in this document is a harmonized method that regulatory authorities in the United States, the European Union, Japan, and Canada agree is the most accurate of the two best available methods for determining residual free formaldehyde content of veterinary biologics. It was selected because it is a familiar, commonly used procedure that does not require special equipment or reagents, should yield reproducible results in all laboratories, and should eliminate the need for veterinary biologics manufacturers to perform two or more tests to determine if their products contain excess levels of free formaldehyde. If necessary, however, veterinary biologics manufacturers would be allowed an exemption under § 113.4 of the regulations to use other test methods for determining residual free formaldehyde content of their products based on specific requirements or characteristics of the test material.

Determination of Residual Free Formaldehyde Content of Biological Products

We are proposing to amend the regulations to specify that the requirements in §§ 113.100 and 113.200 pertain to using the ferric chloride method to determine the free formaldehyde content of veterinary biological products. A footnote in each of these sections would provide an address from which the procedure for performing the ferric chloride test could be obtained. The basis for this proposed amendment is the collaborative and comparative study performed by APHIS, other VICH members, and the animal health industry to validate the ferric chloride method and earn its recognition as a VICH recommended harmonized procedure.

Materials and Equipment

The proposed change to the regulations in §§ 113.100 and 113.200 would require the use of analytical grade chemical reagents and a spectrophometer capable of measuring absorbance at a wavelength of 628 nm. Other commonly used and readily available laboratory equipment and supplies also would be required.

Compliance

Veterinary biologics manufacturers that determine residual free formaldehyde content in desiccated biological products by a method that is not the ferric chloride method that would be required under this proposed rule would be allowed 1 year after the effective date of the final rule to come into compliance or to request an exemption under § 113.4 of the regulations.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the Virus-Serum-Toxin Act regulations for determination of residual free formaldehyde content in biological products to require that such free formaldehyde determinations be made using the ferric chloride method, which determines residual free formaldehyde content by measuring the quantity of coloring matter in solution by the quantity of light absorbed in passing through the solution. In addition, we are proposing that the maximum allowable residual free formaldehyde content of veterinary biologics be measured in grams per liter rather than the currently specified equivalent percent or parts per million. The effect of this action would be to provide a standardized method which has been shown to be more accurate than the presently used basic fuchsin method and which has been standardized and adopted internationally.

This proposed rule would affect all licensed manufacturers of veterinary biologics that test inactivated bacterial products and killed virus vaccines for free formaldehyde content.Currently, there are approximately 135 veterinary

biologics establishments, including permittees. According to the standards of the Small Business Administration, most veterinary biologics establishments would be classified as small entities.

This proposed rule should not impose any additional testing or economic burden on these manufacturers because manufacturers currently test their products for free formaldehyde content using the basic fuchsin and other methods, and the reagents and equipment necessary to perform the ferric chloride test for free formaldehyde content that would be required under this proposed rule should be comparable in cost.

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

Executive Order 12372

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 113 as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. In § 113.100, paragraph (f) is revised to read as follows:

§ 113.100 General requirements for inactivated bacterial products.

* * * * *

(f) If formaldehyde is used as the inactivating agent, and the serial has not been found satisfactory by the viricidal activity test, bulk or final container samples of completed product from each serial must be tested for residual free formaldehyde content using the ferric chloride test.[2] Firms currently using tests for residual free formaldehyde content other than the ferric chloride test have until [*Insert date 1 year from effective date of the final rule*] to update their Outline of Production to be in compliance with this requirement.

(1) The residual free formaldehyde content of biological products containing clostridial antigens must not exceed 1.85 grams per liter (g/L).

(2) The residual free formaldehyde content of bacterins, bacterin-toxoids, and toxoids, other than those containing clostridial antigens, must not exceed 0.74 grams per liter (g/L).

3. In § 113.200, paragraph (f) is revised to read as follows:

§ 113.200 General requirements for killed virus vaccines.

* * * * *

(f) *Formaldehyde content.* If formaldehyde is used as the killing agent, the residual free formaldehyde content must not exceed 0.74 grams per liter (g/L) as determined using the ferric chloride test.[3] Firms currently using tests for residual free formaldehyde content other than the ferric chloride test have until [*Insert date 1 year from effective date of the final rule*] to update their Outline of Production to be in compliance with this requirement.

Done in Washington, DC, this 1st day of April 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–8260 Filed 4–4–02; 8:45 am]

BILLING CODE 3410–34–U

[2] The procedures for performing the ferric chloride test for residual free formaldehyde may be obtained from USDA, APHIS, Center for Veterinary Biologics-Laboratory, 100 Dayton Road, P.O. Box 844, Ames, IA 50010.

[3] The procedures for performing the ferric chloride test for residual free formaldehyde may be obtained from USDA, APHIS, Center for Veterinary Biologics-Laboratory, 100 Dayton Road, P.O. Box 844, Ames, IA 50010.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 01–185; ET Docket No. 95–18; DA 02–601]

Flexibility in the Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment period.

SUMMARY: This document extends by seven days the time in which parties may provide additional technical comment on issues pertaining to issues the Commission considered in the Notice of Proposed Rulemaking in IB Docket No. 01–185 and ET Docket No. 95–18, *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.*

DATES: Comments are due March 22, 2002.[1]

FOR FURTHER INFORMATION CONTACT: Trey Hanbury, Special Counsel, International Bureau, (202) 418–0766.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document regarding IB Docket No. 01–185 and ET Docket No. 95–18, released on March 6, 2002. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

Synopsis

1. On August 17, 2001, the Commission released the *Flexibility Notice of Proposed Rulemaking,* 66 FR 47621 (Sept. 13, 2001) on proposals to bring flexibility to the delivery of communications by mobile satellite service (MSS) providers. One alternative proposal under consideration would open portions of the MSS bands for any operator to provide a terrestrial service that could either be offered in

[1] Editorial note: This document was received at the Office of the Federal Register on April 2, 2002.

conjunction with MSS or as an alternative mobile service. Additional technical comment on this alternative proposal will assist the Commission in reaching a decision in this proceeding.

2. This document allows an additional seven days for parties to file technical comment on issues pertaining to the alternative proposal for MSS operations. The new deadline for additional technical comment is March 22, 2002.

Federal Communications Commission.

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 02–8252 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes. That action would have required an inspection of the aft galley power feeder wire assembly for riding, chafing, and damage located above the main cabin, left side, overwing ceiling panels; and follow-on actions. Since the issuance of that NPRM, the FAA has reviewed and approved a McDonnell Douglas service bulletin which describes procedures for modification of the installation of the aft galley power feeder wire assembly. The FAA has issued a new NPRM which combines the proposed requirements to inspect the aft galley power feeder wire assembly and perform follow-on actions with new proposed requirements to modify the installation of the galley power feeder wire assembly. Accordingly, the previous NPRM is being withdrawn.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on August 31, 2001 (66 FR 45948). The proposed rule would have required an inspection of the aft galley power feeder wire assembly for riding, chafing, and damage located above the main cabin, left side, overwing ceiling panels; and follow-on actions. The proposed actions were intended to prevent damage to the electrical wire insulation of the aft galley power feeder wires, electrical arcing, and potential smoke and/or fire.

Actions That Occurred Since the NPRM Was Issued

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000, which describes procedures for modification of the installation of the galley power feeder cable. The modification involves installing two standoffs on frames at stations Y=924.000 and Y=943.000 and rerouting wire assemblies and relocating the wire assembly clamps from the ceiling support structure to the new standoffs. That service bulletin recommends that McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02 (the applicable service information specified in NPRM Docket No. 2001–NM–149–AD), be accomplished prior to or concurrently with modification of the installation of the power feeder cable.

FAA's Conclusions

Upon consideration, the FAA has determined that it makes technical sense to combine the proposed action of NPRM Docket No. 2001–NM–149–AD with a new NPRM, Docket No. 2000–NM–197–AD, that proposes accomplishment of the previously described modification. Combining these actions would also provide a convenience for the operators and would not adversely affect safety. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001–NM–149–AD, published in the **Federal Register** on August 31, 2001 (66 FR 45948), is withdrawn.

Issued in Renton, Washington, on March 28, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8282 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–8 series airplanes. That action would have required incorporation of horizontal stabilizer position information into the existing takeoff configuration warning system. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that indicate that the identified unsafe condition does not exist. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–8 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on November 30, 1988 (53 FR 48499). The proposed rule would have required incorporation of horizontal stabilizer position information into the existing takeoff configuration warning system. That action was prompted by an FAA review of takeoff configuration warning systems of large turbofan/turbojet transport airplanes. The review revealed that the horizontal stabilizer position was not monitored by the takeoff warning system on Model DC–8 series airplanes. The proposed actions were intended to prevent an airplane from taking off in the wrong takeoff configuration.

Since Issuance of the NPRM

Since the NPRM was issued, we have engaged in additional research into the identified unsafe condition and potentially related accidents and found that incorrect loading data—and not unsafe flight crew procedures—may have resulted in a miscalculated center of gravity on takeoff. Incorrect trim setting was cited or at least suspected as a factor in three accidents. There are a number of possible explanations for an incorrect trim setting: The pilot may have misread the loading data, the company flight operations department may have provided incorrect data, or the pilot may have erred in calculating and setting the trim. To be effective, an out-of-trim warning system requires accurate takeoff data from the pilot; therefore, it is not clear whether input error may have been involved or whether any of the accidents would have actually been prevented by an out-of-trim warning system.

We find that established crew procedures are sufficient to maintain the necessary level of safety. Notwithstanding the three accidents discussed above, the remaining service experience on Model DC–8 series airplanes (and most other airplanes of that vintage) confirms the effectiveness and adequacy of flight crew procedures in ensuring the correct takeoff setting of the horizontal stabilizer when the flight crew is provided correct information. In light of these findings, we have determined that the previously identified unsafe condition does not exist—provided the flight crew follows established takeoff procedures.

Furthermore, the economic impact of the proposed AD on operators would be significant. Five commenters to the NPRM indicated that accomplishment of the actions of the proposed AD would impose a significant economic burden. The cost of the modification kits would be high because the manufacturer must design, test, and certify the system before kits can be made available to the operators. The estimated total cost to accomplish the proposed actions would be $149,000 per airplane (adjusted for inflation from the date of the proposed AD). In fact, the cost of implementing the proposed requirements could exceed the value of the entire fleet. In light of our determination that an unsafe condition does not exist, we find that the large economic impact to mandate incorporation of the proposed system on these airplanes is impractical and unjustified.

FAA's Conclusions

Upon further consideration, we have determined that the unsafe condition identified in the proposed AD does not exist. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 88–NM–145–AD, published in the **Federal Register** on November 30, 1988 (53 FR 48499), is withdrawn.

Issued in Renton, Washington, on March 28, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8281 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–313–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and 328–300 series airplanes. This proposal would require replacement of the bolts with new bolts with wirelocking on the Support One of the rudder spring tab. This action is necessary to ensure replacement of improper bolts installed on the rudder spring tab that could back out over time, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–313–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–313–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 and 328–300 series airplanes. The LBA advises that incorrect bolt inserts were installed on the rudder spring tab during production. The self-locking inserts for the bracket attachment bolts on the rudder spring tab were too long, and consequently, did not fully engage the bolts. Over time, the incomplete engagement of the self-locking features of the bolt inserts could cause the spring tab attachment bolts to back out. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletins SB–328–55–351 (for Model 328–100 series airplanes); and SB–328J–55–058, Revision 1 (for Model 328–300 series airplanes); both dated April 10, 2001. These service bulletins describe procedures for replacement of the bolts with new bolts with wirelocking on the Support One of the rudder spring tab (including torquing the bolts to the proper setting). Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2001–260 and 2001–261, both dated September 6, 2001, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 53 Model 328–100 series airplanes and 20 Model 328–300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,380, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GMBH: Docket 2001–NM–313–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3119 inclusive, and Model 328–300 series airplanes having serial numbers 3105 through 3167 inclusive, excluding serial number 3164; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 ensure replacement of improper bolts installed on the rudder spring tab that could back out over time, which could result in reduced structural integrity of the airplane, accomplish the following:

Bolt Replacement

(a) Within 90 days after the effective date of this AD, replace the bolts with new bolts with wirelocking on the Support One of the rudder spring tab (including torquing the bolts to the proper setting), per the Accomplishment Instructions of Dornier Service Bulletin SB–328–55–351 (for Model 328–100 series airplanes); or SB–328J–55–058, Revision 1 (for Model 328–300 series airplanes); both dated April 10, 2001; as applicable.

Alternative Methods of Compliance

(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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in German airworthiness directives 2001–260 and 2001–261, both dated September 6, 2001.

Issued in Renton, Washington, on March 28, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8285 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–290–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require measurement of the over-center force of the thrust reverser operating levers; a functional test to verify proper energizing of the secondary lock solenoid of the thrust reversers; and corrective actions, if necessary. This action is necessary to detect and correct an insufficient over-center force in the corresponding thrust reverser operating lever, and incorrect setting of the thrust reverser selector switch (S9), which could result in uncommanded deployment of the thrust reversers during flight and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–290–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–290–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–290–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 series airplanes. The CAA–NL advises that an in-flight thrust reverser deployment occurred at the top of descent. The flightcrew encountered some buffeting, but no controllability problems. Forty-five seconds later, at a lower airspeed, the hydraulic pressure on the stow port of the thrust reverser actuator overpowered the aerodynamic forces on the deployed thrust reverser doors and closed them. Subsequent investigation revealed that the thrust reverser selector switch (S9), located in the left-hand thrust lever switchbox, was very critically adjusted. Additionally, the incident airplane had insufficient over-center force on the left-hand thrust reverser operating lever, and the corresponding ''ground/flight'' switch had remained unnoticed by the flightcrew in the ''ground'' position. Consequently, the addition of firm manual retardation of the thrust levers to IDLE resulted in a temporary, unintentional operation of the thrust reverser selector switch (S9).

Incorrect setting of the thrust reverser selector switch (S9) and an insufficient over-center force in the corresponding thrust reverser operating lever, if not corrected, could result in uncommanded deployment of one or both thrust reversers during flight and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–76–015, dated January 15, 2001, including Manual Change Notification MCNM F100–060, dated January 1, 2001, which describes procedures for measurement of the over-center force of the left- and right-hand thrust reverser operating levers, and corrective actions, if necessary. The corrective actions include measuring and readjusting the minimum stop of the reverse-thrust lever and over-center force of the thrust reverser. The service bulletin also describes procedures for a functional test to verify proper energizing of the secondary lock solenoid of the left- and right-hand thrust reversers, and corrective actions, if necessary. The corrective actions include a rigging test of the thrust reverser switchbox, another functional test to verify proper energizing of the secondary lock solenoid, and replacement of the thrust reverser switchbox with a new or serviceable switchbox, if necessary. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2001–040, dated March 30, 2001, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed Rule and Service Bulletin

In lieu of performing corrective actions, the service bulletin allows a readjustment of the over-center force of the thrust reverser operating lever to be scheduled for the next scheduled hangar check or within 1,000 flight hours, whichever comes first. The FAA has determined that such rescheduling would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the proposed corrective actions. In light of all of these factors, the FAA finds that the proposed corrective actions should be accomplished before further flight.

Interim Action

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

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,680, or $120 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action''

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 2001–NM–290–AD.

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

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 as indicated, unless accomplished previously.

To detect and correct incorrect an insufficient over-center force in the corresponding thrust reverser operating lever and incorrect setting of the thrust reverser selector switch (S9), which could result in uncommanded deployment of the thrust reversers during flight and consequent reduced controllability of the airplane, accomplish the following:

Over-Center Force Measurement and Readjustment

(a) Within 6 months after the effective date of this AD, measure the over-center force of the left- and right-hand thrust reverser operating levers, per paragraph 2.A. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including Manual Change Notification MCNM F100–060, dated January 1, 2001.

(1) If the over-center force is equal to or higher than 4.5 pounds, but not higher than 5.5 pounds, no further action is required by this paragraph.

(2) If the over-center force is less than 4.5 pounds or higher than 5.5 pounds, before further flight, readjust the over-center force and accomplish the corrective actions (including measuring and readjusting the minimum stop of the reverse-thrust lever and over-center force of the thrust reverser), per the service bulletin.

Functional Test and Corrective Actions

(b) Within 6 months after the effective date of this AD, perform a functional test to verify proper energizing of the secondary lock solenoid of the left- and right-hand thrust reversers, per paragraph 2.B. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including Manual Change Notification MCNM F100–060, dated January 1, 2001.

(1) If the secondary lock solenoid does NOT (momentarily or continuously) energize with movement of the thrust reverser operating lever as described in paragraph 2.B.(9) of the service bulletin, no further action is required by this paragraph.

(2) If the secondary lock solenoid (momentarily or continuously) energizes with movement of the thrust reverser operating lever as described in paragraph 2.B.(9) of the service bulletin, before further flight, perform a rigging test of the thrust reverser switchbox and repeat the functional test to verify proper energizing of the secondary lock solenoid one more time, per paragraph 2.B.(9) of the service bulletin.

(i) If the solenoid does NOT (momentarily or continuously) energize with movement of the thrust reverser operating lever as described in paragraph 2.B.(9) of the service bulletin, no further action is required by this paragraph.

(ii) If the secondary lock solenoid still (momentarily or continuously) energizes with movement of the thrust reverser operating lever as described in paragraph 2.B.(9) of the service bulletin, before further flight, replace the thrust reverser switchbox with a new or serviceable switchbox, per the service bulletin.

Alternative Methods of Compliance

(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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 2001–040, dated March 30, 2001.

Issued in Renton, Washington, on March 28, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8284 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–197–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This proposal would require an inspection of the galley power feeder cable above the main cabin ceiling supports for damage caused by chafing. The proposal would also require repairing any damage on the outer cable jacket or primary insulation, installing a splice on the power feeder cable to remove damage, installing sleeving along a portion of the cable, installing standoffs for the cable, re-routing the galley power feeder cable, and testing the galley equipment, as applicable. This action is necessary to prevent future damage to the galley power feeder cable as well as to detect and correct existing damage to the galley power feeder cable, which could result in electrical arcing, possibly leading to damage to adjacent structures and to fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 20, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–197–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: George Y. Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–197–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–197–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the aft galley power feeder wires are chafing on the main cabin ceiling supports located in the overwing area. This condition, if not corrected, could result in damage to the galley power feeder cable, which could result in electrical arcing, possibly leading to damage to adjacent structures and to fire in the airplane.

Related Proposed Rulemaking

On August 24, 2001, the FAA issued a Notice of Proposed Rulemaking (NPRM), Docket Number 2001–NM–149–AD (66 FR 45948, August 31, 2001), which proposed to require an inspection of the aft galley power feeder cables for riding, chafing, and damage, and follow-on actions. The follow-on actions include repair of any damage on the outer cable jacket or primary insulation, installation of a splice on the power feeder cables to remove damage, installation of sleeving over the affected area, and a functional test of the galley equipment, as applicable. The actions are proposed to be taken in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001. No comments regarding the proposed AD were received.

Since the Issuance of that NPRM

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000, which describes procedures for modification of the installation of the galley power feeder cable. That service bulletin recommends that Alert Service Bulletin MD90–24A046, Revision 02 (the applicable service information specified in NPRM Docket No. 2001–NM–149–AD), be accomplished prior to or concurrent with modification of the installation of the power feeder cable.

Explanation of Relevant Service Information

The FAA has reviewed and approved two service bulletins pertaining to chafing of the galley power feeder cable against the main cabin ceiling supports located in the overwing area on the left side. One, McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001, was specified in NPRM Docket Number 2000–NM–149–AD as the relevant service information. That alert service bulletin describes procedures for a one-time general visual inspection of the power feeder cable for damage caused by chafing. That alert service bulletin also describes procedures for follow-on actions, including repair of any damage on the outer cable jacket or primary insulation, installation of a splice on the power feeder cable to remove damage, installation of sleeving along a portion of the cable, and a functional test of the galley equipment, as applicable.

The second service bulletin—McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000—describes procedures for installing standoffs for the power feeder cable and re-routing of the power feeder cable to provide additional clearance between the cable and the main ceiling supports. Accomplishment of the actions specified in these alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

The FAA has determined that, rather than proposing to require inspection, follow-on actions, and repair, if necessary, and modification of the galley power feeder cable in two separate ADs, it is technically reasonable to combine the requirements into a single AD. Combining these

actions would also provide a convenience for the operators and would not adversely affect safety. Therefore, this NPRM proposes the accomplishment of the actions specified in both McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001, and Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000. The FAA is considering action to withdraw NPRM Docket Number 2001–NM–149–AD.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry would be affected by the proposed requirement to accomplish McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001. We estimate that 22 airplanes of U.S. registry would be affected by the proposed requirement to accomplish McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $1,020, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed installation of sleeving along a portion of the cable, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed installation of sleeving on U.S. operators is estimated to be $2,040, or $120 per airplane.

It would take approximately 5 work hours per airplane to accomplish the proposed modification of the installation of the galley power feeder cables and re-routing of the cables, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification and re-routing of the cable on U.S. operators is estimated to be $6,600, or $300 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–149–AD.

Applicability: Model MD–90–30 airplanes, as listed in McDonnell Douglas Alert Service Bulletins MD90–24A046, Revision 02, dated March 26, 2001, and MD90–24A047, Revision 01, dated July 31, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 as indicated, unless accomplished previously.

To prevent future damage to the galley power feeder cable as well as to detect and correct existing damage to the galley power feeder cable, which could result in electrical arcing, possibly leading to damage to adjacent structures and to fire in the airplane, accomplish the following:

Inspection and Follow-On Actions

(a) For McDonnell Douglas Model MD–90–30 airplanes as identified in McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001: Within 90 days after the effective date of this AD, do a one-time general visual inspection of the galley power feeder cable located above the main cabin ceiling supports in the overwing area on the left side for damage caused by chafing—particularly near the ends of the ceiling supports—in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD90–24A046, Revision 02, dated March 26, 2001.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Condition 1: Damage to Outer Cable Jacket or Primary Insulation

(1) If any damage to the outer cable jacket or the primary insulation is found, prior to further flight, repair the scuffed jacket or insulation and modify the galley power feeder cable installation by installing sleeving over the wire assembly per the alert service bulletin.

Condition 2: Damage to Power Feeder Cable Conductor

(2) If any damage to the power feeder cable conductor is found, prior to further flight, repair the damaged cable by installing a splice at the damaged location, modify the galley power feeder cable installation by installing sleeving over the cable assembly, and do a functional test of the galley equipment per the alert service bulletin.

Condition 3: No Damage

(3) If no damage is found, prior to further flight, modify the galley power feeder cable installation by installing sleeving over the cable assembly per the alert service bulletin.

Note 3: Accomplishment of the applicable actions prior to the effective date of this AD per McDonnell Douglas Alert Service Bulletin MD90–24A046, dated July 31, 1997; or Revision 01, dated February 16, 1998; is acceptable for compliance with the requirements of paragraph (a) of this AD.

Modification of Installation and Re-routing of Power Feeder Cable

(b) For McDonnell Douglas Model MD–90–30 airplanes, as identified in McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000: Within one year after the effective date of this AD, modify the installation of the galley power feeder cables by installing standoffs and re-route the galley power feeder cable, as shown in Figure 1 of McDonnell Douglas Alert Service Bulletin MD90–24A047, Revision 01, dated July 31, 2000, in accordance with the service bulletin.

Note 4: Accomplishment of the applicable actions prior to the effective date of this AD per McDonnell Douglas Alert Service Bulletin MD90–24–047, dated September 15, 1997, is acceptable for compliance with the requirements of paragraph (b) of this AD.

Alternative Methods of Compliance

(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, Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

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

Issued in Renton, Washington, on March 28, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–8283 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 02N–0010]

Dental Devices; Classification for Intraoral Devices for Snoring and/or Obstructive Sleep Apnea

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify the intraoral devices for snoring and/or obstructive sleep apnea, used to control or treat simple snoring and/or obstructive sleep apnea. Under the proposal, the intraoral devices for snoring and/or obstructive sleep apnea would be classified into class II (special controls). The agency is publishing in this document the recommendations of the Dental Devices Panel (the Panel) regarding the classification of these devices. After considering public comments on the proposed classification, FDA will publish a final regulation classifying these devices. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a draft guidance document that would serve as the special control if this proposal becomes final.

DATES: Submit written or electronic comments by July 5, 2002. See section VII of this document for the proposed effective date of a final rule based on this document.

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: Susan Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the Panel, an FDA advisory committee,

regarding the classification of the devices.

Snoring devices were marketed prior to the enactment of the 1976 amendments. Intraoral devices to treat snoring are removable medical devices that are fitted in the patient's mouth to reduce or eliminate snoring. In some cases, the devices may also be used to treat obstructive sleep apnea. Intraoral devices to treat snoring and obstructive sleep apnea include three basic designs: Mandibular repositioners, tongue retaining devices, and palatal lifting devices. The treatment is viewed as a noninvasive and reversible treatment option. All of these devices provide the same therapeutic goal of increasing the pharyngeal space to improve the patient's ability to exchange air. The increase in airway space decreases the air turbulence, which is a causative factor in snoring. In addition to the removable devices, there are implantable screw devices that may be used with a suturing technique as part of a surgical procedure to lift the intraoral musculature and provide improved oropharyngeal patency (airway space). Implanted screw devices are not included in this classification. Extraoral devices, such as nasal dilators, are classified separately as ear, nose, and throat devices and are not included in this classification.

Recently, an increase in interest from the dental community to provide treatment for patients who snore or who have obstructive sleep apnea has resulted in an influx of premarket notification submissions for these devices to the agency. The majority of these new devices are designed as mandibular repositioners. The sponsors of these devices primarily seek claims for the reduction of simple snoring, although some seek claims for treatment of sleep apnea. Review of these devices includes an analysis of the devices' specific intended use(s) and safety considerations relating to the design and manufacturing materials.

II. Recommendations of the Panel

During a public meeting which was held on November 5, 1997, the Panel made the following recommendations regarding the classification of intraoral devices for snoring and/or obstructive sleep apnea.

A. Identification

The Panel recommended that intraoral devices for snoring and/or obstructive sleep apnea be identified as devices that are worn over the natural teeth (not dentures) to improve oropharyngeal patency (airway space). The devices are intended to reposition and support the mandible in a more forward position, lift the soft palate, or retain and support the tongue and its associated musculature to increase airway space. With an increase in airway space, there is less air turbulence, resulting in a decrease in snoring. In patients who also suffer from obstructive sleep apnea, the resulting increase in airway space functions to diminish apneic episodes.

B. Recommended Classification of the Panel

The Panel unanimously recommended that the intraoral devices for snoring and the intraoral devices for snoring and obstructive sleep apnea be classified into class II. The Panel believed that class II with a guidance document as the special control would provide reasonable assurance of the safety and effectiveness of the devices. The Panel believed that the guidance document should address labeling and advised that the labeling include the following:

1. Precautions

- Use of the device may cause tooth movement or changes in dental occlusion.
- Use of the device may cause gingival or dental soreness.
- Use of the device may cause pain or soreness to the temporomadibular joint (TMJ).
- Use of the device may cause obstructed oral breathing.
- Use of the device may cause excessive salivation.

2. Contraindications

- The device should not be used in patients who have loose teeth or advanced periodontal disease.
- The device is contraindicated for patients who have congested nasal passages.
- The device should not be used in patients who are still growing.
- The device is not indicated for patients who have central sleep apnea.

C. Summary of Reasons for Recommendation

After reviewing the information provided by FDA and considering the open discussions during the Panel meeting and the Panel members' personal knowledge of and clinical experience with the devices, the Panel gave the following reasons in support of its recommendation to classify the generic type of intraoral devices for snoring and intraoral devices for snoring and obstructive sleep apnea used to improve oropharyngeal patency into class II:

1. The Panel believes that intraoral devices for snoring and intraoral devices for snoring and obstructive sleep apnea should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls to provide such assurance.

2. The Panel believes that the benefits to health from use of the devices outweigh any of the known risks.

3. The Panel agrees with FDA that sufficient data already exists to support safe and effective use of these devices for patients who wish to treat or control simple snoring due to partial obstruction of the airway.

D. Summary of Data Upon Which the Recommendation is Based

Snoring is a medical and social problem that can cause patients and their partners to sleep poorly. This often causes excessive daytime drowsiness.

During the Panel meeting, a practitioner and researcher of sleep disorder medicine testified that many patients experience relief from obstructive sleep apnea and simple snoring with the use of intraoral devices (Ref. 1, pp. 208–214). A trade association published a literature review on the use of oral devices for the treatment of snoring (Ref. 3). The review analyzed a compilation of 21 publications covering 320 patients. The authors concluded that despite the variations in device design, the results consistently demonstrated an improvement in snoring, and often eliminated snoring with the use of oral devices. The authors also reported that complications are rare and that long-term compliance varies from 50 to 100 percent of patients.

An analysis of risk factors for mortality in sleep apnea patients suggests that sleep apnea syndrome contributes indirectly to mortality, most likely as a risk factor for hypertension (Ref. 5). Another study reports that there is an association between mortality and impaired respiration in an aged population during sleep (Ref. 4).

According to representatives of the Sleep Disorders Dental Society, the success rate of these devices is well documented (Ref. 1, pp. 34–42). In one study, the role of mandibular repositioning oral appliances in the treatment of obstructive sleep apnea was reported. The study evaluated patients with obstructive sleep apnea and concluded that the devices are useful in long-term treatment of patients with mild to moderate obstructive sleep apnea (Ref. 2).

Another study compared oral devices to nasal continuous positive airway pressure (C–PAP) (Ref. 6). The authors reported that oral appliance therapy is an effective treatment for some patients who suffer from mild to moderate obstructive sleep apnea and noted that fewer side effects existed. The study also revealed that patients reported greater satisfaction from the use of the oral devices than those who were treated with nasal C–PAP.

E. Risks to Health

Intraoral snoring and obstructive sleep apnea devices may present moderate risks to health. The Panel identified the following risks they believe the use of intraoral devices present: Dental soreness, gingival soreness, TMJ dysfunction syndrome, obstruction of oral breathing, and tooth movement.

Dental or gingival soreness may result from pressure on oral structures while wearing a mandibular repositioning device. Soreness of palatal tissues may result from palatal lifting devices. TMJ dysfunction syndrome may result from use of the devices if the TMJ is strained or if the muscular attachments are stretched for prolonged periods. Joint dysfunction or discomfort may occur from unfavorable loading even if the mandible is repositioned appropriately. Oral appliances that do not include a breathing space can completely obstruct oral breathing, forcing the patient to breathe through the nose. Loosening or flaring of lower anterior teeth or general tooth movement may result when a mandibular repositioning device exerts pressure on the teeth. Periodontally compromised teeth are especially susceptible to flaring.

On the basis of its review of the literature and the Panel's recommendation that these devices be classified into class II, FDA believes that intraoral snoring and/or obstructive sleep apnea devices do not present an unreasonable risk to health and that the guidance, ''Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea,'' as a special control, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices.

F. Special Control

Based on the available information, FDA believes that, in addition to general controls, the guidance document, ''Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Draft Guidance for Industry and FDA,'' is adequate to address the risks to health identified above. As discussed below, sections of the guidance address the risks to health by providing material composition and biocompatibility recommendations, providing labeling recommendations, describing when clinical data are needed, and identifying the kinds of clinical observations that should comprise these data. Other sections identify the kinds of material composition and biocompatibility information that address the risks to health.

1. Material Composition and Biocompatibility

Material composition and biocompatibility recommendations in the guidance document help prevent intraoral gingival, palatal, or dental soreness by ensuring that materials used in these devices can maintain dimensional stability, do not leech any chemical compounds into the oral cavity, and have patient contacting surfaces appropriate to the design of the device.

2. Labeling

Labeling recommendations in the guidance document include contraindications, warnings, precautions, and adequate directions for fitting, use, and care of these devices. FDA believes that these labeling recommendations help ensure that these devices are used correctly by patients for whom these devices are appropriate.

3. Clinical Data

When clinical data are necessary, they should demonstrate a reduction in snoring and/or reduction in apneic episodes for intraoral devices for snoring and/or obstructive sleep apnea, respectively. Reduction in snoring should be based on clinical observation. Reduction in apneic episodes should be based on baseline and post-insertion polysomnograms that include measurements of the respiratory disturbance index, apnea index, duration of the apnea, and oxygen saturation.

FDA believes that compliance with the recommendations in the guidance document, when combined with the general controls, will provide reasonable assurance of the safety and effectiveness of intraoral devices for snoring and/or obstructive sleep apnea.

III. Proposed Classification

FDA believes the intraoral devices for snoring and/or obstructive sleep apnea should be classified into class II because the special control, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls to provide such assurance.

IV. Environmental Impact

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

V. 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 agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, 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.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Manufacturers of unclassified preamendments devices are already subject to the general controls of the act including premarket notification. FDA believes that manufacturers, including small manufacturers, are already substantially in compliance with the recommendations in the guidance document that would be the special control for the device. FDA, therefore, believes that the rule will impose no significant economic impact on any small entities. The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the

Unfunded Mandates Reform Act of 1995 is not required.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains noinformation that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

VII. Submission of Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposed rule by July 5, 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. FDA proposes that any final regulation that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

VIII. References

The following references have 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. Transcript of the Dental Products Panel Meeting, November 3–5, 1997.

2. Menn, S. et al., ''The Mandibular Repositioning Device: Role in the Treatment of Obstructive Sleep Apnea,'' *Sleep*, vol. 19, no. 10, pp. 794–800, 1996.

3. Schmidt-Nowara, W. et al., ''Oral Appliances for the Treatment of Snoring and Obstructive Sleep Apnea: A Review,'' *Sleep*, vol. 18, no. 6, pp. 501–510, 1995.

4. Bliwise, D. L. et al., ''Sleep Apnea and Mortality in an Aged Cohort,'' *American Journal of Public Health*, vol. 78, no. 5, pp. 544–547, 1988.

5. Lavie, P. et al., ''Sleep Apnea Research Mortality in Sleep Apnea Patients: A Multivariate Analysis of Risk Factors,'' *Sleep*, vol. 18, no. 3, pp. 149–157, 1995.

6. Ferguson, K. A. et al., ''A Randomized Crossover Study of an Oral Appliance vs. Nasal-Continuous Positive Airway Pressure in the Treatment of Mild-Moderate Obstructive Sleep Apnea,'' *Chest*, vol. 109, no. 5, pp. 1269–1275, 1996.

List of Subjects in 21 CFR Part 872

Medical devices.

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 872 be amended in subpart F as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

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

2. Section 872.5570 is added to subpart F to read as follows:

§ 872.5570 Intraoral devices for snoring and intraoral devices for snoring and obstructive sleep apnea.

(a) *Identification*. Intraoral devices for snoring and intraoral devices for snoring and obstructive sleep apnea are devices that are worn during sleep to reduce the incidence of snoring and to treat obstructive sleep apnea. The devices are designed to increase the patency of the airway and to decrease air turbulence and airway obstruction. The classification includes palatal lifting devices, tongue retaining devices, and mandibular repositioning devices.

(b) *Classification*. Class II (special controls). The special control for these devices is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Draft Guidance for Industry and FDA.''

Dated: February 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8347 Filed 4–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[OK–029–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of revisions to a previously proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Oklahoma Department of Mines (Department or Oklahoma) added a new definition for ''community or institutional building,'' revised the procedures for making a valid existing rights determination, and corrected various editorial-type errors throughout the amendment. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Oklahoma program and proposed amendment to that program are available for your inspection and the comment period during which you may submit written comments on the revisions to the amendment.

DATES: We will accept written comments until 4 p.m., c.s.t., April 22, 2002.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Oklahoma program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, Internet: mwolfrom@osmre.gov.

Mary Ann Pritchard, Director, Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859, Internet: maryann@guinan.osmre.gov.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the

Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning Oklahoma's program and program amendments at 30 CFR 936.15 and 936.16.

II. Description of the Proposed Amendment

By letter dated November 20, 2001 (Administrative Record No. OK–988.02), Oklahoma sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Oklahoma sent the amendment in response to an August 23, 2000, letter (Administrative Record No. 988) that we sent to Oklahoma in accordance with 30 CFR 732.17(c).

We announced receipt of the proposed amendment in the December 21, 2001, **Federal Register** (66 FR 65858) and invited public comment on its adequacy. The public comment period ended January 22, 2002.

During our review of the amendment, we identified concerns relating to definitions at OAC 460:20–7–3, procedures at OAC 460:20–7–5, and various editorial errors. We notified Oklahoma of the concerns by letter dated December 13, 2001, and January 16, 2002 (Administrative Record Nos. OK–988.06 and OK–988.08). On February 21, 2002, Oklahoma sent us a revised amendment (Administrative Record No. OK–988.10).

Below is a summary of the revisions proposed by Oklahoma. The full text of the revised amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. OAC 460:20–7–3 Definitions

Oklahoma proposes the following new definition for ''community or institutional building'':

''Community or institutional building'' means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health, or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

B. OAC 460:20–7–5 Procedures

1. At OAC 460:20–7–5(f)(1), Oklahoma proposes to remove the phrase ''or eligible for listing'' from the first sentence.

2. At OAC 460:20–7–5(h)(2)(C), Oklahoma proposes to replace the originally proposed provision with the following new provision:

(C) If the information that the Department requests under Paragraph (h)(2)(A) of this Section is not provided within the time specified or as subsequently extended, the Department shall issue a determination that the applicant has not demonstrated valid existing rights, as provided in Paragraph (h)(6)(C) of this Section.

3. At OAC 460:20–7–5(h)(7), Oklahoma proposes to replace the originally proposed provision with the following new provision:

(7) The Department shall make a copy of the request subject to notice and comment under Subsection (h)(3) of this Section available to the public in the same manner as the Department makes permit applications available to the public under Section 460:20–15–5(d) of this Chapter. In addition, the Department shall make records associated with that request, and any subsequent determination under Subsection (h)(6) of this Section, available to the public in accordance with the requirements and procedures of Section 460:20–57–7 of this Chapter.

C. Editorial Corrections

Oklahoma proposes to correct typographical errors and citation references in OAC 460:20–7–3, 460:20–7–4, and 460:20–7–5.

III. Public Comment Procedures

We are reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: OK–029–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory

programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 2, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–8231 Filed 4–4–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7156–1]

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production plants, which were promulgated on April 12, 2001 (66 FR 19006) under the authority of section 112 of the Clean Air Act (CAA). These amendments would clarify the startup, shutdown and malfunction requirements for owners and operators of sources subject to the Vegetable Oil Production NESHAP. These amendments would also clarify the applicability of the NESHAP General Provisions.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments, because we view these actions as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for these actions in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive adverse comments, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of this **Federal Register** is withdrawn, all public comments pertaining to those provisions will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on that subsequent final rule. If you are interested in commenting, you must do so at this time.

DATES: *Comments.* We must receive written comments by May 6, 2002, unless a hearing is requested by April 15, 2002. If a hearing is requested, we must receive written comments by May 20, 2002.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by April 15, 2002, a public hearing will be held on April 19, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket number A–97–59, U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460. In person or by courier, submit comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–59, Room M–1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. We request that a separate copy of each public comment also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Docket. Docket No. A–97–59 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460, in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, 109 TW Alexander Drive, Research Triangle Park, North Carolina, at 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Minerals and Inorganic Chemicals Group (C504–05), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5262, electronic mail (e-mail): *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: A direct final rule identical to this proposal is published in the Rules and Regulations section of this **Federal Register**. If relevant adverse comments are received on this proposal, the direct final rule will be withdrawn and the comments will be addressed in a subsequent final rule. If relevant adverse comments are received only on a discrete portion of the rule, we will consider withdrawing only that portion of the rule. If no relevant adverse comments are received, no further action will be taken on this proposal and the direct final will become effective as provided in that notice.

The regulatory text for this proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

Comments

Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect format. All comments and data submitted in electronic form must note the docket number A–97–59. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, (C404–02), Attn: Mr. Rick Colyer, U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket

The docket is an organized and complete file of all the information we considered in developing this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to help you to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A)) of the CAA.) You may obtain the regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. We may charge a reasonable fee for copying docket materials. You may also obtain docket indexes by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at *http://www.epa.gov/airprogm/oar/docket/faxlist.html.*

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Tanya Medley, U.S. EPA, (C504–05), Research Triangle Park, NC 27709, telephone (919) 541–5422, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Tanya Medley to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Worldwide Web

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

Regulated Entities

If your facility produces vegetable oil from corn germ, cottonseed, flax, peanuts, rapeseed (for example, canola), safflower, soybeans, or sunflower, it may be a ''regulated entity.'' Categories and entities potentially regulated by this action include:

Category	NAICS	Examples of regulated entities
Industry	311223	Cottonseed oil mills.
	311222	Soybean oil mills.
	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.

Category	NAICS	Examples of regulated entities
	311223	Other vegetable oil mills, excluding soybeans and cottonseed mills.
	311119	Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats.
	311211	Flour and other grain mill product mills.
	311221	Wet corn milling.
Federal government		Not affected.
State/local/tribal government		Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2832 of the rule. If you have any questions regarding the applicability of these amendments to a particular entity, consult the appropriate EPA Regional Office representative.

What Are the Administrative Requirements for This Action?

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Because the proposed rule amendments will not impose additional regulatory requirements on owners or operators of solvent extraction for vegetable oil production plants, I certify that this action will not have a significant economic impact on a substantial number of small entities.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulation section for this **Federal Register** publication.

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 5, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–5863 Filed 4–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0010; FRL–6833–6]

RIN 2070–AD43

Perfluoroalkyl Sulfonates, Proposed Significant New Use Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the existing comment period for the proposed significant new use rule (SNUR) on perfluoroalkyl sulfonates published on March 11, 2002, in the **Federal Register**. In response to a request from the International Imaging Industry Association, the comment period is being extended by 90 days, until July 9, 2002. The comment period was scheduled to close on April 10, 2002. The proposed SNUR under section 5(a)(2) of the Toxic Substances Control Act (TSCA) applies to the following chemical substances: Perfluorooctanesulfonic acid (PFOSH) and certain of its salts (PFOSS); perfluorooctanesulfonyl fluoride (POSF), certain higher and lower homologues of PFOSH and POSF; and certain other chemical substances, including polymers, that are derived from PFOSH and its homologues. These chemical substances are referred to collectively in the proposed rule as perfluoroalkyl sulfonates, or PFAS. The proposed rule would require manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of these chemical substances for the significant new uses described in this document. EPA believes that this action is necessary because the chemical substances included in that proposed rule may be hazardous to human health and the environment. The required notification would provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments, identified by docket control number OPPTS–50639C, must be received on or before July 9, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50639C in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mary Dominiak, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8104; e-mail address: dominiak.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in Table 2 of the proposed rule. Persons who intend to import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 12.728.

Those persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export any of the chemical substances listed in Table 2 of the proposed rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR 721.20 and 40 CFR part 707, subpart D. Entities potentially affected by the SNUR requirements in the proposed rule may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Chemical Manufacturers or Importers	325	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances
Chemical Exporters	325	Persons who export, or intend to export, one or more of the subject chemical substances

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 in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine if you or your business are affected by this action, you should carefully examine the applicability provisions at 40 CFR 721.5 for SNUR-related obligations. Note that because the proposed rule would designate certain manufacturing and importing activities as significant new uses, persons that solely process the chemical substances that would be covered by this action would not be subject to the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

A. *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/. 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 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

B. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50639C. 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, 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 for the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

As described in Unit I.C. of the proposed rule published in the Federal **Register** of March 11, 2002 (67 FR 11014) (FRL–6823–7), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the proposed rule. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPPTS–50639C in the subject line on the first page of your response.

IV. What Action is EPA taking?

EPA is extending the comment period for the proposed SNUR on PFAS by 90 days, from April 11, 2002, until July 9, 2002. This proposed rule would require manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of 75 chemical substances for the significant new uses described in the proposed rule. This extension was requested by the International Imaging Industry Association (OPPTS–50639C–C2–001) for the purpose of allowing the member companies of the Association to develop information that addresses both progress made by voluntary PFAS replacement activities, and the specific request made in the proposed rule for comments that address anticipated exposures and releases that may result from photographic use of PFAS, including information on handling and disposal controls that would control, reduce, or eliminate such exposures and releases. EPA believes that this information would be valuable to the Agency and the public, and that an extension of time not to exceed 90 days would be warranted for its provision.

As stated in Unit IV. of the proposed rule, EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing.

Persons who begin commercial manufacture or import of PFAS for the significant new uses listed in this proposed SNUR after the proposal has been published would be subject to the requirements of the SNUR when and if the rule goes final, and would have to stop that activity unless it meets the requirements of the final SNUR. Persons who ceased those activities will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who begin commercial manufacture or import of these chemical substances between the proposal and the effective date of the SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

V. What is the Agency's Authority for Taking this Action?

EPA proposed this SNUR pursuant to its authority under TSCA section 5(a)(2).

VI. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA on a proposed rule that previously published in the **Federal Register**. For information about the applicability of the regulatory assessment requirements to the proposed rule, please refer to the discussion in Unit VII. of that document (65 FR 11014, 11024).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: April 1, 2002.

David R. Williams,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–8259 Filed 4–2–02; 4:29 pm]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 01–185; ET Docket No. 95–18; DA 02–554]

Flexibility in the Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 Ghz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comment.

SUMMARY: This document invites parties to provide additional technical comment on issues pertaining to issues the Commission considered in the Notice of Proposed Rulemaking in IB Docket No. 01–185 and ET Docket No. 95–18, *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.*

DATES: Comments are due March 15, 2002.[1]

FOR FURTHER INFORMATION CONTACT: Trey Hanbury, Special Counsel, International Bureau, (202) 418–0766.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document regarding IB Docket No. 01–185 and ET Docket No. 95–18, released on March 6, 2002. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at *http://www.fcc.gov.*

[1] This document was received at the Office of the Federal Register on April 2, 2002.

Synopsis

1. On August 17, 2001, the Commission released the *Flexibility Notice of Proposed Rulemaking,* 66 FR 47621 (Sept. 13, 2001), on proposals to bring flexibility to the delivery of communications by mobile satellite service (MSS) providers. One alternative proposal under consideration would open portions of the MSS bands for any operator to provide a terrestrial service that could either be offered in conjunction with MSS or as an alternative mobile service. Additional technical comment on this alternative proposal will assist the Commission in reaching a decision in this proceeding.

2. For this reason, the Commission additional technical comment on issues pertaining to the alternative proposal for MSS operations.

Federal Communications Commission.

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 02–8251 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; CC Docket No. 96–98; CC Docket No 96–116; FCC 02–73]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission), seeks comment on whether to extend the LNP and pooling requirements to all carriers within the largest 100 MSAs. Finally, the Commission seeks comment on whether all MSAs included in Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.

DATES: Comments are due May 6, 2002. Reply Comments are due May 20, 2002. Written comments by the public on the proposed information collections are due May 6, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before June 4, 2002.

ADDRESSES: Federal Communications Commission, Secretary, 445 12th Street, SW, Room TW–B204F, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbherman@fcc.gov,* and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *JThornto@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff, (202) 418–7705 or e-mail at pslipako@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the *Third Further Notice of Proposed Rulemaking in CC Docket 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95–116, (FNPRM),* adopted on March 13, 2002 and released on March 14, 2002. The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW, Washington, DC 20554. The complete text may also be obtained through the world wide web at *http://www.fcc.gov/Bureaus/CommonCarrier/Orders,* or may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

This *FNPRM* contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This *FNPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *FNPRM*,

as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *FNPRM*; OMB notification of action is due 60 days from the date of publication of this *FNPRM* in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Numbering Resource Optimization—Clarification and Further Notice.

Form No.: N/A.

Type of Review: Proposed new collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 2 hours per respondent.

Total Annual Burden: 20 hours.

Total Annual Costs: $0.

Needs and Uses: Comments are being solicited on whether rural or small carriers should be able to opt out of participation in certain MSAs upon a showing of whether or not there are competing providers in the applicable geographic area. This information will be used to determine whether or not certain carriers provide LNP and participate in thousands-block number pooling.

Synopsis of the Third Further Notice of Proposed Rulemaking in CC Docket 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95–116

1. In the *Numbering Resource Optimization Third Report and Order,* 67 FR 6431 (Feb. 12, 2002) the Commission extended LNP and thousands-block number pooling requirements to all carriers in the largest 100 MSAs, and gave non-compliant carriers six months from the effective date of the order to deploy LNP. Apparently, some carriers and state commissions differed on the current status of the LNP requirements. Specifically, they were not sure whether LNP is required for all carriers within the 100 largest MSAs, or only for those carriers that receive a request from a competing carrier. Thus, the Commission sought to clarify the issue.

2. In attempting to clarify the issue, however, the Commission reversed the decision on LNP deployment reached by the Commission in the *Number Portability First Order on Reconsideration,* 62 Fed. Reg 18280 (April 15, 1997), without providing an adequate opportunity for comment on this specific issue. The Commission now reverses this clarification and provides interested parties an opportunity to comment on whether carriers should be required to deploy LNP and participate in thousands-block number pooling in the 100 largest MSAs, regardless of whether they have received a specific request to provide LNP from another carrier.

3. *Number Portability.* Reasoning that the deployment schedule should be modified to allow carriers to focus their resources on areas where competition is the greatest, the Commission in the *Number Portability First Order on Reconsideration* determined that that carriers need only provide LNP in switches for which another carrier has made a specific request for the provision of LNP. Initial deployment in accordance with the schedule modified in that order has been completed. Thus, the Commission now reexamines whether the benefits of widespread LNP deployment warrant a change in policy.

4. Accordingly, the Commission seeks comment on whether the benefits of LNP to competition and numbering resource optimization warrant a reinstatement of the original LNP requirement for all local exchange carriers and covered CMRS carriers in the largest 100 MSAs. The Commission also seeks comment on whether certain small carriers that have switches either within the largest 100 MSAs or in areas adjoining the largest 100 MSAs, but provide service to no or few customers within the MSA, should be exempt from the LNP requirement because they are not likely to receive a request for LNP.

5. *Thousands-Block Number Pooling.* The Commission also seeks comment on whether all carriers within the largest 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are capable of providing LNP or whether they have received a request to provide LNP in a particular switch. Initially, the Commission linked the pooling requirement to the LNP requirement because it was widely accepted that carriers without LNP capability could not participate in pooling. Recently, however, carriers have represented to the Commission that the underlying local routing number (LRN) architecture is necessary for pooling, but full LNP capability is not necessary for pooling. The Commission continues to believe that numbering optimization measures, such as thousands-block number pooling, provide the greatest benefits when participation is maximized. In addition, the Commission continues to believe that the industry and consumers are best served by national numbering resource optimization standards implemented consistently and in a competitively neutral manner across the nation. Thus, the Commission tentatively concludes that expanding the pooling requirement to all carriers without regard to whether they are required to provide number portability will promote further numbering resource optimization, and seeks comment on this tentative conclusion. The Commission also seeks comment on whether certain small carriers, or classes of carriers that utilize numbering resources, should be exempt from the pooling requirements.

6. *Largest 100 MSAs.* In the *Numbering Resource Optimization Third Report and Order,* the Commission clarified that the ''largest 100 MSAs'' include those MSAs identified in the *LNP First Report and Order,* 61 FR 38605 (July 25, 1996), as well as those areas included on any subsequent list of the largest 100 MSAs. The most recent U.S. Census list for the year 2000 includes areas referred to as combined MSAs, or CMSAs. CMSAs include and combine the populations of several MSAs, some of which would not otherwise be included as one of the largest 100 MSAs. The Commission has focused on LNP and pooling efforts in the largest MSAs because those are the areas most likely to have competitive markets that would benefit from these measures. Conversely, the Commission has not required carriers to provide LNP or to participate in pooling in less populous areas because the full benefits of these measures would not likely be realized in areas without sufficient competition. The Commission believes this policy remains intact, and question whether those areas on the largest 100 MSAs list only because they have been combined with other MSAs into CMSAs are sufficiently competitive to be subject to the LNP and pooling requirements. The Commission therefore seeks comment on whether to require carriers in such MSAs to provide LNP and participate in thousands-block number pooling. Comments should address whether requiring LNP and pooling in these additional MSAs will further our pro-competition and numbering resource optimization goals. The

Commission also seeks comment on whether, in the alternative, to give state commissions authority to require LNP and pooling in these additional MSAs. Commenters should address what factors states must consider (e.g., the number of competing service providers in the MSA), whether certain criteria must be met, and whether any such authority should be subject to Commission approval on a case-by-case basis. In addition, commenters should address whether small or rural carriers should be able to opt out of participation in such MSAs upon a showing that there are no competing carriers in the applicable geographic area.

Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in paragraph 26 of the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. 5 U.S.C. 603(a). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. *Id.*

A. Need for, and Objectives of, the Proposed Rules

8. The Commission is issuing this *FNPRM* to seek further comment on whether the Commission should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. The Commission also seeks comment on whether all carriers in the top 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable. Finally, the Commission seeks comment on whether all MSAs included in CMSAs on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs. Receiving comment on such matters will help to ensure that number portability and thousands-block number pooling are implemented effectively and efficiently.

B. Legal Basis

9. The authority for actions proposed in this *FNPRM* may be found in § 52.23 of the Commission's rules, 47 CFR 52.23, sections 1, 3, 4, 201–205, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 604(a)(3). The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

11. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). 47 CFR 64.601 *et seq.* According to data in the most recent report, there are 5,679 interstate service providers. These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

12. We have included small incumbent local exchange carriers (LECs), 47 U.S.C 251(h), in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not ''independently owned and operated.'' 15 U.S.C. 632(a)(1). It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service providers that may be affected by these rules.

14. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for wireline telecommunications carriers. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, such a small business telephone company is one employing no more than 1,500 persons. 13 CFR 121.201. All but 26 of the 2,321 wireline companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 wireline companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 communications wireline companies are small entities that may be affected by these rules.

15. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a specific size standard definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), operator service providers (OSPs), payphone

providers, or resellers. The closest applicable size standard for these carrier-types under SBA rules is for wireline telecommunications carriers and telecommunications resellers. 13 CFR 121.201. The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the TRS. 47 CFR 64.601 *et. seq.* According to our most recent data, there are 1,329 LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity LECs or small incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers that may be affected by these rules.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

16. Future rules may require carriers within the 100 largest MSAs to be LNP-capable, regardless of whether they have received a specific request from another carrier to provide LNP. In addition, we may also require all carriers in the top 100 MSAs to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable. These rules may also include carriers that were not previously included in the top 100 MSAs. These potential requirements and inclusions of new carriers may impose additional obligations on such carriers. Commenters should discuss whether such requirements would pose an unreasonable burden on any group of carriers including small carriers.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

18. This *FNPRM* may impact small entities that were not previously subject to our rules because they were not previously in the top 100 MSAs or were not otherwise required to be LNP or pooling-capable. These requirements, however, are not designed to impact small entities any differently than larger entities. Rather, these requirements are designed to promote nationwide, effective and efficient LNP and number pooling. Furthermore, in the *FNPRM*, we explore possible exemptions for small carriers. Specifically, we seek comment on whether certain small carriers that have switches either within the largest 100 MSAs or, in areas adjoining the 100 largest MSAs, but provide service to no or few customers within the MSA, should be exempt from the LNP requirement. Thus, we seek to avoid creating an overwhelming burden for those carriers that are not likely to receive a request for LNP. We also seek comment on whether certain small carriers, or classes of carriers that utilize numbering resources, should be exempt from the pooling requirements. In addition, we request that commenters address whether small or rural carriers should be able to opt out of participation in certain areas within the largest 100 combined MSAs upon a showing that there are no competing carriers in the applicable geographic area.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.

19. None.

Report to Congress

20. The Commission will send a copy of this *FNPRM* including this IRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *FNPRM*, and IRFA (or summaries thereof) will also be published in the **Federal Register**.

21. Pursuant to Sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this Third Further Notice of Proposed Rulemaking in CC Docket 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket 95–116 is hereby adopted.

22. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Further Notice of Proposed Rulemaking in CC Docket 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket 95–116*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8250 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–613; MM Docket No. 02–56; RM–10391]

Radio Broadcasting Services; De Ridder and Merryville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Apex Broadcasting, Inc., licensee of Station KROK(FM), Channel 221C3, De Ridder, Louisiana, requesting the reallotment of Channel 221C3 from De Ridder to Merryville, Louisiana, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The coordinates for requested Channel 221C3 at Merryville, Louisiana, are 30–48–35 NL and 93–29–29 WL.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 221C3 at Merryville, Louisiana, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 6, 2002, and reply comments on or before May 21, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, *Esq.*; Verner, Liipfert, Bernhard, McPherson and Hand; 901 15th Street, NW, Suite 700; Washington, DC 20005.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–56, adopted March 6, 2002, and released March 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Merryville, Channel 221C3, and removing Channel 221C3 at De Ridder.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–8196 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–564; MM Docket No. 02–48; RM–10386]

Radio Broadcasting Services; Cuthbert and Buena Vista, Georgia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Alaga Communications Corp., licensee of Station WMRZ(FM), Channel 264C3, Cuthbert, Georgia, requesting the reallotment of Channel 264C3 from Cuthbert to Buena Vista, Georgia, and modification of its authorization accordingly, pursuant to the provisions of section 1.420(i) of the Commission's Rules. The coordinates for requested Channel 264C3 at Buena Vista, Georgia, are 32–11–57 NL and 84–35–07 WL.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 264C3 at Buena Vista, Georgia, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before April 29, 2002, and reply comments on or before May 14, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: The Law Office of Dan J. Alpert; 2120 N. 21st Road; Arlington, Virginia 22201.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–48, adopted February 27, 2002, and released March 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Buena Vista, Channel 264C3, and removing Cuthbert, Channel 264A[1].

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 02–8254 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; FCC 02–81]

Improving Public Safety Communications in the 800 MHz Band and Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

[1] On July 17, 2001, the authorization for Station WMRZ, Cuthbert, Georgia, was modified to specify operation on Channel 264C3 in lieu of Channel 264A (BLH–20010419AAJ). See Report and Order adopted March 25, 2002, and released March 29, 2002 (DA 02–736).

SUMMARY: In this document, the Commission seeks comment on proposals made by the National Association of Manufacturers and MRFAC, Inc. and Nextel Communications, Inc. for alleviation of interference to public safety communications in the 800 MHz band. The primary objective of the Notice of Proposed Rule Making is to explore all available options and alternatives for improving the spectrum environment for public safety operations in the 800 MHz Band and to ensure that public safety agencies have access to adequate spectrum resources in the 800 MHz band to support their critical missions. The Commission also requests comment on the terms and conditions of licenses in the 900 MHz land mobile band if it is used to relocate 800 MHz licensees to resolve interference. Finally, the Commission also seeks comment on a Petition for Rule Making filed by the Personal Communications Industry Association (PCIA) to consolidate the Business and Industrial/Land Transportation Pools.

DATES: Written comments by the public on the proposed are due on or before May 6, 2002, and reply comments are due on or before June 4, 2002.

ADDRESSES: Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the US Postal Service, by an overnight courier or hand and messenger-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

FOR FURTHER INFORMATION CONTACT: Michael J. Wilhelm, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418–0680 (voice), (202) 418–1169 (TTY), *mwilhelm@fcc.gov (e-mail).*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making, FCC 02–81, adopted on March 14, 2002 and released on March 15, 2002. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text and graphical appendices may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

1. In this *NPRM*, the Commission:

- Describes the current configuration of the 800 MHz band public safety and non-public safety systems.
- Discusses the causes of severe interference to public safety communications.
- Tentatively concludes that increasing levels of harmful interference to public safety communications on the 800 MHz band must be remedied.
- Discusses various means of reconfiguring the 800 MHz band in a manner that will effectively minimize interference to public safety radio systems from Commercial Mobile Radio Service stations using cellular architecture.
- Requests information on the amount of spectrum sufficient to meet the needs of public safety.
- Discusses means of handling licensing and frequency coordination if the 800 MHz band is restructured and incumbent 800 MHz licensees are relocated to other suitable bands.
- With respect to any necessary incumbent relocation, discusses what replacement spectrum would be appropriate for displaced incumbents, who would be reimbursed for relocating and who would pay the costs associated with relocation.
- Considers complementary means of reducing interference to 800 MHz public safety communications in addition to reconfiguration of the 800 MHz frequency band, including receiver standards, stricter limits on out of band emissions, and more robust public safety signals.
- Describes and discusses PCIA's petition for rule making seeking to consolidate the Business and Industrial/Land Transportation pools.
- Requests comment on the terms and conditions of licenses in the 900 MHz land mobile band if it is used to relocate displaced licensees.

2. If commenting parties believe 800 MHz band restructuring is necessary to mitigate interference to 800 MHz public safety systems, they should describe their restructuring proposals in sufficiently exact detail that the Commission can ascertain whether they meet our goal of resolving interference with minimum disruption to existing services. If the 800 MHz band is restructured, there is the potential for gaining additional spectrum for use by public safety agencies. Before adopting any plan that would realize additional public safety spectrum, the Commission requires quantitative information on public safety agencies' needs for additional spectrum. The Commission seeks such information in this *NPRM.* In order that the Commission may build a record sufficient to take timely and effective action to alleviate interference to public safety communications, it solicits comments from the public safety community, telecommunications carriers, Specialized Mobile Radio, Business and Industrial/Land Transportation licensees and their representatives, equipment manufacturers, government agencies and any other parties who can contribute to a solution to an interference problem potentially threatening to life and property. Also, the Commission seeks comment from all interested parties on PCIA's proposal to merge the 900 MHz Business and Industrial/Land Transportation pools into a single pool accessible to both services.

I. Procedural Matters

A. Ex Parte Rules

3. Pursuant to § 1.1206 of the Commission's ex parte rules, 47 CFR 1.1206, this rulemaking proceeding is a permit-but-disclose proceeding. Provided they are disclosed in accordance with the Commission's rules, ex parte presentations are permitted, except during the Sunshine Agenda period.

B. Filing Procedures

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on this *Notice of Proposed Rule Making* on or before May 6, 2002, and reply comments on or before June 4, 2002. Comments and reply comments should be filed in WT Docket No. 02–55. All relevant and timely filings will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of each comment or reply comment. Commenting parties who wish each Commissioner to receive personal copies of their submissions must file an original and nine copies of each comment and reply comment. Comments and reply comments must be directed to William F. Caton, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Copies of all comments also should be provided to (1) the Commission's duplicating contractor, Qualex International, Portals

II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, and (2) Michael J. Wilhelm, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Filings can be sent first class by the US Postal Service, by an overnight courier or hand and messenger-delivered. Hand and messenger-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

5. Comments may also be filed using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenting parties should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Or, you may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

6. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Information Center, Room CY–A257, at the Federal Communications Commission, 445 12th St., SW, Washington, DC. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* This *Notice of Proposed Rulemaking* can be found on the Wireless Telecommunications Bureau home page at *http://wireless.fcc.gov*.

C. Regulatory Flexibility Act

7. Pursuant to the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Initial Regulatory Flexibility Act Analysis is set forth beginning at paragraph nine. We request written public comments on the Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as the comments on the rest of the *Notice of Proposed Rule Making,* and must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

8. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

II. Initial Regulatory Flexibility Analysis for Notice of Proposed Rulemaking

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this *Notice of Proposed Rulemaking* (*Notice*). Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* provided in paragraph 4 of the item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

10. In the Notice, we consider proposals submitted by Nextel, Inc. (Nextel) and the National Association of Manufacturers and MRFAC, Inc. (NAM). Nextel proposes to: (1) Expand the 800 MHz public safety spectrum by consolidating it into 10 MHz blocks of contiguous channels at 806–816 MHz and 851–861 MHz; (2) relocate National Public Safety Planning Advisory Committee (NPSPAC) licensees from their current 821–824 MHz and 866–869 MHz channels into the above blocks of contiguous public safety spectrum; (3) relocate Business, Industrial and Land Transportation (I/LT), and Specialized Mobile Radio (SMR) licensees from their current channels in the 809.75–816 MHz and 854.75–861 MHz band to channels in the 896–901 MHz and 935–940 MHz band and in the 762–764 MHz and 792–794 MHz Guard Band Block B; (4) establish an allocation for ''low site, low power digital SMR'' licensees in the 816–824 MHz and 861–869 MHz band; and (5) establish two 5 MHz blocks for ''Nextel SMR'' in the 2 GHz Mobile Satellite Service (MSS) band. NAM proposes that the 800 MHz land mobile band be restructured so that there is a public safety segment from 806–811 MHz and 851–856 MHz; an SMR, Business, and Industrial and Land Transportation segment from 811–816 MHz and 856–861 MHz; and a Cellular Architecture Digital SMR segment at 816–824 MHz and 861–869 MHz. We will also give consideration to other reallocation proposals. We have tentatively concluded that spectrum reallocation would be in the public interest because it would solve current and future harmful interference to 800 MHz public safety communications.

11. We also consider a proposal that the 800 MHz and 900 MHz Business and Industrial/Land Transportation (I/LT) pools be consolidated into a single pool accessible by both services. In the alternative, we propose to lift the freeze on intercategory sharing that prevents the use of I/LT channels by Business entities.

B. Legal Basis

12. Authority for issuance of this item is contained in Sections 4(i), and 303(f) and (r) and Section 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f) and (r), 332.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a small business concern is one that: (1) Is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration.

14. A small organization is generally any not-for-profit enterprise which is independently owned and operated and

is not dominant in its field. Nationwide, as of 1992, there were approximately 275,801 small organizations. A ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number included 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entities—applicants, licensees, and radio equipment manufacturers—that may be affected by the proposals, if adopted, in this Notice.

15. *Public Safety Radio Licensees.* There are currently 1320 public safety and NSPAC licensees who would be required to relocate their station facilities, with some reimbursement, if the NAM or Nextel proposals described in the *Notice of Proposed Rulemaking* were adopted. The NSPAC licensees operate on six (6) MHz of spectrum from 821–824 and 866–869 MHz known as the NSPAC channels. In this band the public safety channels are not interleaved with channels of other services; however, the band abuts the upper 200 SMR channels ending at 821/866 MHz and the cellular band beginning at 824/869 MHz. The other public safety licensees—operating on channels interleaved with channels of other services—affected by this proceeding include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services operating in the 800 MHz band. Non-Federal government entities, as well as private businesses, are licensees for these services. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.

16. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward public safety licensees. Therefore, the applicable definition of small business is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small business is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were public safety licensees, nearly all would be small businesses under the SBA's definition, if independently owned and operated.

17. *Business, I/LT, and SMR licensees.* At present, there are 2,100 Business and I/LT licensees who would be required to relocate their station facilities, without reimbursement, if the Nextel proposal described in the *Notice* were adopted. Also, there are currently 1,100 SMR licensees who would be required to relocate their station facilities, without reimbursement, if the Nextel proposal were implemented. Significantly fewer such licensees would have to be relocated under the NAM proposal. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees. Therefore, the applicable definition of small business is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small business is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were business, ILT, SMR, or MSS licensees, nearly all would be small businesses under the SBA's definition, if independently owned and operated.

18. *Communications Equipment Manufacturers.* This proposal will provide marketing opportunities for radio manufacturers, some of which may be small businesses. According to the Small Business Administration's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and, therefore, would be classified as small entities. We do not have information that indicates how many radio equipment manufacturers who would be interested in manufacturing the new radio equipment are among these 778 small firms. Motorola and M/A COM Private Radio Systems, Inc., however, are major, nationwide radio equipment manufacturers, and thus, would not qualify as small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

19. The *Notice of Proposed Rulemaking* does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

21. As an alternative to relocating Business, I/LT, and SMR systems, we will consider: (a) Allowing the licensees of these systems to remain on the public safety channels, on a secondary basis, after the realignment plan is implemented, as proposed by Nextel; or (b) allowing Business, I/LT and SMR systems to remain in the 800 MHz band as proposed by NAM. We will also consider such alternatives as may be recommended in comments to the *Notice.* We will also evaluate whether the 700 MHz public safety allocation, though currently encumbered with television stations, can satisfactorily meet public safety's spectrum needs.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

III. Ordering Clause

23. Authority for the issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i), 303(f) and (r), 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f) and (r), 332.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8304 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, and 195

[Docket Number RSPA–99–6132]

RIN 2137–AD42

Pipeline Safety: Producer-Operated Outer Continental Shelf Natural Gas and Hazardous Liquid Pipelines That Cross Directly Into State Waters

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to implement a provision of the December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding safety regulations of Outer Continental Shelf (OCS) natural gas and hazardous liquid pipelines. This rule addresses producer-operated natural gas and hazardous liquid pipelines that cross into State waters without first connecting to a transporting operator's facility on the OCS. This proposed rule would also address the procedures by which producer operators could petition for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance.

DATES: Comments on the subject of this proposed rule must be received on or before June 4, 2002.

ADDRESSES: Comments should identify the docket number of this proposed rule, RSPA–99–6132, and be mailed to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Plaza 401, Washington, DC 20590–0001. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Alternatively, you may submit written comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov* and click on ''Help'' for instructions on electronic filing of comments. All written comments should identify the docket and notice numbers which appear in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: You may contact L.E. Herrick by telephone at (202) 366–5523, by fax at (202) 366–4566, by mail at U.S. Department of Transportation, RSPA, DPS–10, room 7128, 400 Seventh Street, SW., Washington, DC 20590, or via e-mail to *le.herrick@rspa.dot.gov* regarding the subject matter of this notice. For copies of this notice or other material that is referenced herein you may contact the Dockets Facility by telephone at (202) 366–5046 or at the addresses listed above.

SUPPLEMENTARY INFORMATION: This rule is complementary to the RSPA Direct Final Rule (DFR) that addressed OCS natural gas or hazardous liquid pipeline facilities located upstream of the points at which operating responsibility for the pipeline facility transfers from a producing operator to a transporting operator (November 19, 1997; 62 FR 61692 and March 16, 1998; 63 FR 12659) and to the DOI Minerals Management Service (MMS) rule, ''Producer Operated Pipelines that Cross Directly into State Waters,'' which was published in the **Federal Register** on July 27, 2000 (65 FR 46092).

Background

In May 1996, MMS and RSPA met with a joint industry workgroup, which was led by the American Petroleum Institute. The workgroup proposed that the agencies rely upon individual operators of natural gas and hazardous liquid production and transportation pipeline facilities to identify the boundaries of their respective facilities. The MMS and RSPA agreed with the industry proposal and entered into an interagency Memorandum of Understanding (MOU) on December 10, 1996. The MOU was published in a joint MMS–RSPA **Federal Register** Notice (February 14, 1997; 62 FR 7037–7039).

The MOU placed, to the greatest practical extent, OCS production pipelines under DOI responsibility and OCS transportation pipelines under DOT responsibility. Therefore, RSPA has primary regulatory responsibility for transporter-operated pipelines and associated pumping or compressor facilities on the OCS, while MMS has primary regulatory responsibility for producer-operated facilities and pipelines. Producing operators are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporting operators are companies which are engaged in the transportation of those hydrocarbons from the OCS. There are approximately 150 operators of producer pipelines and 75 operators of transportation pipelines on the OCS.

The MOU established a regulatory boundary on the OCS at the point where operating responsibility for the pipeline transfers from a producing operator to a transporting operator. The MOU did not address the producer-operated pipelines that cross the Federal/State boundary without a transfer on the OCS. However, the MOU provided the agencies with the flexibility to address situations that do not correspond to the general definition of the regulatory boundary.

The purpose of this proposed rule is to address regulatory questions regarding producer-operated pipeline facilities that cross the Federal/State boundary without first connecting to a transporting operator's facility on the OCS and to establish a procedure whereby OCS producing operators may petition to have their pipelines regulated by RSPA. The rule would amend 49 CFR parts 191.1(b)(1), 192.1(b)(1) and 195.1(b)(5).

When we published the DFR to implement the December 1996 MOU on November 19, 1997 (62 FR 61692), we received comments from Chevron U.S.A. Production Company and Chevron Pipe Line Company in which they observed that the proposed regulation did not appear to allow OCS producer-operated pipelines to remain under DOT regulatory authority. The commenters requested that provision be made to allow producers to continue to operate under DOT regulations if approval is obtained from DOI.

This arose because the regulatory boundaries in the MOU and the DFR were described in terms of specific points on OCS pipelines where operating responsibility transfers from a producing operator to a connecting transporting operator. The producer-operated pipelines that cross the Federal/State boundary into State waters without first connecting to a transporter-operated facility were not affected. Nor were the producer lines that flow from State waters to production platforms located on the OCS.

Regardless of the direction of flow, producer pipelines that cross the Federal/State boundary are always subject to RSPA regulation on the portions of the lines located in State waters. However, it does not make operational sense to have a pipeline segment crossing the Federal/State boundary subject to MMS regulations on the OCS side of the boundary and RSPA regulations on the State side of the boundary. We believe that a regulatory

boundary point is better defined in terms of a specific point that isolates one segment of a pipeline from another. By contrast, the Federal/State geographic boundary does not allow the isolation of facilities on each side of the boundary.

Therefore, for producer-operated pipeline facilities that cross into State waters without first connecting to a transporting operator's facility on the OCS, we propose that pipeline segments located upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment) be exempted from compliance with 49 CFR parts 190–199.

Under this arrangement, producer-operated pipeline facilities upstream (generally seaward) of the last valve on the last production facility on the OCS would be regulated under MMS regulations. RSPA would continue to inspect all upstream safety equipment (including valves, over-pressure protection devices, cathodic protection equipment, and pigging devices) that serve to protect the integrity of the RSPA-regulated pipeline segments. This arrangement is consistent with the general intent of the MOU. However, producer-operators whose lines do not transfer operating responsibility on the OCS may petition RSPA for a different regulatory boundary.

An important principle of the industry agreement leading to the MOU is to allow the operators to agree to the regulatory boundaries on their facilities. Therefore, producer pipeline operators may petition RSPA's Office of Pipeline Safety under 49 CFR 190.9 for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance. In considering such petitions, the RSPA Administrator, or designee, will consult with the MMS and the affected parties.

This proposed rule would affect about 215 producer-operated pipelines that are being regulated according to a now-superseded 1976 MOU between DOI and DOT. By exempting the producer-operated pipelines from RSPA regulation, this rule would reduce the overlapping regulations in accordance with the MOU of December 10, 1996. The rulemaking would have minimal economic impact on any of the affected operators.

Regulatory Analyses and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

DOT does not consider this action to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4,1993). Therefore, it was not forwarded to the Office of Management and Budget. This proposed rule is not significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of this proposal was prepared and placed in the docket of this action.

Benefits

Without the proposed rule, the pipeline operations of a large number of producers with pipelines crossing directly into State waters could remain subject to overlapping regulations for design, construction, operation, and maintenance. This includes about 35 producers in Gulf of Mexico OCS waters and 10 producers operating in California OCS waters. This would be contrary to the intent of the American Petroleum Institute and industry agreement and the MOU to regulate producer-operated pipelines under DOI and transporter-operated pipelines under DOT.

By implementing the proposed rule, RSPA will bring these pipelines under the provisions of the 1996 MOU. This should serve to minimize confusion among operators concerning which regulations they are expected to follow. We estimate that each OCS producer operator spends on average one-half person year annually per OCS pipeline to comply with RSPA regulations. Assuming that a loaded wage for a person year in the pipeline industry is $50,000, each company could realize a savings of $25,000 annually ($50,000 × 0.5 person-years = $25,000). The annual savings to the entire industry could be as high as $1,125,000 ($25,000 × 45 operators = $1,125,000).

Costs

The administrative costs of the proposed rule are minimal. Paperwork costs would arise only in cases when a producer pipeline operator decided to request that its pipeline continue to be regulated as a RSPA facility. We estimate that less than 10 producer pipeline operators will request to remain under RSPA regulation. We estimate that the time for developing each request and submitting it to MMS and RSPA will be about 40 hours. Based on 10 requests at 40 hours each, the total one-time burden of requesting to remain under RSPA regulation will be less than 400 hours. Based on $35 per hour, we estimate that the total administrative cost to respondents is less than $14,000 ($1,400 per request) during the first year that the rule is implemented. In the first year, nearly all producer pipeline operators would have decided whether to automatically convert to MMS regulation or apply to remain under RSPA regulation. We anticipate that in following years, not more than two operators a year would submit a request to change their regulatory status at a total cost of $2,800. However, for most following years it is highly unlikely that any request would be made as a result of the proposed rule.

The proposed rule does not have a significant economic effect (less than $100 million); therefore, RSPA does not consider it to be a major rule. We do not expect there to be any increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions to result from implementing the proposed rule. Any indirect effects on costs or prices are anticipated to be negligible.

This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlement, grants, user fees, or loan programs; or raise novel legal or policy issues.

The proposed rule will not have any effect on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in other markets because the economic effects are minor. Therefore, a Regulatory Impact Analysis is not required under E.O. 12866.

B. Federalism Assessment

The proposed rule would not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (October 30, 1987; 52 FR 41685), we have determined that this notice does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) RSPA must consider whether a rulemaking would have a significant impact on a substantial number of small entities.

MMS recently conducted an analysis of 150 operators on the Gulf of Mexico OCS. For publicly-traded operators, numbers of employees and annual sales are readily available on the Internet. MMS was not able to get information on all operators on the OCS. Using the criterion that a small company is one

that employs less than 500 employees, 60 operators are medium-to-large-size entities. Of the remaining operators, 36 are small, based on available data, and 44 others were presumed to be small because no information about them was available on the Internet. In sum, 80 operators on the Gulf of Mexico OCS may be considered to be small.

The above breakdown describes the OCS sector of the natural gas and hazardous liquid industry as a whole and provides the wider context in which to examine the actual community that would be affected by the proposed rule.

Of the 150 production operators in the Gulf of Mexico, only 35 would be directly affected by the proposed rule. Of these 35 operators, 11 are considered to be ''small.'' There are about ten producer pipeline operators on the Pacific OCS that may be affected by the proposed rule, and four of these are considered to be small. Of the small operators to be affected by the proposed rule, almost all are represented by the North American Industry Classification System (NAICS) code 211111, which represents crude petroleum and natural gas producers.

A pipeline company (non-producer) is a ''small entity'' if it is a liquid pipeline company with fewer than 1,500 employees, or a natural gas pipeline company with gross annual receipts of $25 million or less. There are about 18 entities operating on the OCS that can be interpreted as ''small independent pipeline companies.'' These small pipeline companies provide transportation services for several non-major oil or gas producers with which they have an ''arms-length'' but symbiotic business relationship. These companies are represented primarily by NAICS codes 486210 (crude petroleum pipelines) and 486210 (natural gas transmission pipelines).

The larger operators to be affected by the rule mostly fall into either NAICS Code 211111 (crude petroleum and natural gas producers), or NAICS Code 324110, which represents petroleum refining. Companies operating on the OCS and that fall into NAICS Code 324110 tend to be the very large integrated natural gas and hazardous liquid companies.

Two of the larger operators in the Gulf of Mexico that have production pipelines are represented under NAICS Code 486210 (natural gas transmission), and by NAICS Code 221210 (natural gas distribution). These classifications mean that the operators in question normally operate as pipeline companies, and we anticipate that these two operators may choose to remain under RSPA regulation. Pipeline companies are considered ''small'' if they have fewer than 1,500 employees, but both of these operators would be considered ''large'' under the 1,500-employee criterion.

Natural gas and hazardous liquid production and transportation companies are classified under NAICS Codes by the Census Bureau. The Small Business Administration further classifies ''small businesses'' in the various offshore sectors as follows: (1) Oil and gas producers that have fewer than 500 employees; (2) liquid pipeline companies than have fewer than 1,500 employees; (3) natural gas pipeline companies that have gross annual receipts of $25 million or less; and (4) offshore oil and gas field exploration service or production service companies that have gross annual receipts of $5 million or less. There are many companies on the OCS that are ''small businesses'' by these definitions.

However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have financial resources disproportionate to their numbers of employees and well beyond what would normally be considered ''small business.'' These entities customarily conduct their operations by contracting with offshore drilling or service companies, and therefore tend to have few employees in relation to their financial resources.

There are up to 150 designated operators of leases and 75 operators of transmission pipelines on the OCS (both large and small operators), and the economic impacts on the oil and gas production and transmission companies directly affected would be minor. All costs imposed by the rule would be small compared to the normal operating and maintenance expenses experienced by offshore pipeline operators. Direct costs to industry for the entire proposed rule total less than $14,000 for the first year. This rule would not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change.

We conclude that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposal will not, if implemented, have a significant economic impact on a substantial number of small entities. However, we are particularly interested in receiving comments from any small business operators believing otherwise. This certification is subject to modification as a result of a review of the comments received in response to this proposal.

D. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule effects the Federally managed OCS and does not affect the communities of the Indian tribal governments and nor impose any direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule does not propose any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on States and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply.

F. Unfunded Mandates

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of over $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives.

G. Paperwork Reduction Act

This proposed rule does not contain information collection requirements estimated to effect more than ten respondents per year.

H. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that this proposed rule would not significantly affect the quality of the human environment. The Environmental Assessment of this proposal is available for review in the docket.

I. Executive Order 13211 (Energy)

We have reviewed this proposed rule in accordance with Executive Order 13211 regarding the energy of Federal regulations and have determined that this proposed rule does not have any adverse effects on energy supply, distribution, or use. Therefore, no reasonable alternatives to this action are necessary.

List of Subjects

49 CFR 191

Gas, Pipeline safety. Reporting and recordkeeping requirements.

49 CFR Part 192

Hazardous liquid, Natural gas, Pipeline safety, Pipelines, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 49 CFR Parts 191, 192 and 195 is proposed to be amended as follows.

PART 191—[AMENDED]

1. The authority citation for part 191 would continue to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, 60124; and 49 CFR 1.53.

2. Section 191.1 would be amended by revising paragraph (b) to read as follows:

§ 191.1 Scope.

* * * * *

(b) * * *

(1) Offshore gathering of gas in State waters upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(2) Pipelines on the Outer Continental Shelf that are producer-operated and cross into State waters without first connecting to a transporting operator's facility, upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment). Producing operators may petition the Administrator, or designee, for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

(3) Pipelines on the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator; or

(4) Onshore gathering of gas outside of the following areas:

(i) An area within the limits of any incorporated or unincorporated city, town, or village.

(ii) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.

PART 192—[AMENDED]

1. The authority citation for Part 192 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

2. Section 192.1 would be amended by revising paragraphs (b)(1) through (5) and adding paragraph (b)(6) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) * * *

(1) Offshore gathering of gas in State waters upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(2) Pipelines on the Outer Continental Shelf that are producer-operated and cross into State waters without first connecting to a transporting operator's facility, upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment). Producing operators may petition the Administrator, or designee, for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

(3) Pipelines on the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(4) Onshore gathering of gas outside of the following areas:

(i) An area within the limits of any incorporated or unincorporated city, town, or village.

(ii) Any designated residential or commercial area such as a subdivision, business or shopping center, or community development.

(5) Onshore gathering of gas within inlets of the Gulf of Mexico except as provided in § 192.612; or

(6) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place).

PART 195—[AMENDED]

1. The authority citation for Part 195 would continue to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1 would be amended by redesignating paragraphs (b)(7), (8) and (9) as paragraphs (b)(8), (9) and (10), respectively; revising paragraphs (b)(5) and (6); and adding a new paragraph (b)(7) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(5) Transportation of hazardous liquid or carbon dioxide in offshore pipelines in State waters which are located upstream from the outlet flange of each facility where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(6) Transportation of hazardous liquid or carbon dioxide in Outer Continental Shelf pipelines which are located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(7) Pipelines on the Outer Continental Shelf that are producer-operated and cross into State waters without first connecting to a transporting operator's facility, upstream (generally seaward) of the last valve on the last production facility (excluding pipeline risers and associated safety equipment). Producing operators may petition the Administrator or designee for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

* * * * *

Issued in Washington, DC on March 15, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–6825 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 020325070–2070–01; I.D. 031202B]

RIN 0648–AP82

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Suspension of the 2002 Texas Closure

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure contained in the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS proposes to suspend, for the 2002 fishing year, the seasonal prohibition of shrimp trawling in the exclusive economic zone (EEZ) off Texas (the Texas closure). This action would enable fishermen to harvest marketable-sized shrimp from an area that would otherwise be closed. The intended effect of this action is to increase revenues to the shrimping industry and to mitigate short-term adverse impacts associated with additional closures of state waters off Texas.

DATES: Comments must be received no later than 4:30 p.m., eastern standard time, on April 22, 2002.

ADDRESSES: Written comments on the proposed rule should be sent to Dr. Steven Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the environmental assessment, regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA) should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the Gulf of Mexico EEZ is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Under the FMP, the Texas closure was established as part of a cooperative closure with the State of Texas that also involves the seasonal closure of Texas' state waters to trawling. The Texas closure is established by regulations at 50 CFR 622.34(h) to be from 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, each year. During that time frame, trawling (except for trawling for royal red shrimp beyond the 100–fathom (183–m) contour) is prohibited in the EEZ off Texas. In accordance with the FMP, the NMFS Southeast Regional Administrator (RA) may adjust the closing and/or opening date of the Texas closure, but the closure may not exceed 90 days nor be less than 45 days. Additionally, the framework procedures established in the FMP, and modified in Amendment 5 in 1991, provide the RA with the opportunity, after determining that benefits may be increased or adverse impacts decreased, to either: (1) modify the geographical scope of the extent of the Texas closure, or (2) eliminate the Texas closure for one season.

The intent behind the cooperative closures off Texas, in both state and Federal waters, has been to enhance yield in the fishery by deferring the harvest of shrimp until they reach a larger, more valuable size. In all years that cooperative seasonal closures have been implemented off Texas, simulation analyses have demonstrated a resulting increase in yield per recruit, thus meeting the Council's objectives of enhancing economic value to the shrimp fishery. However, over time, several other regulations have been implemented that, according to the shrimp industry, have reduced the benefits (and need for) the Texas closure.

The State of Texas recently prohibited shrimping at certain times, within a large area of its territorial waters. The Northern Shrimp Zone, extending from Corpus Christi Pass (27°40′34″ N. lat.) to the Louisiana state boundary, is closed year-round to night-time shrimping within 5 nautical miles of the coastline, and it is also closed during the day from December 1 through February 15 within 5 nautical miles of the coastline. The Southern Shrimp Zone, extending south from Corpus Christi Pass (27°40′34″ N. lat.) to the Mexican border and within 5 nautical miles of the coastline, is closed year-round to all night-time shrimp trawling, and from December 1 through May 15, the area is entirely closed to shrimp trawling. Brown and pink shrimp are fished by trawling at night; thus, the year-round nighttime closures preclude brown shrimp fishing in the nearshore Texas waters. Pink shrimp are only found off southern Texas, and more commonly occur in nearshore waters; thus, the nighttime closure entirely eliminates the pink shrimp fishery from Texas waters. The daytime closure of the Northern Shrimp Zone from December 1 through February 15 and the Southern Shrimp Zone closure from December 1 through May 15 also restrict the fishery from harvesting white shrimp that are found in nearshore waters during that time frame. Texas implemented these closures to protect shrimp stocks, with an ancillary benefit of reducing shrimp trawler interactions with endangered sea turtles, especially Kemp's Ridley sea turtles, which are known to frequent this area. These closures, in combination with the complete closure of Texas territorial waters from May 15 through July 15, result in much of Texas' state waters being closed to shrimping from December 1 through July 15. Should the Federal 200-nautical mile Texas closure be imposed from May 15 through July 15, shrimp vessels would be effectively excluded from fishing in an even greater portion of the western Gulf of Mexico between May 15 and July 15.

Analysis and Justification

At its January meeting each year, the Council reviews the results (e.g., benefits and impacts) of the Texas closure for the preceding year. At its January 2002 meeting, the Council received public testimony identifying several issues regarding the Texas closure. The Council heard testimony that there is now a surplus of large-sized shrimp (26–30 and 31–35 count-per-pound tails) in cold storage and that imports of shrimp into Texas had increased substantially in 2001 to 775 million lb (352 million kg) compared to 620 million lb (281 million kg) in 2000. Thus, there is a lesser demand and price for larger shrimp, and a greater opportunity for the industry to market their catch if the shrimp are a smaller size. Participants in the shrimp fishery indicated that the economic impacts imposed by other state-mandated closures off Texas would be exacerbated by an additional closure of the EEZ off Texas, which would result in the capture of even more large shrimp. Therefore, the industry would prefer to suspend the Texas closure for 2002, and

have the opportunity to harvest smaller shrimp.

Biological and Fishery Impacts

The distribution of shrimp catch from Texas offshore waters to various ports throughout the Gulf of Mexico has not significantly changed since 1977. For Texas, lower Texas ports land approximately 35 percent of the shrimp, followed by middle Texas ports at 30 percent, and upper Texas ports land about 20 percent of the shrimp; the remainder of Texas-caught shrimp are landed in other states. This relationship has held true during full 200–nautical mile closures (1981–1985 and 1989–2001) and during 15-nautical mile closures (1986–1988). During 2001, about 86 percent of the shrimp taken from Texas waters (statistical zones 18–21) were landed at Texas ports. Similarly, for the May through August period, the landings in both Texas and Louisiana have remained constant, with an average of about 33 percent of all shrimp landings occurring in Texas and 47 percent of all landings occurring in Louisiana.

Penaeid shrimp resources in the Gulf of Mexico are not overfished nor is overfishing occurring. Brown shrimp are, in general, an annual crop. The size of the stock and recruitment are more likely influenced by natural environmental factors (temperature, salinity, rainfall) than by fishing mortality. Previous NMFS' studies concluded that seasonal and area closures do not diminish overall effort; such closures defer or redirect effort where target and bycatch species are still vulnerable to the gear. These studies documented that shrimp effort reduction due to the 200–nautical mile closure versus the 15–nautical mile closures implemented in the late 1980s was less than 3 percent.

In evaluating the differences between a full 200–nautical mile closure and the 15–nautical mile closures of 1986-1988, NMFS concluded that any increases in catch-per-unit effort that were shown during the initial full closure years (1981–1985) were lost during the limited closure years. Thus, the potential increase in harvest of larger shrimp was exchanged for access to offshore waters in May and June during those 3 years.

Thus, the RA has determined that the proposed action would not impact the stocks of target and non-target species. The species that are vulnerable to the fishery have distributional ranges that encompass areas much broader than the EEZ off Texas, and, thus, fishing mortality on the various stocks would remain relatively constant.

Economic and Social Impacts

Assuming 1996–2000 conditions persist in the fishery for the 2002 fishing season, the suspension of the Texas closure in the EEZ is forecast to result in a net increase of approximately $15–$19 million in discounted total producer surplus, defined as total revenues minus total variable costs, for the 2002 fishing season of the Gulf of Mexico shrimp fishery. Total harvest and revenues are forecast to decline, consistent with the intent of the original closure, i.e., that the closure would allow larger shrimp to be harvested, producing greater revenues. The reverse, therefore, would be expected upon forgoing the closure. However, producer surplus increases even though revenues decline because of a redistribution of benefits within the fishery. Over the course of the entire year and over the entire Gulf of Mexico, catches shift toward mid-depth waters (0–10 fathoms)(0–18.3 m) and away from deeper waters (>10 fathoms)(>18.3 m), resulting from increased participation by smaller boats and decreased participation by larger boats. Since fishing effort by smaller boats is less costly than that of larger boats, variable costs decline. The reduction in variable costs is more than sufficient to compensate for the lost revenues; hence, the increase in industry producer surplus.

The suspension of the 2002 Texas closure is projected to increase full-time equivalent (FTE) vessels by approximately 2,800. This number, however, does not represent actual individual vessels and instead represent a standardized unit of effort necessary to run the projection model. The increase indicates that core participating vessels in the fishery will have the opportunity to increase their level of participation (become less part time).

The effects of suspending the closure in the EEZ on consumer prices is unknown due to the absence of suitable price models. The action is projected to affect dockside (ex-vessel) prices by 1–3 percent.

The increased participation opportunities by small boats will enhance employment opportunities for this sector and associated industries. From a crew-day perspective (days fished times the average number of crew per vessel), the small vessel fleet will gain approximately 119,000 crew-day opportunities (57,000 fishing days times 2.1 crew/day) as a result of not implementing the closure (under the 100–percent large shrimp price scenario). The converse, of course, will be true for the large boats. Although the shrimp fishery overall is dominated by small boats, since the large boats carry more crew per vessel, total crew-day opportunities in the large vessel fleet have exceeded those in the small vessel fleet under the closure. Allowing the EEZ off Texas to remain open would be expected to reduce large vessel crew-day opportunities by approximately 219,000 days (62,500 days times 3.5 crew/day). Significant income may accrue to these large vessel participants since they are typically paid as a percentage of gross revenues. The net outcome of the small vessel gains and large vessel losses on employment opportunities is unknown, though the preponderance of small vessels would suggest that the small vessel fishery employs more individuals, and the net effect of allowing the EEZ off Texas to remain open would be fewer individuals seeking other employment when not shrimping. Potential enhanced employment opportunities and increased producer surplus should enhance community structures associated with the shrimp fishery. Regional variances are likely to occur.

Effects on Endangered and Threatened Species and Marine Mammals

The expected change in fishing patterns by allowing the EEZ off Texas to remain open are unlikely to alter significantly the impact of the fishery on endangered species. Five species of sea turtle species are known to occur in the area (Kemp's ridley, loggerhead, green, hawksbill, and leatherback). Previous NMFS studies indicate turtle interactions are low in the offshore waters of the western Gulf of Mexico, and because state waters off Texas will continue to be closed, protection would still be afforded to turtles where they are more commonly encountered in nearshore areas. Amendment 9 to the FMP contains detailed summaries of the section 7 consultations and biological opinions that have been issued for the shrimp fishery in the Gulf of Mexico since 1980. These consultations and opinions generally concluded that the management actions that have affected the shrimp fishery were not likely to jeopardize the continued existence of any endangered species. An informal section 7 consultation on this proposed rule concluded that the proposed 1–year suspension of the Texas closure in the EEZ is not likely to change the level of interaction of the shrimp fishery with listed species and, therefore, does not change the basis for the no-jeopardy conclusion of the existing biological opinion prepared on March 24, 1998. NMFS will prepare a biological opinion on a final turtle excluder device (TED)

rule considering the likely effects of that rule and the latest information on the status of listed species. While that major consultation for the shrimp fishery is ongoing, approval of this proposed action would not constitute an irretrievable or irreversible commitment of resources that would affect the formulation of any reasonable and prudent alternative measures in that consultation.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA, based on the RIR, that describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. The proposed rule would suspend, for 2002, the regulations at 50 CFR 622.34(h) that establish the annual (i.e. closure to shrimp trawling in the EEZ off Texas), Texas closure. The objective of the proposed rule is to increase the opportunity of the fishery to achieve greater profits from the increased marketability of smaller shrimp.

The objective and legal basis of this proposed rule are described in the preamble of this document.

Modeling results indicate that suspension of the Texas closure for the 2002 fishing season is expected to increase producer surplus, defined as total revenues minus total variable costs, for the Gulf of Mexico shrimp fishery by $15–$19 million, consistent with industry expectations. Although days fished, pounds landed, and total revenues will decline as a result of the suspension, the suspension will redistribute benefits within the fishery. Catches shift toward mid-depth waters (0–10 fathoms, 0–18.3m) and away from deeper waters (>10 fathoms, >18.3 m), resulting from increased participation by smaller boats and decreased participation by larger boats. Since fishing effort by smaller boats is less costly than that of larger boats, variable costs decline. Fishing opportunities for small vessels increase such that total variable costs for the fishery decline sufficient to produce the net increase in producer surplus. Full-time equivalent (FTE), which is a standardized vessel unit, vessel numbers for all size classes will increase by 2,600–2,800. However, this increase is composed of a 3,600-3,900 increase in FTE vessels for the small vessel sector, and a 1,000–1,100 decrease in FTE vessels for the large vessel sector. Fishing days decline overall, but the small vessel fleet is projected to experience a 51,000–57,000 increase in fishing days, while the large vessel fleet is projected to experience a 56,000–63,000 decline in fishing days. Estimates of FTE vessels and fishing days, however, represent standardized units, as firm-level statistics cannot be estimated due to data limitations and the structural arrangements of the model employed.

Generally, a fish-harvesting business is considered a small business if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of $3.5 million. Approximately 18,000 fishing craft, over all size categories, participate in the Gulf of Mexico shrimp fishery. More direct effects as a result of the proposed action might be expected to accrue to those craft recorded in some manner as located in or fishing off Texas and Louisiana, due to the geographic proximity to the waters in question. These craft number in excess of 10,000. An additional unknown number of large vessels from other states are known to traditionally fish off Texas whenever the closure is lifted. The average gross revenues for all shrimp craft has been estimated at approximately $82,000 (1999 dollars), with a one standard deviation range of $16,000 to $425,000. Average annual revenues by vessel length were reported at $4,000 for vessels less than 25 feet (7.6 m), $23,000 for vessels between 25 and 50 feet (7.6 m and 15.2 m) and, $198,000 for vessels greater than 50 feet (15.2 m). By homeport state, the average annual revenues for Gulf of Mexico shrimp vessels were $112,000 for Alabama, $106,000 for Florida, $9,000 for Louisiana, $45,000 for Mississippi, and $192,000 for Texas. All of these operations would be considered small business entities. Thus, business operations operating in this fishery consist solely of small business entities.

Total producer surplus, defined as total revenue minus total variable costs and used as a proxy for profit, for the whole fishery is projected to increase for the 2002 fishing season as a result of the proposed action and all vessel operations in the fishery are considered small business entities. However, differential impacts occur by vessel size category, with the small vessel sector (vessels less than 60 ft (18.3 m) in length) experiencing an increase in producer surplus/profits, while the large vessel sector (vessels greater than 60 ft (18.3 m) in length) experiences a decline. While total producer surplus/profits for the small vessel fleet is expected to increase, that of the large vessel sector is projected to decline from $101 million under status quo closure to $71 million under the proposed action. On the assumption that a stable population of vessels, allowing for a natural flow of vessels to enter and exit the fishery each year, constitutes the core of the fleet and that this core equals 3,500 vessels, average producer surplus/profits for the large vessel fleet would decline from approximately $28,900 to approximately $20,300, a decrease of $8,600 per vessel, or 30 percent. Although the precise number in this core is unknown, the use of an alternative number would preserve this rate of reduction since the number of vessels is not intrinsic to the determination of producer surplus.

Two alternatives to the proposed rule have been considered. One alternative would allow status quo operation of the fishery. The second alternative would decrease the geographic extent of the closure. Maintenance of the status quo would forego the impacts the proposed action would impose on the large vessel fleet, but would preserve the foregone producer surplus and FTE vessel opportunities for small business entities and the projected net benefit the fishery as a whole is projected to receive. The second alternative would substantially mitigate, but not eliminate, the negative impacts the proposed action would impose on the large vessel fleet. The decline in producer surplus for the large vessel sector would be reduced from $31 million relative to the status quo to approximately $2 million, or approximately 2 percent per core vessel. Similar to the status quo, however, this alternative would substantially forego the potential increased benefits to the small vessel fleet and the fishery as a whole associated with the proposed rule.

This proposed rule would not duplicate, overlap or conflict with any other Federal Rule.

Copies of the IRFA and RIR are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 622.34 [Amended]

2. Effective May 15, 2002, through July 15, 2002, in § 622.34, paragraph (h) is suspended.

[FR Doc. 02–8189 Filed 4–4–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648

[I.D. 031502A]

Fisheries of the Northeastern United States; Petition for Rulemaking for Management of the Atlantic Hagfish Fishery

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

ACTION: Notice of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces receipt of, and requests public comment on, a petition for emergency rulemaking to implement measures to limit the entry of vessels into the unregulated Atlantic hagfish fishery. Mr. William R. Palombo, Nippert Fishing Corporation (Petitioner) has petitioned NMFS, on behalf of the Secretary of Commerce, to implement these measures as soon as possible.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on May 6, 2002.

ADDRESSES: Copies of the letter constituting the petition are available upon request from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

Written comments on the petition should be sent to the Regional Administrator at the above address. Mark on the outside of the envelope: ''Comments on Petition for Management of the Hagfish Fishery.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, (978) 281–9104, e-mail at myles.a.raizin@noaa.gov, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In November 2001, the Petitioner wrote to the Secretary of Commerce (Secretary) and the New England Fishery Management Council (Council) on behalf of himself, his partner, Steve Nippert, and other members of the Atlantic hagfish industry to request that action be taken to initiate management of Atlantic hagfish (*Myxine glutinosa*). He requested that the Council establish a control date for the fishery and start to develop a fishery management plan. He asked the Secretary to take emergency action under the Magnuson-Stevens Fishery Conservation and Management Act to establish a control date for the fishery and implement a moratorium on new entrants into the fishery. The Assistant Administrator for Fisheries, NOAA, responding on behalf of the Secretary, declined to take emergency action at that time because he felt that the Council arena was the appropriate forum for consideration of the request.

The Council considered the request at its January 17, 2002, meeting. The Council tabled a motion that would have established a control date for the fishery, and instead adopted a motion to request that state fishery agencies develop regulations to manage the fishery. The Council requested that state agencies report back to the Council on the issue in 6 months.

Petition for Rulemaking

On January 18, 2002, the Petitioner submitted a Petition for Rulemaking requesting NMFS to implement immediately emergency measures to limit entry into the Atlantic hagfish fishery. The Petitioner believes that the Council acted irresponsibly, illegally, and contrary to U.S. and international standards when it declined to take action to conserve and manage Atlantic hagfish. He explains that all opponents of the action indicated that they had either added larger vessels to the fishery in the recent past, or are planning on adding larger vessels to the fishery in the future. He notes that the need for larger boats is a result of localized depletion of hagfish and the need to go farther offshore, outside of the range of smaller vessels to find fishable concentrations of hagfish.

The Petitioner notes that opponents' testimony in support of larger vessels in the fishery indicates that large hagfish are taken when hagfish barrels are set on new bottom; this suggests that hagfish traps are extremely efficient and will catch the standing stock of mature eels very quickly. The Petitioner believes that, before this fishery is allowed to expand, the appropriate rate at which eels can be removed without severely depleting the adult population should be calculated.

The Petitioner believes that there is a misunderstanding regarding the nature of the hagfish market. He states that many believe that the eel skin market drives the demand for hagfish. However, the primary market for hagfish is for meat. He adds that, prior to 1995, it was illegal to import hagfish into Korea for meat. Therefore, the market is relatively new and developing.

The Petitioner notes that the New England catch has risen steadily from zero in 1993 to 6.8 million lb (3,085 mt) in 2000. He explains that hagfish are a long-lived species and have a low reproductive potential compared to most fish species. He states that the surplus production from the hagfish fishery is likely to be limited compared to the absolute abundance fishermen find when setting on virgin grounds. He believes that an unregulated fishery will be more of a mining operation than a fishery. The Petitioner notes that the hagfish fishery in the Sea of Japan has collapsed and has never recovered.

The Petitioner believes that the Council's Red Crab Fishery Management Plan should have considered impacts on the Atlantic hagfish fishery that could result from limited entry measures in the red crab fishery. He has testified before the Council that at least five large vessels are preparing to enter the Atlantic hagfish fishery.

The Petitioner cites NMFS guidelines that advise a precautionary approach to managing new fisheries, where initially fishing should be exploratory in nature and focus on gathering data to estimate life history parameters. He also cites United Nations Food and Agriculture Organization (FAO) advice that managers control access to a fishery early, before problems appear. He further states that FAO recommends putting a cap on both fishing capacity and the total fishing mortality rate, and that caps should remain in place until analyses of data justify an increase in fishing effort.

The Petitioner states that testimony before the Council indicated that there are at least five vessels that have either already entered or are planning to enter the Atlantic hagfish fishery in the near future, and each of these is larger than any of the existing vessels in the fishery. He claims that the total harvesting capacity of the potential entrants alone

is likely to exceed four times the capacity of the existing fleet.

This notice solicits comments from the public regarding the need to proceed with rulemaking for the Atlantic hagfish fishery. NMFS is specifically requesting that the public provide comments on the biology and ecology of the Atlantic hagfish stock. NMFS will consider this information in determining whether to proceed with the development of regulations requested by the amended petition.

Dated: April 1, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–8335 Filed 4–4–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 66
Friday, April 5, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Exemption Regarding Historic Preservation Review Process for Projects Involving Historic Natural Gas Pipelines

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of final exemption regarding historic natural gas pipelines.

SUMMARY: The Advisory Council on Historic Preservation is publishing a final exemption that relieves Federal agencies from the requirement of taking into account the effects of their undertakings on historic natural gas pipelines. The exemption goes into effect on April 5, 2002.

DATES: This final exemption will go into effect on April 5, 2002.

FOR FURTHER INFORMATION CONTACT: Address all questions about this exemption to Javier Marqués, Office of General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. *jmarques@achp.gov.*

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (''Council'') a reasonable opportunity to comment with regard to such undertakings. The Council has issued the regulations that set forth the process through which Federal agencies comply with these duties. Those regulations are codified under 36 CFR part 800 (''Section 106 regulations'').

The National Historic Preservation Act (''Act'') authorizes the Council, with the concurrence of the National Park Service, to promulgate regulations for exempting undertakings ''from any or all of the requirements of'' the Act. 16 U.S.C. 470v. The Section 106 regulations detail the process for the approval of such exemptions. 36 CFR 800.14(c).

According to that process, the Federal Energy Regulatory Commission (''Commission'') formally proposed an exemption regarding the effects of undertakings on historic natural gas pipelines. The Council preliminarily approved that exemption, pending the results of the public comment opportunity provided through an earlier notice (67 FR 9429, March 1, 2002). Please refer to that earlier notice for a lengthier background on the exemption, and an explanation of how it meets the criteria for exemptions under the Section 106 regulations.

At the end of the public comment period provided by that earlier notice, only three comments had been filed: the National Conference of State Historic Preservation Officers (''NCSHPO''), the Interstate Natural Gas Association of America (''INGAA''), and Duke Energy Gas Transmission (''Duke Energy''). Since all three comments supported the exemption, the Council's preliminary approval of the exemption was not withdrawn, and the exemption will go into effect on April 5, 2002.

The exemption releases all Federal agencies from the Section 106 requirement of having to consider the effects of their undertakings on historic natural gas pipelines. Historic natural gas pipelines are defined as those natural gas pipelines that meet the criteria for listing on the National Register of Historic Places. The exemption applies unconditionally for all undertakings except for those that entail the abandonment of a historic natural gas pipeline. The sole condition for those cases is that the historic natural gas pipeline gets documented prior to abandonment. The documentation requirements are enumerated in the exemption document. Finally, the exemption does not apply on tribal land.

The comment filed by INGAA, and supported by Duke Energy, requested a clarification on the term ''abandonment.'' INGAA submitted that the Council clarify that term by specifically defining it as any abandonment filed pursuant to Section 7(b) of the National Gas Act, 15 U.S.C. 717f(b) (2000), except for all abandonments described in the blanket certification provisions set forth in Subpart F, Section 157.201 et seq of the regulations of the Commission, that is, those abandonments that are automatically authorized under the Commission's regulations or those that are filed under the Commission's prior notice regulations. The Council believed such a definition accurately reflected the intent of the proposed exemption and thereby incorporated it into the final exemption.

Under this definition of ''abandonment,'' documentation of a historic natural gas pipeline is ensured when significant pipeline facilities are to be abandoned. This would include any abandonment of mainline facilities. Due to their age and their central importance to the resource as a whole, such mainline facilities are the most likely to contain or reflect the historically significant features of the pipeline.

By the same token, the use of this specific definition of ''abandonment'' underlines the fact that the exemption does not require documentation of the pipeline for the abandonment of relatively minor (and more recently constructed) facilities, such as gas supply facilities, receipt or delivery points, or related supply or delivery laterals. Such abandonments, by their nature, present much more limited, if not negligible, impacts on the pipeline as a whole. As the Council has noted before, natural gas pipelines exhibit considerable redundance and uniformity in form over their entire extent. Accordingly, these minor abandonments are unlikely to affect the integrity of the pipeline as a historic property or jeopardize adequate documentation of the pipeline in the future.

The full text of the final exemption is reproduced below.

Section 106 Exemption Regarding Effects to Historic Natural Gas Pipelines

I. Exemption Regarding Effects to Historic Natural Gas Pipelines

Except as noted on Section II, all Federal agencies are exempt from the Section 106 requirement of taking into account the effects of their undertakings on historic natural gas pipelines.

II. Abandonment of Historic Natural Gas Pipelines

Abandonment of a historic natural gas pipeline, in part or in whole, will qualify for the exemption under Section I, provided that the Federal agency or its applicant has documented the historic natural gas pipeline by:

(a) Completing a determination of eligibility for the pipeline as a whole, which identifies contributing and non-contributing components of the pipeline, using standard information required on a National Register nomination form. The documentation must be prepared by an individual meeting the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44738–9). The documentation must include the following components:

(i) a brief history of construction of the line with a bibliography recording the primary and secondary sources that were used;

(ii) documentation through as-built drawings, historical photographs or, 35 mm photographs, as appropriate, of representative examples of significant features associated with the line;

(iii) a map of the historic property set at an appropriate scale; and

(iv) an annotated bibliography of other primary and secondary sources identified during research; and

(b) Placing the documentation in an appropriate repository, accessible to the general public, in each State crossed by the pipeline, and filing the documentation with the relevant State Historic Preservation Officer(s).

When the abandonment involved only a section of the historic natural gas pipeline, Federal agencies or applicants handling subsequent abandonments of other sections of the historic natural gas pipeline will not have to repeat the documentation requirements set forth above.

III. Existing Agreements

This exemption is not intended to amend, invalidate or otherwise modify Section 106 Programmatic Agreements (PAs) in existence at the time this exemption goes into effect. Parties to such PAs may amend them according to their terms.

IV. Tribal Lands

This exemption does not apply to those portions of undertakings that take place on tribal lands.

V. Definitions

(a) ''Section 106'' means Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, and its implementing regulations, found under 36 CFR part 800.

(b) ''Undertaking'' means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(c) ''Historic natural gas pipelines'' means natural gas pipelines, and their appurtenant facilities, that are listed, or eligible for listing, on the National Register of Historic Places.

(d) ''Tribal lands'' means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(e) ''Abandonment'' means any abandonment that would be filed pursuant to Section 7(b) of the National Gas Act, 15 U.S.C. 717f(b)(2000), except for all abandonments described in the blanket certification provisions set forth in Subpart F, 18 CFR 157.201 *et seq.* of the regulations of the Federal Energy Regulatory Commission.

Authority: 16 U.S.C. 470v; 36 CFR 800.14(c).

Dated: April 1, 2002.

John M. Fowler,

Executive Director.

[FR Doc. 02–8336 Filed 4–4–02; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ponderosa Pine Restoration Project, Coeur d'Alene River Ranger District, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On March 12, 2002, a Notice of Intent (NOI) to prepare an environmental impact statement for the Ponderosa Pine Restoration Area Project was published in the **Federal Register** (Volume 67, Number 48, pages 11089–11090). Since notice of the project proposal was published before receiving approval to proceed from the agency's Washington Office, the NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Sarah Jerome, Project Team Leader, Coeur d'Alene River Ranger District, (208) 664–2318.

Dated: March 29, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–8221 Filed 4–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Saturday, May 11, 2002, 9:00 am to 3:30 pm in Alturas, California for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting May 11 begins at 9:00 am, at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of 04/13/02 minutes, reports from subcommittees and review and selection of projects that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality that meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Dan Chisholm, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Dan Chisholm,

Forest Supervisor.

[FR Doc. 02–8222 Filed 4–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Golden Valley Electric Association, Inc.; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment and/or an environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794) proposes to hold a scoping meeting and prepare an Environmental Assessment (EA) for its Federal action related to a project proposed by Golden Valley Electric Association. Inc., (GVEA) of Fairbanks, Alaska. The project consists of constructing a 138kV transmission line between the GVEA generating facilities at the Williams Alaska Petroleum Refinery in North Pole, Alaska, and the Carney Substation, which is approximately 28 miles southeast of North Pole.

Meeting Information: RUS will conduct a scoping meeting in open house forum on Thursday, April 25, 2002, at the North Pole City Hall, 125 Snowman Lane, North Pole, Alaska 99705, from 5 p.m. until 9 p.m.

FOR FURTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, U.S. Department of Agriculture, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1414, FAX: (202) 720–0820, e-mail: *nislam@rus.usda.gov*. Information is also available from Mr. Greg Wyman, Manager of Construction Services, GVEA, POB 71249, Fairbanks, Alaska 99707–1249, telephone (907) 451–5629. His e-mail address is: gwyman@gvea.com.

SUPPLEMENTARY INFORMATION: GVEA proposes to construct the North Pole-Carney Substation 138kV Transmission Line Project, which is approximately 28 miles in length. To accommodate the new transmission line, either a new substation would be built next to the Williams Refinery, or the existing generating/substation facilities at North Pole would be modified to provide an additional breaker to feed the transmission line and other breaker bays for future growth. In addition, GVEA would modify the Carney Substation to provide an additional breaker to allow for termination of the transmission line. This substation work would take place within the existing substation footprint. The primary purpose of the facility is to meet the projected future increases in regional power requirements and to improve the quality of service to existing customers.

Alternatives to be considered by RUS and GVEA include no action, purchased power, upgrade of existing lines, new transmission facilities, alternative sites, alternative routes, energy conservation.

GVEA has prepared an Alternative Evaluations and Macro-Corridor Study for the project. The report is available for public review at RUS or GVEA at the addresses provided in this notice and at the following locations:

(1) Noel Wien Public Library, 1215 Cowles Street, Fairbanks, AK 99701
(2) North Pole City Library, 601 Snowman Lane, North Pole, AK 99705
(3) GVEA Office, 758 Illinois Street, Fairbanks, AK 99707

Federal, state and local agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and GVEA will be available at the scoping meeting to discuss RUS' environmental review process, the proposed project and the alternatives being considered, scope of the environmental issues to be considered, and answer questions. Oral and written comments will be accepted at the scoping meeting. Written comments regarding the proposed project will also be accepted for 30 days after the scoping meeting. All written comments should be sent to RUS at the address provided in this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the CEQ Regulations and RUS Environmental Policies and Procedures.

Dated: March 29, 2002.

Mark S. Plank,

Acting Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. 02–8202 Filed 4–4–02; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: May 6, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Refillable Tape Dispenser with Tape (Matte Finish), 7520–00-NIB–1402.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, LA.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.
Product/NSN: Refillable Tape Dispenser with Tape (Glossy Finish), 7520–00–NIB–1516.

NPA: The Lighthouse for the Blind in New Orleans, New Orleans, LA.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY.

Services

Service Type/Location: Janitorial/Custodial, FBI Information Technology Center, Fort Monmouth, NJ.
NPA: Monmouth Center for Vocational Rehabilitation, Eatontown, NJ.
Contract Activity: FBI Information Technology Center, Fort Monmouth, NJ.
Service Type/Location: Janitorial/Custodial, Naval and Marine Corps Reserve Center, Mobile, AL.
NPA: GWI Services, Inc., Mobile, AL.
Contract Activity: Naval Facilities Engineering Command, North Charleston, SC.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–8277 Filed 4–4–02; 8:45 am]

BILLING CODE 6353–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on April 17, 2002, at 2175 K Street, Suite 400 Conference Room. Topics will include:

1. Update on reactive chemical hazard investigation
2. Update on CSB investigation into a fatal explosion at the BP Amoco Polymers plant in Augusta, Georgia on March 13, 2001, that killed three workers
3. Close out of CSB recommendations
4. Update on CSB budget proposal for FY 2003
5. Update on Fiscal Audit of CSB
6. Review of CSB performance goals for FY 2002
7. Update on Chief Operating Officer position filling process
8. Review of CSB management initiatives and recommendations made by CSB's Office of Inspector General
   - Request for opinion from Department of Justice regarding designation of Acting Chairperson
   - Publication of proposed rule implementing Sunshine Act
   - Discussion of proposal to Office of Personnel and Management regarding Schedule A hiring initiatives
   - Interim Outreach Proposal
9. Tentative date for next Board Meeting

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of Congressional and Public Affairs, (202)–261–7600, or visit our website at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 02–8438 Filed 4–3–02; 2:12 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032602B]

Receipt of an Application for an Incidental Take Permit (1357)

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

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit from the State of Hawaii's Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, the DAR's application includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. The permit application is for the incidental take of ESA-listed sea turtles associated with otherwise lawful fisheries occurring in state waters (shoreline to the extent of state jurisdiction), which are under the State's management authority (except for federal pelagic and bottomfish fisheries managed by the Western Pacific Regional Fishery Management Council). The duration of the proposed permit is July 1, 2002 to June 30, 2005. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the permit application and conservation plan must be received (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on May 6, 2002.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. The application is available for download and review at http://www.nmfs.noaa.gov/prot__res/PR3/Permits/ESAPermit.html. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Margaret Akamine Dupree (ph.808–973–2935, fax 808–973–2941, e-mail Margaret.Dupree@noaa.gov) or Therese Conant (ph. 301–713–1401, fax 301–713–0376, e-mail Therese.Conant@noaa.gov). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301–713–1401.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under certain conditions, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in this Notice

The following species are included in the plan and permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and olive ridley (*Lepidochelys olivacea*) sea turtles.

Background

On March 21, 2002, the DAR submitted an application to NMFS for an ESA section 10(a)(1)(B) permit for an incidental take of ESA-listed sea turtles associated with state-managed fisheries. The application request is for the three year period from July 1, 2002 to June 30, 2005. This permit would allow for the continued take of sea turtles incidental to the recreational and commercial harvest of fish in state waters of Hawaii and provide conservation for sea turtles.

Conservation Plan

The conservation plan prepared by the DAR and included in the application describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed sea turtles in what it refers to as the ''inshore fisheries.''

Inshore fisheries occur in Hawaii state waters (shoreline to the extent of state jurisdiction) which are under the State's management authority (except for federal pelagic and bottomfish fisheries managed by the Western Pacific Regional Fishery Management Council). This includes both recreational fishing and commercial fishing. Many different kinds of fishing methods exist and, in aggregate, fishing occurs throughout the year and along all accessible coastlines. Hawaiian fishermen utilize gear in four broad categories: hook-and-line, net, trap and spear. There is a diverse array of gear and gear configurations within these categories.

The DAR conservation plan includes a monitoring program to accurately estimate the annual take of sea turtles by inshore fisheries and to assess the effect of mitigation measures on addressing goals and objectives. The plan would also work to reduce the lethal take of sea turtles (all species combined) by 25 percent from 2002 levels and reduce the total take by 10 percent. Incidental mortalities of ESA-listed sea turtles associated with the Hawaii inshore marine fisheries are requested at levels specified in the permit application. The plan would protect critical inshore foraging and resting habitat from the impacts of the permitted activity.

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and public comments to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: April 1, 2002.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–8190 Filed 4–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040102A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee in April 2002, to consider actions affecting New England fisheries in the exclusive economic zone. Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on April 23 and 24, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held in Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Tuesday, April 23, 2002, at 9:30 a.m. and Wednesday, April 24, 2002, at 8:30 a.m. - Groundfish Oversight Committee Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

The Committee will continue development of Amendment 13 to the Northeast Multispecies Fishery Management Plan, Amendment 13 will end overfishing and establish rebuilding schedules for overfished stocks. At a meeting on February 27, 2002, the New England Council decided to develop groundfish management measures for five broad areas and one user group: inshore Gulf of Maine, offshore Gulf of Maine, eastern Georges Bank, western Georges Bank, Southern New England/Mid Atlantic, and recreational/charter/party. This meeting will focus on commercial fishing for groundfish in the Eastern and Western Georges Bank areas. Measures for the Western Georges Bank area will be discussed on Tuesday, April 23, 2002, and measures for the Eastern Georges Bank area will be discussed on Wednesday, April 24, 2002. Proposed area boundaries can be obtained from the Council (see **ADDRESSES**). Interested parties will be consulted to identify management measures that will achieve specific biological, economic, and social objectives identified by the Council. Such measures may include, but are not limited to, trip or possession limits, changes to the days-at-sea program, year-round or seasonal closed areas, or gear changes. Suggestions for management measures should consider all Magnuson-Stevens Act requirements.

The Committee will consider these suggested measures and will develop a recommendation that will be reviewed by the Council at a later date. After Council approval, the measures will be analyzed and included in a draft supplemental environmental impact statement.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8191 Filed 4–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040202A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of public meeting.

SUMMARY: The New England Fishery Management Council (Council) has cancelled a public meeting of its Monkfish Oversight Committee that was scheduled for April 10-11, 2002.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950, telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The initial notice was published on March 20, 2002 (see 67 FR 12976, March 20, 2002). The meeting will be rescheduled at a later date and announced in the Federal Register.

Dated: April 2, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–8334 Filed 4–4–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 18 April 2002 at 10:00 am in the Commission's office at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC 2001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days beforet the meeting date.

Dated in Washington, DC., 1 April 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–8223 Filed 4–4–02; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability for the Draft Integrated Feasibility Report and Environmental Impact Statement/Environmental Impact Report for the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project, Lake County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, in coordination with Lake County and the State of California Reclamation Board, have prepared the Draft Integrated Feasibility Report and Environmental Impact Statement/ Environmental Impact Report (DFR/EIS/ EIR) for the Middle Creek Flood Damage Reduction and Ecosystem Restoration Project, Lake County, California. This investigation proposes to reduce flood damage and restore the historic Robinson Lake ecosystem, located at the northern end of Clear Lake, for fish and wildlife resources by restoring open water, wetland, riparian, and upland habitat; increasing the amount of breeding, feeding, and nursery grounds for fish; and reestablishing native historic plant and wildlife communities. This DFR/EIS/EIR is being made available for a 45-day public comment period. All comments should be submitted on or before May 20, 2002.

FOR FURTHER INFORMATION CONTACT: To obtain additional information related to this report, interested persons are invited to contact the following: Mr. Jerry Fuentes, Social Sciences Environmental Manager, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, (916) 557–6706 or (916) 557–7856 (FAX), *jerry.w.fuentes@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

a. *Report Availability.* Printed copies of the DFR/EIS/EIR are available for public inspection and review at the following locations:

(1) U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922.

(2) Lake County Library, 1425 High Street, Lakeport, CA 95453.

b. *Commenting.* Comments received in response to this report, including names and addresses of those who comment, will be considered part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

Luz D. Oritz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8176 Filed 4–4–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting 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 June 4, 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 Acting 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: April 1, 2002.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Ronald E. McNair Postbacalaureate Achievement Program (84.217).

Frequency: Once every four years.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 6,000.

Abstract: The application form is needed to conduct a national competition for the Ronald E. McNair Postbaccalaureate Achievement Program for program year 2002–03. The program provides Federal financial assistance in the form of grants to institutions of higher education and combinations of institutions of higher education. The program provides Federal financial assistance in the form of discretionary grants to institutions of higher education for the purpose of providing academic and other support services to prepare low-income, first-generation college students, and students from groups underrepresented in graduate education for doctoral study.

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, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO__IMG__Issues@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 his 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. 02–8216 Filed 4–4–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–23; Terrestrial Carbon Sequestration Using the Poplar

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces interest in receiving applications for the Terrestrial Carbon Sequestration Using the Poplar research program. Research is requested that could lead to strategies to improve the use of the poplar tree, genus Populus, for long-term sequestration of atmospheric carbon: (1) By leveraging the planned genomic sequencing of the poplar, and/or (2) through understanding of the microbial communities found in the poplar rhizosphere. Applications are sought for research to develop the scientific understanding needed to develop and apply genomic methods to enhance carbon sequestration by poplar. Genomics, which is revolutionizing the biological and environmental sciences, uses the genetic information within a cell to understand phenotypic expression of an organism, such as Populus. The focus of genomics in this solicitation is on how gene functions of Populus affect and can be manipulated to affect the phenotypic expression of processes that control the fixation and sequestration of carbon in above- and below-ground biomass and the soil.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. Early submission of preapplications is suggested to allow time for meaningful dialogue.

The deadline for receipt of formal applications is 4:30 p.m., E.D.T., May 30, 2002, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002 and early Fiscal Year 2003.

ADDRESSES: Preapplications, referencing Program Notice 02–23, should be sent e-mail to: *john.houghton@science.doe.gov.*

Formal applications, referencing Program Notice 02–23, should be sent 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 02–23. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, e-mail: *john.houghton@science.doe.gov,* fax: (301) 903–8519. The full text of Program Notice 02–23 is available via the World Wide Web using the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: The Department of Energy Joint Genome Institute will be sequencing the nuclear, genomic DNA from a member of the Populus genus, *Populus balsamifera* ssp. *trichocarpa,* commonly known as black cottonwood. This Populus genome will be sequenced to a three-fold coverage in 2002, and increased to six-fold coverage in 2003. It will be the first woody plant species to be sequenced, and the draft sequence will be available immediately to the research community.

Poplar has many advantages both as a model organism and as a crop for carbon sequestration. Poplar is easily mutated, has facile transgenesis, and is easily cloned. The molecular physiology is well characterized. It has a relatively small, compact genome of approximately 550 Mbases. Much is known already about its genome, and genetic tools exist, such as genetic linkage maps, BAC (bacterial artificial chromosome) libraries, EST (expressed sequence tags) libraries, and QTL (quantitative trait locus) mapping of physiological traits. Research on trees has some advantages over non-woody plants for carbon sequestration due to the large fraction of total global terrestrial biomass in forests, rapid growth, high value products other than carbon sequestration that could help the economics of carbon sequestration, and widespread distribution.

Genomic studies of the poplar may result in improved breeding and options for cultivation that will enable

significant quantities of carbon to be sequestered using poplar or other trees. This notice solicits research that will build on the planned sequencing of the poplar to investigate ways in which carbon sequestration of the above-ground bole and branches of trees can be improved. In addition, a significant fraction of the carbon associated with a stand of trees is in the soil, rather than the above-ground biomass. Carbon sequestration in soils may be a critical natural sink for anthropogenic carbon dioxide emitted to the atmosphere. Carbon sequestration in forest soils also has many potential ancillary benefits, such as improved fertility and water holding capacity of soil, thereby reducing both erosion and the need for fertilizers, and the possibility of soil carbon sequestration credits to save forests on lands that might otherwise be converted to other use.

The proposed research should be linked to possible options for purposeful enhancement of carbon sequestration. In below-ground sequestration, for example, carbon could be partitioned so that roots contain more biomass than usual. Recalcitrant forms of carbon, such as lignin, could be over-expressed in roots. The plant biochemistry could be manipulated so that secondary compounds of interest could be exuded from the roots into the soil with the intent of increasing carbon storage in the soils. These techniques would alter the natural flow of carbon fixed from the atmosphere by the tree so that more carbon would be added to the soil and/or the carbon would remain in the soil longer.

For the goal of carbon management using the above-ground biomass, the bole and branches could be manipulated to make them more conducive for use as an energy source, effectively slowing the increase in atmospheric carbon dioxide concentrations compared with the same energy production from fossil fuels. For proposed products that are not replacing fossil fuels, a justification needs to be made that significant additional carbon will be sequestered. The total life cycle global carbon sequestered should be at least on the order of 1 Gigatonne carbon per decade. These products need to have lifetimes of decades so that the carbon involved remains sequestered.

Applicants should describe a phased research program that takes advantage of the draft DNA sequence as it becomes available over the next two years. The proposed research could lead to the development of high throughput experimental and computational methods for understanding of the functional genomics and proteomics of the poplar, especially as related to carbon utilization. Research topics might include (but are not limited to): the identification of gene function(s), the ability to rapidly develop mutants and transform cells, high throughput assays for SNPs (Single Nucleotide Polymorphisms) that alter function(s), the development of systems for phenotyping important traits in mutants, and the understanding and control of metabolic and regulatory pathways.

Research is also being sought that investigates the microbial community in the poplar rhizosphere with the intent of understanding its role in the transfer of carbon from roots to the soil. Research topics might include: (but are not limited to): a characterization of the bacterial and fungal organisms that metabolize the products, for example, exudates and structural root components, from the roots to form compounds with a long (decades) turnover time. Research is preferred on organisms and pathways that serve to increase long-term carbon storage over organisms and pathways that would serve to decrease carbon storage. A link should be made to potential techniques that would lead to increased carbon storage in the poplar rhizosphere and surrounding soil, such as a manipulation of the soil chemical environment to promote certain microorganisms or particular metabolic pathways.

Applicants are encouraged, where appropriate, to include computational biology and informatics techniques in the research. Where practical, data should be made accessible, in machine-readable format, to other researchers. Applicants are strongly encouraged to include an informatics plan for managing the emerging data so that, to the extent practical, the data is compatible with other researchers and data sets.

Program Funding

It is anticipated that up to $1,500,000 will be available for multiple awards to be made in Fiscal Year 2002 and early Fiscal Year 2003, in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs. Annual budgets are expected to range from $100,000 to $400,000 total costs, unless there is prior approval from the Program Manager.

Collaboration

Applicants are encouraged to consider proposing multidisciplinary, collaborative research projects. Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.science.doe.gov/production/grants/Colab.html.*

Preapplications

A brief preapplication is strongly encouraged (but not required) prior to submission of a full application. The preapplication should identify on the cover sheet the institution, Principal Investigator's name, address, telephone, fax and E-mail address, title of the project, and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Terrestrial Carbon Sequestration Using the Poplar research program. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria 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 will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues.

Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available 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 research project description must be 20 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. All collaborators should be listed with the abstract or summary. On the grant face page, form DOE F 4650.2, in block 15, also provide the Principal Investigator's phone number, fax number, and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of the National Institutes of Health (NIH) or the National Science Foundation (NSF) (two to three pages), see for example: *http://www.nsf.gov/bfa/cpo/gpg/fkit.htm#forms-9.*

(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, March 29, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–8233 Filed 4–4–02; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Electricity Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Department of Energy's Electricity Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Electricity Advisory Board.

DATES: Tuesday, April 23, 2002, 1 p.m.–5 p.m.

ADDRESSES: Ronald Reagan Building and International Trade Center, Rotunda Room 8th floor, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Craig R. Reed, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The Electricity Advisory Board was chartered to provide the Secretary of Energy with essential independent advice and recommendations on electricity policy issues of importance to the Department of Energy. The Electricity Advisory Board is to provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's electricity programs; current and future capacity of the electricity system; issues related to production, reliability and utility restructuring; and coordination between the Department of Energy and state and regional officials and the private sector on matters affecting electricity supply and reliability.

Tentative Agenda

The agenda for the April 23, 2002, meeting has not been finalized. The meeting, which will begin at 1 p.m., will cover a range of issues concerning wholesale electricity markets such as the state of competition; transmission infrastructure; capitalization concerns; effects of wholesale competition on economic and environmental policy; and legislative initiatives. Several regulatory and legislative leaders have been invited to participate in the discussion. Members of the public wishing to comment will have an opportunity to address the Electricity Advisory Board during a designated public comment period. The public comment period will be limited to approximately 15 minutes and is tentatively scheduled to begin at 3:30 p.m.. The final agenda will be available at the meeting.

Public Participation

During its meeting in Washington, DC, the Electricity Advisory Board welcomes public comment. In keeping with procedures, members of the public may observe the business of the Electricity Advisory Board and submit written comments or comment in person during the scheduled public comment period. The public comment period will be limited to approximately 15 minutes. Members of the public who wish to comment during the limited public comment period will be required to sign-up in the public comment registration book available at the registration table for the Electricity Advisory Board meeting. Members of the public wishing to provide public comment are encouraged to preregister by providing advance notice via fax ((202) 586–6279), telephone ((202) 586–7092) or letter to Dr. Craig R. Reed, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Preregistration will help the Board to determine how much time to allot to each speaker in light of the time constraints of this initial Electricity Advisory Board meeting. Members of the public will be heard in the order in which they are listed in the public comment registration book. Registration sign in for the public comment period will close before the public comment period commences. The Chairman of the Electricity Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. The Electricity Advisory Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Dr. Craig R. Reed, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Please advise Lisa Epifani, staff director for the Electricity Advisory Board, at least seven days before the meeting if special assistance is required to make the meeting accessible by persons with vision, hearing, or mobility disabilities. Ms. Epifani may be reached at (202) 586–5450 or (202) 586–6279 (fax).

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, DC, on April 1, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–8235 Filed 4–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, April 20, 2002, 8:30 p.m.–12 p.m.

ADDRESSES: Public Environmental Information Center, 10995 Hamilton-Cleves Highway, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:30 a.m. Call to Order
8:30–8:45 a.m. Chair's Remarks and Ex Officio Announcements
8:45–9:00 a.m. Results of Chair's Meeting
9:00–10:30 a.m. Silos Presentations and Discussion
10:30–10:45 a.m. Break
10:45–11:15 a.m. Silos—FCAB Next Steps
11:15–11:45 a.m. Planning for Design Charrette
11:45–12:00 p.m. Public Comment
12:00 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on April 2, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–8234 Filed 4–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meetings

April 1, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), which was filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and Federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. On Monday, April 8, there will be meetings of the aquatics-hydrology workgroup and the project economics workgroup. On Tuesday, April 9, the terrestrial resources workgroup will meet. The meetings will focus on further defining interests and development of management objectives. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in this meeting.

On Monday, April 8, the aquatics-hydrology workgroup will meet from 9 am until 3 pm and the project economics workgroup will meet from 3 pm to 5 pm. On Tuesday, April 9, the terrestrial workgroup will meet from 11 am to 5 pm. Both meetings will be held in the Folsom Hilton Garden Inn, located at 221 Iron Point Road, Folsom, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

Magalie R. Salas,

Secretary.

[FR Doc. 02–8236 Filed 4–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

April 1, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2170.

c. *Date filed:* March 1, 2002.

d. *Submitted By:* Chugach Electric Association, Inc.

e. *Name of Project:* Cooper Lake Hydroelectric Project.

f. *Location:* Project is located near Cooper Landing on the Kenai Peninsula in south-central Alaska.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee in the Planning Department Library, Chugach Electric Association, Inc., 5601 Minnesota Drive, Anchorage, Alaska 99518.

i. *FERC Contact:* Vince Yearick, 202–219–3073, Vince.Yearick@Ferc.Gov.

j. Expiration Date of Current License: April 30, 2007.

k. *Project Description:* Cooper Lake Dam, powerhouse containing two turbine, A tunnel, conduit, and penstock with two transmission lines. The installed capacity is 19.4 megawatts.

l. The licensee states its unequivocal intent to submit an application for A new license for Project No. 2170 Pursuant to 18 CFR 16.9(b)(1) each

application for A new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2005.

A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The notice may be viewed on *http://www.ferc.fed.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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–8237 Filed 4–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7168–3]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Aluminum Association* v. *U.S. EPA,* No. 00–1211 (D.C. Circuit). This case concerns the National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production, 40 CFR part 63, subpart RRR, published at 65 FR 15710 on March 23, 2000. The proposed settlement agreement was lodged with the United States Court of Appeals for the District of Columbia Circuit on April 1, 2002.

DATES: Written comments on the proposed settlement agreement must be received by May 6, 2002.

ADDRESSES: Written comments should be sent to Timothy D. Backstrom, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed settlement agreement was also lodged in the case with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on April 1, 2002.

SUPPLEMENTARY INFORMATION: EPA promulgated the National Emission Standard for Hazardous Air Pollutants for Secondary Aluminum Production, 40 CFR Part 63, Subpart RRR, on March 23, 2000. 65 FR 15710. The Aluminum Association filed a timely petition for review and settlement discussions followed.

The proposed settlement agreement provides that some revisions to Subpart RRR will be made by a proposed rule, and some more urgent revisions will be made by a direct final rule. The proposed rule and direct final rule are to be signed by the EPA Administrator by May 10, 2002, and final action on the proposed rule is due by December 13, 2002.

One issue addressed by the settlement agreement is the desire of the Petitioner to allow for different sources within a secondary aluminum facility to be ducted to the same emission controls. The existing rule expressly provides for emission averaging within a secondary aluminum processing unit or SAPU, an affected source which may include multiple emission units. However, due to statutory constraints, the rule does not permit new emission units to be included in the same SAPU with existing emission units. The amendments to be proposed address this issue in two ways: (1) By permitting existing emission units to be redesignated as new, and (2) by establishing criteria which would permit compliance demonstrations for other commonly ducted units.

The proposed rule also includes alternative procedures for adoption of an operation, maintenance, and monitoring (OM&M) plan, and technical amendments addressing compliance by unvented in-line flux boxes, compliance by sidewell furnaces, procedures for conducting performance tests, alternative monitoring methods, and recordkeeping for flux boxes which do not use reactive flux. The direct final rule will be used to resolve confusion in the structure of the current rule concerning compliance dates, and to defer a few early compliance obligations which would otherwise come due before the principal rulemaking process can be concluded.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: April 1, 2002.

Alan W. Eckert,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–8297 Filed 4–4–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7168–5]

Operating Permits Program; Notice of Location of Response Letters to Citizens Concerning Program Deficiencies in Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is adding a letter to its web site which responds to citizens' comments on alleged deficiencies in the Texas air operating permits programs. The citizen comments were submitted to EPA as a result of a 90-day comment period EPA provided for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs required by title V of the Clean Air Act (Act). The 90-day comment period was from December 11, 2000, until March 12, 2001.

FOR FURTHER INFORMATION CONTACT: Jeff Herring, C304–04, Information Transfer and Program Integration Division, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711. Telephone: 919–541–3195. Internet address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 11, 2000 (65 FR 77376), EPA announced a 90-day comment period during which the public could submit comments identifying deficiencies they perceived to exist in State and local agency operating permits programs required by title V of the Act. The 90-day comment period ended on March 12, 2001.

The December 11, 2000 notice solicited comment from the public regarding either deficiencies in the elements of the approved program, such

as deficiencies in the States' approved regulations, or deficiencies in how a permitting authority was implementing its program. The Agency indicated that it would consider information received from the public and determine whether it agreed or disagreed with the purported deficiencies and would then publish notices of those findings. Where the Agency agreed that a claimed shortcoming constituted a deficiency, it indicated it would issue a notice of deficiency. Where the Agency disagreed as to the existence of a deficiency, it indicated it would respond to the citizen comments by December 1, 2001, for comments on programs granted interim approval as of December 11, 2000. For programs granted full approval as of December 11, 2000, EPA indicated it would respond to citizen comments by April 1, 2002.

In accordance with the procedures set forth in the December 11, 2000, notice and outlined above, EPA issued a notice of deficiency for Texas in connection with the citizen comment letters submitted pursuant to the December 11, 2000, notice (see 67 FR 732, January 7, 2002). The State of Texas must adopt appropriate corrections to its title V program and submit them to EPA for approval within the timeframes set out in the notice of deficiency or face highway and/or offsets sanctions under section 179(b) of the Act [1] and implementation of a whole or partial Federal operating permits program under part 71 if it fails to do so.

Also in accordance with the December 11, 2000, notice, EPA has issued Agency response letters to citizen comments which explain EPA's reasoning in those instances where the Agency disagrees that particular alleged problems constitute deficiencies within the meaning of part 70. The EPA hereby notifies the public that an EPA letter responding to citizen allegations concerning Texas is available at the following web address: (*http://www.epa.gov/air/oaqps/permits/response/*). In a previously published notice (67 FR 6709, January 13, 2002), EPA alerted the public to this same web site as the location for all EPA response letters that had been signed at that time. The EPA also notes that when it signs additional EPA response letters in the future, it will publish additional notices of availability to identify the location of its web site containing those letters.

The EPA notes further that the terms ''deficiency'' and ''notice of deficiency'' are terms of art under the operating permits regulations in part 70. Thus, as explained in our letters responding to citizen comments, in some instances where EPA declined to issue a notice of deficiency, it was because the Agency disagreed that there was a problem with the State program or its implementation that requires correction. In other instances, however, EPA agreed in whole or in part with commenters that a program was not being properly implemented but nevertheless did not issue a notice of deficiency. Rather, EPA determined that the alleged deficiency had been corrected because the State had made a firm commitment to correct program implementation shortcomings where that could be accomplished on a timely basis by the State administratively without additional rulemaking or legislation.

Background

Pursuant to section 502(b) of the Act, EPA has promulgated regulations establishing the minimum requirements for State and local air agency operating permits programs. We promulgated these regulations on July 21, 1992 (57 FR 32250), in part 70 of title 40, chapter I, of the Code of Federal Regulations. Section 502(d) of the Act requires each State to develop and submit to EPA an operating permits program meeting the requirements of the part 70 regulations and requires us to approve or disapprove the submitted program. In some cases, States have delegated authority to local city, county, or district air pollution control agencies to administer operating permits programs in their jurisdictions. These operating permits programs must meet the same requirements as the State programs. In accordance with section 502(g) of the Act and 40 CFR section 70.4(d), for 99 State and local operating permits programs, we granted ''interim'' rather than full approval because the programs substantially met, but did not fully meet, the provisions of part 70. For interim approved programs, we identified in the notice of interim approval those program deficiencies that would have to be corrected before we could grant the program full approval. As of December 11, 2000, some of those 99 programs had since been granted full approval and the remainder still had interim approval status.

After a State or local permitting program is granted full or interim approval, EPA has oversight of the program to insure that the program is implemented correctly and is not changed in an unacceptable manner. Section 70.4(i) of the part 70 regulations requires permitting authorities to keep us apprised of any proposed program modifications and also to submit any program modifications to us for approval. Section 70.10(b) requires any approved operating permits program to be implemented ''* * * in accordance with the requirements of this part and of any agreement between the State and the Administrator concerning operation of the program.''

Furthermore, sections 70.4(i) and 70.10(b) provide authority for us to require permitting authorities to correct program or implementation deficiencies. As explained previously, EPA has exercised these authorities by in some instances issuing notices of deficiency and in other instances issuing letters explaining why we do not agree that deficiencies exist.

Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of EPA's action responding to the citizen letter on Texas' operating permits programs may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of April 5, 2002.

Dated: March 25, 2002.

Robert G. Kella,

Acting Director, Information Transfer and Program Integration Division.

[FR Doc. 02–8299 Filed 4–4–02; 8:45 am]

BILLING CODE 6560–50–P

[1] The EPA is in the process of promulgating a rule which will address the order of sanctions.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–9]

Environmental Impact Statements; Notice of Availabitlity

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa*

Weekly receipt of Environmental Impact Statements

Filed March 25, 2002 Through March 29, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020121, Draft Supplement, NOA, Regulatory Adjustment 2 to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan, Proposed Rule to Reduce Sea Turtle Bycatch and Bycatch Mortality in Highly Migratory Species Fisheries, Comment Period Ends: May 20, 2002, Contact: Christopher Rogers (301) 713–2347.

This document is available on the Internet at: (*http://www.nmfs.noaa.gov/sfa/hmspg.html*).

EIS No. 020122, Draft Supplement, NPS, NV, Great Basin National Park (GRBA) Amendment to the General Management Plan (GMP), Proposal to

Construct a Visitor Learning Center on an 80-acre Parcel of Land North of the Town of Baker, NV, Comment Period Ends: June 04, 2002, Contact: Becky Mills (775) 234–7331.

EIS No. 020123, Draft EIS, COE, CA, Middle Creek Flood Damage Reduction and Ecosystem Restoration Project, Implementation, Located between Highway 20 and Middle Creek immediately northwest of Clear Lake, Lake County, CA, Comment Period Ends: May 20, 2002, Contact: Jerry Fuentes (916) 557–6706.

EIS No. 020124, Draft EIS, FRC, CT, NY, Islander East Pipeline Project, To Construct and Operate an Interstate Natural Gas Pipeline Facilities, To Provide 285.009 dekatherms per day (Dth/d) of natural gas to energy market, New Haven, CT and Suffolk County, NY, Comment Period Ends: May 20, 2002, Contact: Margalie R. Salas (202) 208–2156.

EIS No. 020125, Final EIS, FTA, MN, Northstar Transportation Corridor Project, Improvements from downtown Minneapolis to the St. Cloud area along Trunk Highway (TH) 10/47 and the Burlington Northern Santa Fe (BNSF) Railroad Transcontinental Route, Connecting the Hiawatha Light Rail Transit (LRT) Line at a Multi-Modal Station, Minneapolis/St. Paul (MSP) International, Wait Period Ends: May 06, 2002, Contact: Joel Ettinger (312) 353–2865.

EIS No. 020126, Final Supplement, TVA, AL, Browns Ferry Nuclear Plant, Operating License Renewal, Units 2 and 3 and Potentially Unit 1 Operations Extension, Athens, Limstone County, AL, Wait Period Ends: May 06, 2002, Contact: Bruce L. Yeager (865) 632–8051.

EIS No. 020127, Draft EIS, COE, FL, Broward County Shore Protection Project, Proposed for Fill Placement in Segment II (Hillsboro Inlet to Port Everglades) and Segment III (Port Everglades to the south County Line), Broward County, FL , Comment Period Ends: May 20, 2002, Contact: Yvonne Haberer (904) 232–1701.

Amended Notices

EIS No. 020118, Draft EIS, FHW, NC, Second Bridge to Oak Island project, Transportation Improve from SR–1104 (Beach Drive) to NC–211, COE Section 404 Permit and US Coast Guard Permit, Federal Aid Project No. STP.1105(6), State Project No. 8.2231201, and TIP NO. R–2245, Brunswick County, NC, Comment Period Ends: May 13, 2002, Contact: Nicholas L. Graf (919) 856–4346.

Published FR 03–29–02 Correction to Comment Period from 04–29–2002 to 05–13–2002.

Dated: April 2, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–8300 Filed 4–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7168–4]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee (LGAC) and its Subcommittees will meet on May 1–3, 2002, in Washington, DC. The Committee will be discussing issues concerning the relationship between Local Governments and the U.S. Environmental Protection Agency (EPA). The focus of the meeting will be the orientation of new members to the Committee, the development of Committee Work Plans for the next 18 months, attendance at sessions of the EPA Science Forum, and discussions and briefings on current environmental issues.

There will also be an orientation session for the new LGAC members in the morning on May 1st to discuss EPA organization and structure, Committee history and rationale, legal requirements for members, and LGAC functions, and current issues.

During the meeting decisions will be made as to Subcommittees and Workgroup organization and these groups plus the standing Small Community Advisory Subcommittee (SCAS) may meet to initiate discussions on topics assigned by the Committee.

The Committee will hear comments from the public between 10 a.m.–10:20 a.m., May 3. Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Please contact the Designated Federal Officer (DFO) at the numbers listed below to schedule agenda time. Time will be allotted on a first come, first served basis, and the total period for comments may be extended, if the number of requests for appearances required it.

These are open meetings and all interested persons are invited to attend. LGAC meeting minutes and Subcommittee summary notes will be available after the meetings and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible, and to facilitate security clearance to the meeting. Seating will be on a first come, first served basis.

DATES: Formal Committee sessions will begin May 1st, and the orientation session will be held from 10:30 a.m.–12:30 p.m. The Local Government Advisory Committee plenary session will begin at 3:30 p.m. Wednesday, May 1st and conclude at 3:30 pm Friday, May 3rd.

ADDRESSES: The meetings will be held in Washington, D.C. at the EPA's Headquarters, located at 1200 Pennsylvania Avenue, NW—the Ariel Rios North Building. The orientation session will be held in conference room 5530. The LGAC plenary session on Wednesday, Thursday and Friday will be held in the Rachel Carson Great Hall on the 3rd floor

Additional information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for the Local Government Advisory Committee (LGAC) is Paul Guthrie (202) 564–3649.

Dated: March 27, 2002.

Paul N. Guthrie,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 02–8296 Filed 4–4–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7167–2]

Proposed CERCLA Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Environmental Waste Resources Site, Coal City, IL

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for Public Comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C.

9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Environmental Waste Resources, Inc., facility (''Site'') located near Coal City, Illinois. The settling parties are listed in the Supplementary Information portion of this Notice. The settlement is designed to resolve the liability of the settling parties for response costs the United States Environmental Protection Agency (''U.S. EPA'' or ''Agency'') incurred responding to the release or threat of release of hazardous substances from the Site. The settlement requires the settling parties to pay $136,457 to the Hazardous Substances Superfund. The settlement includes a covenant from U.S. EPA not to sue the settling parties pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, to recover Past Response Costs. U.S. EPA has the authority to enter into this administrative settlement agreement pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). For thirty (30) days following the date of publication of this notice the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at U.S. EPA, Region 5, Superfund Division Record Center, 77 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60604.

DATES: Comments must be submitted 30 days following the date of publication of this notice.

ADDRESSES: The proposed Administrative Order on Consent (''AOC'') embodying the settlement agreement and additional background information relating to the settlement are available for public inspection at the U.S. EPA, Region 5, Superfund Division Record Center, 77 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60604. A copy of the proposed AOC may be obtained from Craig Melodia (address see below). Comments should reference the Environmental Waste Resources Site.

FOR FURTHER INFORMATION CONTACT: Craig Melodia, Office of Regional Counsel, Mail Code C–14J, U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

A. Background

Environmental Waste Resources, Inc. (''EWR''), a Connecticut corporation, operated a Resource Conservation and Recovery Act-permitted treatment, storage, and recycling facility at the 26-acre Site from 1976 to 1997. During its operation EWR accepted hazardous and nonhazardous waste in bulk and container shipments. On July 8, 1997, EWR filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Act (Case No. 97–32784). On February 3, 1998, the Chapter 11 proceeding converted into a Chapter 7 proceeding to liquidate the Debtor's assets (Case No. 97–51487). When EWR's bankruptcy proceeding converted to a Chapter 7 proceeding, EWR abandoned the Site, including hazardous substances, pollutants and contaminants. This waste remained on the Site in drums, some of which were deteriorating, and in the bulk tanks. Waste containing elevated concentrations of volatile organic compounds (''VOCs'') as well as lower concentrations of other VOCs and semivolatile organic compounds (''SVOCs'') was stored in drums and tanks on the Site. Additionally, approximately 40 compressed gas cylinders, many of which contained flammable gases, were left in outdoor areas of the Site. Numerous laboratory chemicals that included concentrated acids, bases, flammables, oxidizers, poisons, and radioactive material were left in the laboratory building on the Site.

Shortly after EWR filed for bankruptcy the Illinois Environmental Protection Agency (''IEPA'') conducted a site investigation. That investigation prompted IEPA to refer the Site to U.S. EPA for response actions. From March 3 to March 6, 1998, U.S. EPA and its Superfund Technical Assessment and Response Team (''START'') contractor conducted an emergency site assessment. The site assessment identified 831 full drums labeled as containing both hazardous and non-hazardous waste; several hundred empty and partially full drums stored in three semi-trailers; 23 aboveground tanks in outdoor tank farms, most of which were full (capacity of 10,000 to 50,000 gallons each); four aboveground tanks within the process building; 29 compressed gas cylinders; and a variety of laboratory chemicals. Several leaking drums were also identified during the site assessment.

On March 7, 1998, U.S. EPA and its emergency response contractor mobilized to the Site to conduct an emergency response. A total of nine leaking 55-gallon drums were over packed, semi-trailers containing empty and partially full drums were investigated, and missing bolts were replaced on a storage tank man-way. In addition, U.S. EPA's contractor provided 24-hour security at the Site.

On December 22, 1998, the U.S. EPA, Region 5, Superfund Division Director signed an AOC with 21 parties (''AOC parties'') to perform a time-critical removal action and to reimburse U.S. EPA for oversight costs associated with overseeing the removal. The AOC parties took control of the Site and began providing site security on February 8, 1999. The removal took place from April 21, 1999, until September 3, 1999. The AOC parties' final report was issued on October 1, 1999, and stated that over 300,000 gallons of liquid and solid waste, 928 drums, 257 containers of laboratory hazardous substances, and 48 compressed gas cylinders had been removed from the Site. According to the final report, the AOC parties spent $1,186,894 performing the removal. In addition, the AOC parties paid $163,393 to U.S. EPA in oversight costs.

B. Settling Parties

The parties to this proposed AOC are: Warner-Lambert; Eastman Chemical Company and its subsidiaries, including Eastman Company; Chicago Specialty, Inc.; Release International/Rexam Release, Inc.; Valspar Corporation; Esco Co. Limited Partnership; ACME Borden; Morton International, Inc.; Coleman Chemical, Inc.; Mallinckrodt Specialty Chemical; Northwestern Flavors, Inc.; Viskase Corp.; Quebecor Printing Mt. Morris, Inc.; Libra Industries, Inc.; Allied Tube & Conduit; Jefferson Smurfit Corporation; Lyon Metal Products; Mozel, Inc.; Chicago Steel Container Corp.; Precision Coatings, Inc.; and International Paper.

C. Description of Settlement

The proposed AOC is a cash settlement to reimburse the Hazardous Waste Superfund for costs U.S. EPA incurred conducting the emergency removal action at the Site. The proposed AOC calls for the settling parties to pay $136,457 of U.S. EPA's total remaining costs of $243,925 (''past costs''). The settling parties have already paid $163,393 in oversight costs. The proposed settlement compromises U.S. EPA's claim for the remaining costs in recognition of the settling parties' cooperation in conducting the time-critical removal at the Site, and in recognition of the substantial share of liability EWR is responsible for as the owner and operator of the Site. Since EWR is in bankruptcy and did not

participate in the removal, or reimburse U.S. EPA for its oversight costs, the settling parties have contributed more than their fair share. In recognition of this fact U.S. EPA would forgive $107,468 of its past costs under the proposed settlement.

Dated: March 22, 2002.

Wendy Carney,

Acting Director, Superfund Division.

[FR Doc. 02–8298 Filed 4–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 29, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments June 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the internet to jbherman@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at jbherman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0891.

Title: Certificate of Completion of Construction for an Instructional Television Fixed Service Station.

Form No.: FCC Form 330–A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, state, local or tribal government.

Number of Respondents: 65.

Estimated Time Per Response: 0.5 hours.

Total Annual Burden: 33 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: FCC Form 330–A is used to certify that the facilities as authorized in the FCC Forms 330 and 331 have been completed and that the station is now operational, ready to provide service to the public. The license shall be subject to forfeit upon the expiration of the construction period specified in the license unless the licensee files with the Commission a FCC Form 330–A within five days after that date.

OMB Control No.: 3060–0368.

Title: Section 97.523, Question Pools.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 3.

Estimated Time Per Response: 96 hours.

Total Annual Burden: 288 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Recordkeeping requirement.

Needs and Uses: The recordkeeping requirement contained in 47 CFR 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer-Examiner Coordinators (VEC's). These question pools must be published and made available to the public before the questions are used in an examination.

OMB Control No.: 3060–0325.

Title: Section 80.605, U.S. Coast Guard Coordination.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 47.

Estimated Time Per Response: 1.1 hours.

Total Annual Burden: 52 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 80.605 is needed to insure that no hazard to marine navigation will result from the grant of applications for non-selectable transponders and shore based radionavigation aids. If this collection was not conducted, stations posing a hazard to marine navigation could be licensed inadvertently and/or long delays in the processing of applications could result due to the necessity for coordination between the FCC, the U.S. Coast Guard and the applicant.

OMB Control No.: 3060–0204.

Title: Section 90.20(a)(2)(v), Physically Handicapped ''Special Eligibility Showing''.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 20.

Estimated Time Per Response: .084 hours.

Total Annual Burden: 1 hour.

Annual Reporting and Recordkeeping Cost Burden: $1,074.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: This rule section requires application for Special Emergency Road Service frequencies that are reserved for handicapped individuals to be accompanied by a physician's statement attesting to the applicant's handicap. The Commission uses the data to determine the eligibility of the applicants to hold a radio station authorization for specific frequencies.

OMB Control No.: 3060–0554.

Title: Section 87.199, Special Requirements for 406.025 MHz ELTs.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 500.

Estimated Time Per Response: .084 hours.

Total Annual Burden: 42 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Needs and Uses: Section 87.199 requires owners of 406.025 MHz

Emergency Locator Transmitters (ELT's) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). The information would be used by search and rescue personnel to identify the aircraft in distress and to select the proper rescue units and search methods. The information is used by NOAA to maintain a database used to provide information about the owner of an activated ELT of an aircraft in distress. If the collection were not conducted, NOAA would not have access to this information which would increase the time needed to complete a search and rescue operation.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8253 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 29, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0848.

Expiration Date: 03/31/2005.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1750 respondents; 94.63 per response (avg.); 165,600 total annual burden hours (for all collections under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Annually; Recordkeeping; Third Party Disclosure.

Description: The following collections of information implement Section 251 of the Communications Act of 1934, as amended. In CC Docket Nos. 98–147 and 96–98, the Commission sought to further Congress's goal of promoting innovation and investment by all participating in the telecommunications marketplace, in order to stimulate competition for all services, including advanced services. In furtherance of this goal, the Commission imposes certain collections of information on incumbent local exchange carriers (LECs) in order to ensure compliance with the incumbent LEC's collocation obligations and to assist incumbent LECs in protecting network integrity.

a. *Processing of Collocation Applications.* Where neither the state nor the parties to an interconnection agreement set a different deadline, an incumbent LEC must tell the requesting telecommunications carrier whether a collocation application has been accepted or denied within ten calendar days after receiving the application. If the incumbent LEC deems that application unacceptable, it must advise the competitive LEC of any deficiencies within this ten calendar day period. The incumbent LEC must provide sufficient detail so that the requesting carrier has a reasonable opportunity to cure each deficiency. The competitive LEC must cure any deficiencies in its collocation application and resubmit the application within 10 calendar days after being advised of them. The requesting carrier must inform the ILEC that physical collocation should proceed within seven calendar days after receiving the ILEC's price quotation. *See* 47 CFR 51.323(l). (No. of respondents: 1400; hours per response: 40 hours; total annual burden: 56,000 hours).

b. *Amendment of Collocation Agreements, Collocation Tariffs, and Collocation-Related Provisions in Statements of Generally Available Terms.* An incumbent LEC must offer to provide all forms of physical collocation (*i.e.,* caged, cageless, shared, and adjacent) in accordance with the Commission's application processing and provisioning interval requirements, except to the extent a state sets its own application processing and collocation interval deadlines. To make an offer to provide physical collocation, an incumbent LEC must propose in response to a request from a competitive LEC an interconnection agreement or an amendment to an interconnection agreement including all necessary rates, terms, and conditions. The incumbent LEC also must file with the state commission proposed amendments to any tariff or statement of generally available terms and conditions that does not comply with the national standards for processing collocation applications and provisioning collocation arrangements. These amendments must provide for application processing intervals and physical collocation intervals no longer than the national standards except to the extent a state sets its own standard. (No. of respondents: 1400; hours per response: 44 hours; total annual burden: 61,600 hours).

c. *State Commission Approval.* If collocation becomes available in a previously exhausted incumbent LEC structure, the incumbent LEC must obtain the state commission's express approval before requiring a competitive LEC to move, or prohibiting a competitive incumbent LEC from moving, a collocation arrangement into that structure, unless the incumbent LEC and the collocation have an interconnection agreement that expressly provides for a different outcome. Safe-time work practices that the incumbent may waive to keep from competitively disadvantaging its or an affiliates operations or that prevents a collocation, from restoring service in the event of an outage are inherently suspect and must receive explicit state commission approval. (No. of respondents: 1400; hours per response: 2 hours; total annual burden: 2800 hours).

d. *Showing Regarding Loop Condition.* Incumbent LECs who refuse a competitive carrier's request to condition a loop must make an affirmative showing to the relevant state commission that conditioning the specific loop in question will significantly degrade voiceband services. The incumbent LEC must also show that there is no adjacent or alternative loop available that can be conditioned or to which the customer's service can be moved to enable line sharing. *See* 47 CFR 51.319(h)(5). (No. of respondents: 1400; hours per response: 2 hours; total annual burden: 2800 hours).

e. *Request for Alternative Physical Access.* Incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair. At a minimum, incumbent must provide requesting carriers with physical loop test access points to requesting carriers at the splitter, through a cross-connection to the competitor's collocation space, or through a standard interface. An incumbent seeking to utilize an alternative physical access methodology may request approval to do so from the

relevant state commission, but must show that the proposed alternative method is reasonable, nondiscriminatory, and will not disadvantage a requesting carrier's ability to perform loop or service testing, maintenance or repair. *See* 47 CFR 51.319(h)(7). (No. of respondents: 1400; hours per response: .50 hours; total annual burden: 700 hours).

f. *Showing of Significant Degradation.* An incumbent LEC may not deny a carrier's request to deploy a technology that is presumed acceptable for deployment unless the incumbent LEC demonstrates to the relevant state commission that deployment of the particular technology will significantly degrade the performance of other advanced services or traditional voiceband services. Where a carrier seeks to establish that deployment of a technology falls within the presumption of acceptability under 47 CFR 51.230(a)(3), the burden is on the requesting carrier to demonstrate to the state commission that its proposed deployment meets the threshold for a presumption of acceptability and will not, in fact, significantly degrade the performance of other advanced services or traditional voice band services. Upon a successful demonstration by the requesting carrier before a particular state commission, the deployed technology shall be presumed acceptable for deployment in other areas. *See* 47 CFR 51.230(b) and (c). (No. of respondents: 1400; hours per response: 2 hours; total annual burden: 2800 hours).

g. *Information on Type of Technology.* A requesting carrier that seeks access to a loop or a high frequency portion of a loop to provide advanced services must provide to the incumbent LEC information on the type of technology that the requesting carrier seeks to deploy. Where the requesting carrier asserts that the technology it seeks to deploy fits within a generic power spectral density mask, it also must provide Spectrum Class information for the technology. Where a requesting carrier relies on a calculation-based approach to support deployment of a particular technology, it must provide the incumbent LEC with information on the speed and power at which the signal will be transmitted. The requesting carrier also must provide the information required above when notifying the incumbent LEC of any propose change in advanced services technology that the carrier uses on the loop. *See* 47 CFR 51.231(b)–(c). (No. of respondents: 1400; hours per response: 1.5 hours; total annual burden: 2100 hours).

h. *Petition.* Any party seeking designation of a technology as a known disturber should file a petition for declaratory ruling. *See* 47 CFR 51.232(b). (No. of respondents: 100; hours per response: 1 hour; total annual burden: 100 hours).

i. *Showing of Network Harm.* Where a deployed advanced service is significantly degrading other services and the degradation remains unresolved by the deploying carrier(s) after a reasonable opportunity to correct the problem, the carrier whose services are being degraded must establish before the relevant state commission that a particular technology deployment is causing the significant degradation. Any claims of network harm presented to the deploying carrier(s) or, if subsequently necessary, the relevant state commission, must be supported with specific and verifiable information. *See* 47 CFR 51.233 (b) and (c). (No. of respondents: 100; hours per response: 2 hours; total annual burden: 200 hours).

j. *List of Equipment, Affidavit*—Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment is eligible for collocation. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. The Commission requires that this affidavit set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety. *See* 47 CFR 51.323(b). (No. of respondents: 1400; hours per response: 2 hours; total annual burden: 2800 hours).

k. *Space Limitation Documentation*—An incumbent LEC shall submit to the state commission, subject to any protective order as the state commission may deem necessary, detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations. An incumbent LEC that contends space for physical collocation is not available in an incumbent LEC premises must also allow the requesting carrier to tour the entire premises in question, not just the room in which space was denied, without charge, within ten days of the receipt of the incumbent LEC's denial of space. The Commission requires that each incumbent LEC provides the state commission with all information necessary for the state commission to evaluate the reasonableness of the incumbent LEC's and its affiliates' reservations of space for future growth. This information shall include any information the state commission may require to implement its specific space reservation policies, including which space, if any, the incumbent or any of its affiliates have reserved for future use. The incumbent shall also provide the state commission with a detailed description of the specific future uses for which the space has been reserved. An incumbent LEC shall permit any requesting telecommunications carrier to inspect any floor plans or diagrams that the incumbent LEC provides a state commission, subject to any nondisclosure protections the state commission deems appropriate. *See* 47 CFR 51.321(f). (No. of respondents: 100; hours per response: 26 hours; total annual burden; 26,000 hours).

l. *Report of Available Collocation Space*—Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. This report must specify the amount of collocation space available at each requested premises, the number of collocators, and any modifications in the use of the space since the last report. The incumbent LEC must maintain a publicly available document, posted for viewing on the Internet, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space. *See* 47 CFR 51.321(h). ILEC must provide this report within ten calendar days, as opposed to ten business days. The Commission requires that this report describe in detail the space that is available for collocation in the particular premises. This description requirement should enable a carrier requesting collocation to request the space that best fits its operational needs. *See* 47 CFR 51.321(h). (No. of respondents: 1400;

hours per response: 2 hours; total annual burden: 2800 hours).

m. *Information on Security Training*—An incumbent LEC must provide information to competitive LECs on the specific type of security training a competitive LEC's employees must complete in order for the incumbent LEC to maintain reasonable security measures for its equipment and networks. *See* 47 CFR 51.323(i)(3). (No. of respondents: 1400; hours per response: .50 hours; total annual burden: 700 hours).

n. *Access to Spectrum Management Procedures and Policies*—An incumbent LEC must provide competitive LECs with nondiscriminatory access to the incumbent LEC's spectrum management procedures and policies. *See* 47 CFR 51.231(a). (No. of respondents: 1400; hours per response: .50 hours; total annual burden: 700 hours).

o. *Rejection and Loop Information*—An incumbent LEC must disclose to requesting carriers information with respect to the rejection of the requesting carrier's provision of advanced services, together with the specific reason for the rejection. An incumbent LEC must also disclose to requesting carriers information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops. *See* 47 CFR 51.231(a). (No. of respondents: 1400; hours per response: 1 hour; total annual burden: 1400 hours).

p. *Notification of Performance Degradation*—If a carrier claims a service is significantly degrading the performance of other advanced services or traditional voice band services, then that carrier must notify the causing carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information. *See* 47 CFR 51.233. (No. of respondents: 1400; hours per response: .50 hours; total annual burden: 700 hours).

q. *Certification of Interstate Traffic*—The Commission requires that an incumbent LEC provision cross-connects between collocated carriers upon reasonable request. A collocated carrier may request such provisioning pursuant to either section 201 or 251 of the Communications Act. An incumbent LEC, however, is not required to provide a connection between the equipment in the collocated spaces of two or more telecommunications carriers if the connection is requested pursuant to section 201 of the Act, unless the requesting carrier submits to the incumbent LEC a certification that more than 10 percent of the amount of traffic to be transmitted through the connection will be interstate. The certification requirement recognizes that the Commission's jurisdiction under section 201 is subject to certain limits. Because the Commission's jurisdiction under section 251 is not similarly limited, no such certification is required for a request for a cross-connect under section 251 of the Act. *See* 47 CFR 51.323(h). (No. of respondents: 350; hours per response: 4 hours; total annual burden: 1400 hours). All of the collections are used to ensure that incumbent LECs and collocation carriers provide for collocation and obtain cross-connects in a manner consistent with sections 201 and 251 of the Communications Act of 1934, as amended. Obligation to respond: Mandatory.

OMB Control No.: 3060–0395.

Expiration Date: 09/30/2002.

Title: The ARMIS USOA Report (ARMIS Report 43–02); The ARMIS Service Quality Report (ARMIS Report 43–05; The ARMIS Infrastructure Report (ARMIS Report 43–07).

Form No.: FCC Reports 43–02, 43–05, and 43–07.

Respondents: Business or other for-profit.

Estimated Annual Burden: 50 respondents; 587.3 hour per response (avg.); 29,366 total annual burden hours (for all collections under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. Sections 219(b) of the Communications Act of 1934, as amended, 47 U.S.C. 219(b), authorizes the Commission by general or special orders to require any carrier subject to this Act to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules details that requirement. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161, requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications services to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such services and whether such regulations should be repealed or modified. Section 11 further instructs the Commission to repeal or modify any regulation it determines to be no longer in the public interest.

FCC Report 43–02—The ARMIS 43–02 Report contains company-wide data for each account specified in the Uniform System of Accounts (''USOA''). It provides the annual operating results of the carriers' activities for every account in the USOA. The Commission clarified in an Order on Reconsideration released March 8, 2002, that mid-sized LECs are not required to file the ARMIS FCC Report 43–02. (No. of respondents: 30; hours per response: 395 hours; total annual burden: 11,850).

FCC Report 43–05—The ARMIS 43–05 Report collects data at the study area level and holding company level and is designed to capture trends in service quality information in the areas of service quality under price cap regulation. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies. (No. of respondents: 12; hours per response: 849; total annual burden: 10,196 hours, includes recordkeeping requirement).

FCC Report 43–07—The ARMIS 43–07 Report is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data. (No. of respondents: 8; hours per response: 550 hours; total annual burden: 4400 hours). The information contained in these reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data it needs to administer its rules. ARMIS facilitates the timely and efficient analysis of revenue requirements, rates of return and price caps, and provides an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the

effects of policy proposals. Obligation to respond: Mandatory.

OMB Control No.: 3060–0511.

Expiration Date: 09/30/2002.

Title: ARMIS Access Report.

Form No.: FCC Report 43–04.

Respondents: Business or other for-profit.

Estimated Annual Burden: 121 respondents; 157 hour per response (avg.); 18,997 total annual burden hours (for all collections under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: Section 220 of the Communications Act of 1934, as amended, 47 USC 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. Sections 219(b) of the Communications Act of 1934, as amended, 47 USC 219(b), authorizes the Commission by general or special orders to require any carrier subject to this Act to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules details that requirement. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161, requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications services to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such services and whether such regulations should be repealed or modified. Section 11 further instructs the Commission to repeal or modify any regulation it determines to be no longer in the public interest. The ARMIS 43–04 Report monitors revenue requirements, joint cost allocations, jurisdictional separations, and access charges. In the Report and Order, 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers (LECs) and Amendments to the Uniform System of Accounts and Jurisdictional Separations Reform (R&O), released November 5, 2001, the Commission eliminated the requirement that mid-sized LECs file the FCC Report 43–04. (This was also clarified in an Order on Reconsideration released March 8, 2002). In addition the Commission revised the FCC Report 43–04 to reduce the data required to be reported during the interim freeze of certain jurisdictional cost categories and allocation factors prescribed in 47 CFR part 36. The information contained in this report provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data it needs to administer its rules. ARMIS facilitates the timely and efficient analysis of revenue requirements, rates of return and price caps, and provides an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals. Obligation to respond: Mandatory.

OMB Control No.: 3060–0513.

Expiration Date: 09/30/2002.

Title: ARMIS Joint Cost Report.

Form No.: FCC Report 43–03.

Respondents: Businesses or other for profit.

Estimated Annual Burden: 121 respondents; 83 hours per response (avg.); 10,043 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: Section 220 of the Communications Act of 1934, as amended, 47 U.S.C. 220, allows the Commission, at its discretion, to prescribe the forms of any and all accounts, records and memoranda to be kept by carriers subject to this Act, including the accounts, records and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys. Sections 219(b) of the Communications Act of 1934, as amended, 47 USC 219(b), authorizes the Commission by general or special orders to require any carrier subject to this Act to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. Section 43.21 of the Commission's rules details that requirement. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161, requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications services to determine whether the regulations are no longer in the public interest due to meaningful economic competition between providers of such services and whether such regulations should be repealed or modified. Section 11 further instructs the Commission to repeal or modify any regulation it determines to be no longer in the public interest. The ARMIS 43–03 Report is needed to administer the Commission's joint cost rules and to analyze data in order to prevent cross-subsidization of nonregulated operations by the regulated operations of Tier 1 carriers. In an Order on Reconsideration, released March 8, 2002, the Commission clarified that mid-sized carriers are not required to file FCC Report 43–03 on April 1, 2002. The information contained in this report provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data it needs to administer its rules. ARMIS facilitates the timely and efficient analysis of revenue requirements, rates of return and price caps, and provides an improved basis for auditing and other oversight functions. It also enhances the Commission's ability to quantify the effects of policy proposals. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–8346 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–45–B (Auction No. 45); DA 02–470]

Auction No. 45 Cellular Rural Service Areas Auction Scheduled for May 29, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of three cellular Rural Service Area (RSA) licenses scheduled for May 29, 2002 (Auction No. 45). This document is intended to familiarize prospective bidders with the Commission's rules relating to the cellular RSA and those relating to application and auction procedures.

DATES: Auction No. 45 is scheduled for May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Denise Coca, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418–0660; Barbara Sibert, Auctions Operations Branch, at (717) 338–2888. Media Contact: Meribeth McCarrick at (202) 418–0654. Commercial Wireless Division: Gary Oshinsky or Amal Abdallah, Policy and Rules Branch, or Dwain Livingston, Licensing and Technical Analysis Branch, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 45 Procedures Public Notice* released March 4, 2002. The complete text of the *Auction No. 45 Procedures Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 45 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

A. Introduction

1. By the *Auction No. 45 Procedures Public Notice,* the Wireless Telecommunications Bureau (''Bureau'') announces the procedures and minimum opening bids for the upcoming auction of three cellular Rural Service Area (RSA) licenses scheduled for May 29, 2002 (Auction No. 45). On February 5, 2002, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 45. The Bureau received one comment and no reply comments in response to the *Auction No. 45 Comment Public Notice,* 67 FR 8978 (February 27, 2002).

i. Background of Proceeding

2. The Federal Communications Commission (''Commission'') has been awarding cellular licenses since 1982. Cellular radio service is a mobile radiotelephone service in which common carriers are authorized to offer and provide a mobile telecommunications service for hire to the general public. On January 28, 2002, the Commission released the *Cellular RSA Report and Order,* 67 FR 11425 (March 14, 2002), which adopted rules for awarding licenses for four cellular RSAs that remain unlicensed because the initial lottery winner in those markets was disqualified. Specifically, in the *Cellular RSA Report and Order,* the Commission decided to: (i) Allow all eligible parties to apply for these initial licenses; (ii) license these markets on an RSA basis under its part 22 rules; and (iii) use its part 1 competitive bidding rules to auction these licenses.

ii. Licenses to Be Auctioned

3. Auction No. 45 will include a cellular frequency block A license in each of the following three RSA markets: 332–Polk, AR; 582–Barnes, ND; and 727–Ceiba, PR. A fourth market, 672A–Chambers, TX, was also the subject of the *Cellular RSA Report and Order* but will not be included in Auction No. 45. The following table provides the Block/Frequency Band cross-references for the licenses that will be auctioned.

Market No.	Market name	Channel block	Frequencies (MHz)	Bandwidth (MHz)
RSA332	Arkansas 9—Polk	A	824–835, 845–846.5, 869–880, 890–891.5	25
RSA582	North Dakota 3—Barnes	A	824–835, 845–846.5, 869–880, 890–891.5	25
RSA727	Puerto Rico 5—Ceiba	A	824–835, 845–846.5, 869–880, 890–891.5	25

4. One commenter suggested that RSA Market 672A be included in Auction No. 45 or, alternatively, that the Bureau delay Auction No. 45 until resolution of all proceedings relating to the application of the tentative selectee from the second lottery for Market 672A. The Bureau declines to adopt these suggestions. The Bureau does not intend to delay the auction of the three available cellular RSA licenses until final resolution of an unrelated proceeding involving a fourth RSA license. Such a delay would undermine the Bureau's primary goal of getting licenses into the hands of parties that will provide service to the public. For this reason, the Bureau believes that the public will realize a greater benefit if it auctions the three available cellular RSA licenses as soon as practicable than if it postpones the auction until the Commission has resolved all issues connected with RSA Market 672A.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the cellular RSA licenses contained in title 47, part 20 and part 22 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

6. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in the *Auction No. 45 Procedures Public Notice;* the *Auction No. 45 Comment Public Notice;* the *Part 1 Fifth Report and Order,* 65 FR 52323 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures); the *Cellular RSA Notice,* 66 FR 14104 (March 9, 2001); and the *Cellular RSA Report and Order.*

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained

in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 02–9 for the *Cellular RSA Report and Order*).

ii. Prohibition of Collusion

8. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

9. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. In Auction No. 45, for example, the rule would apply to any applicants that have applied for licenses covering the same geographic areas. Therefore, applicants that apply to bid for all of the markets would be precluded from communicating with all other applicants until after the down payment deadline. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

10. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

11. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 45 Procedures Public Notice.*

iii. Due Diligence

12. Potential bidders should be aware that the Commission has granted interim operating authority (IOA) to one or more cellular operators to provide cellular service on the Channel A block pending the ultimate permanent licensing of these RSAs. The interim operator must fully cooperate with the permanent licensee in effectuating a smooth transition of service in the market to the permanent licensee without disruption of service to the public. The IOA operator must cease operations in the market on the date of initiation of permanent service or within 30 days of written notification by the permanent licensee to the interim operator of the day and time that it intends to initiate service, whichever date occurs later.

13. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority (''STA'') waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the *Cellular RSA Report and Order* and in this proceeding may be subject to judicial appeal and may be the subject of additional reconsideration or appeal. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 45. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

14. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 45.

15. Potential bidders are advised that 47 CFR 22.942 places limits on a cellular RSA licensee holding a controlling interest in a license operating on one cellular channel block, and the amount of interest they may hold in a license for the other channel block in an overlapping CGSA. Also, any RSA licensee operating transmitters within 72 kilometers (45 miles) of the U.S.-Canadian border must coordinate with the adjacent Canadian licensee to eliminate any harmful interference as conditioned by § 22.955.

16. Licensing records for Cellular RSAs are contained in the Bureau's Universal Licensing System (ULS) and may be researched on the Internet at *http://wireless.fcc.gov/uls* by selecting ''Licenses'' under Search and selecting ''General'' from the search type drop down menu. The IOA Licenses, along with their special conditions of operation may be researched by their call signs. They are for market 582-KNKP980, KNKP986, and KNKP990; market 727–KNKQ240; and market 332–KNKP970. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using License query and downloading query results are available online by selecting the ''?''

button at the bottom right-hand corner of the License Search screen.

17. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *ulscomm@fcc.gov.* The hotline is available to assist with questions Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, all calls to the hotline are recorded.

18. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the RSA for which they plan to bid.

iv. Bidder Alerts

19. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

20. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a FCC auction represents an opportunity to become a FCC licensee in this service, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

21. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 45 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

22. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 45 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

V. National Environmental Policy Act (''NEPA'') Requirements

23. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's NEPA rules for each such facility. *See* 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

24. The auction will begin on Wednesday, May 29, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

25. Auction No. 45—Cellular RSA

iii. Bidding Methodology

26. The bidding methodology for Auction No. 45 will be simultaneous multiple-round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

27. These are important dates relating to Auction No. 45:

Auction Seminar: April 10, 2002
Short-Form Application (FCC FORM 175): April 17, 2002; 6:00 p.m. ET
Upfront Payments (via wire transfer): May 6, 2002; 6:00 p.m. ET
Mock Auction: May 23, 2002
Auction Begins: May 29, 2002

v. Requirements For Participation

28. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, April 17, 2002.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, May 6, 2002.
- Comply with all provisions outlined in the *Auction No. 45 Procedures Public Notice.*

vi. General Contact Information

29. The following is a list of general contact information relating to Auction No. 45:

General Auction Information

General Auction Questions

Seminar Registration
FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET

Auction Legal Information

Auction Rules, Policies, Regulations
Auctions and Industry Analysis Division, Legal Branch (202) 418–0660

Licensing Information

Rules, Policies, Regulations
Licensing Issues
Due Diligence
Incumbency Issues
Commercial Wireless Division, (202) 418–0620

Technical Support

Electronic Filing
Automated Auction System
FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10:00 p.m. ET, Saturday, 8:00 a.m. to 7:00 p.m., Sunday, 12:00 noon to 6:00 p.m.

Payment Information

Wire Transfers
Refunds
FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)

Telephonic Bidding

Will be furnished only to qualified bidders

FCC Copy Contractor

Additional Copies of Commission Documents
Qualex International
Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax), qualexint@aol.com (E-mail)

Press Information

Meribeth McCarrick (202) 418–0654

FCC Forms

(800) 418–3676 (outside Washington, DC)
(202) 418–3676 (in the Washington Area)
http://www.fcc.gov/formpage.html

FCC Internet Sites

http://www.fcc.gov
http://wireless.fcc.gov/auctions
http://wireless.fcc.gov/uls

II. Short-Form (FCC Form 175) Application Requirements

30. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 45 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, entrepreneur, small, or very small business bidding credit eligibility, identification of the license(s) sought the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.D. (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

31. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an ''Exhibit A'' providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

32. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an ''Exhibit B'' to the FCC Form 175.

33. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

34. Bidding credits are available to entrepreneurs, small businesses, and very small businesses, or consortia thereof, as defined in 47 CFR 22.229 for cellular RSA licenses. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years receives a 15 percent discount on its winning bids for cellular RSA licenses;
- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for cellular RSA licenses;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years receives a 35 percent discount on its winning bids for cellular RSA licenses;

Bidding credits are not cumulative; qualifying applicants receive either the 15 percent, 25 percent, or the 35 percent bidding credit, but not more than one of them.

ii. Tribal Land Bidding Credit

35. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Part V.C.

iii. Applicability of Part 1 Attribution Rules

36. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter*

alia, adopted a ''controlling interest'' standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various part 1 orders would result in discrepancies and/or redundancies between certain of the new part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 45. *Accordingly, the ''controlling interest'' standard as set forth in the part 1 rules will be in effect for Auction No. 45, even if conforming edits to the CFR are not made prior to the auction.*

37. *Control.* The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

38. *Attribution for entrepreneur, small, and very small business eligibility.* In determining which entities qualify as entrepreneurs, small businesses, or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

39. A consortium of entrepreneurs, small, or very small businesses is a ''conglomerate organization formed as a joint venture between or among mutually independent business firms,'' each of which *individually* must satisfy the definition of entrepreneur, small, or very small business in § 1.2110(f). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for entrepreneur, small, or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

40. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneur, small, or very small businesses (or consortia of entrepreneurs, small, or very small businesses) for this auction.

41. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

42. *Entrepreneur, small, or very small business eligibility (Exhibit C).* Entities applying to bid as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of entrepreneurs, small businesses, or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

43. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

44. ''Former defaulters'' *—i.e.,* applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 45, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

45. Installment payment plans will not be available in Auction No. 45.

F. Other Information (FCC Form 175 Exhibits E and F)

46. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the

participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

47. After the short-form filing deadline (April 17, 2002), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction45@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 45. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

48. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Denise Coca of the Auctions and Industry Analysis Division at (202) 418–0660.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

49. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

50. On Wednesday, April 10, 2002, the FCC will sponsor a free seminar for Auction No. 45 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the Automated Auction System, and the Cellular Rural Service Area spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

51. To register, complete Attachment B of the *Auction No. 45 Procedures Public Notice* and submit it by Monday, April 8, 2002. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due April 17, 2002

52. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on April 17, 2002. Late applications will not be accepted.

53. There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See Part III.D.

i. Electronic Filing

54. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on April 10, 2002, until 6:00 p.m. ET on April 17, 2002. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline of 6:00 PM ET on April 17, 2002.

55. Applicants must press the ''SUBMIT Application'' button on the ''Submission'' page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 45 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)) the hours of service Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

56. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

57. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 45 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 45 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

58. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 45 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

59. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely-submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

60. As described more fully in the Commission's rules, after the April 17, 2002, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due May 6, 2002

61. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159

that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on May 6, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 45 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 6, 2002, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

62. Wire transfer payments must be received by 6:00 p.m. ET on May 6, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BENEFICIARY: FCC/Account # 910–1174
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A45U)
FCC CODE 1 (same as FCC Form 159, block 28A: ''45'')
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358405

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

63. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 45.'' Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

64. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 45 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

65. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), the Commission ordered that ''former defaulters,'' *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-''former defaulters.''

66. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

67. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$0.0125 * MHz * License Area Population with a minimum of $1,000 per license. Having received no comments regarding the value of the proposed upfront payments, the Bureau therefore adopts its proposed upfront payment amounts for Auction No. 45.

68. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 45 Procedures Public Notice*.

69. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active on in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

70. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

71. The Commission will use wire transfers for all Auction No. 45 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by May 6, 2002. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank

ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.)

Eligibility for refunds is discussed in Part V.E.

E. Auction Registration

72. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

73. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed on the FCC Form 175.

74. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, May 22, 2002 should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

75. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

76. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 45. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

77. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

78. All qualified bidders will be eligible to participate in a mock auction on Thursday, May 23, 2002. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

79. The first round of bidding for Auction No. 45 will begin on Wednesday, May 29, 2002. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

80. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 45 in a single, simultaneous multiple-round auction. The Bureau received no comments on this issue. Therefore, the Bureau concludes that it is operationally feasible and appropriate to auction the Cellular Rural Service Area licenses through a single, simultaneous multiple-round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. The Bureau believes this approach allows bidders to take advantage of any synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

81. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

82. For Auction No. 45 the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 45 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids during any given round. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the dollar amount a bidder may bid on licenses.

83. In addition, the Bureau received no comments on its proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureau adopts its proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than waiting until the end before participating. A bidder is required to be active on one hundred (100) percent of its bidding eligibility during each round of the auction.

Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility.

iii. Activity Rule Waivers and Reducing Eligibility

84. In the *Auction No. 45 Comment Public Notice,* the Bureau proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comments on this issue.

85. Based upon its experience in previous auctions, the Bureau adopts its proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that its practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

86. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating them from the auction.

87. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules (*see* Part IV.A.ii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

88. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

89. For Auction No. 45, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

90. The Bureau also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

91. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if any remain).

92. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum acceptable bids for the licenses.

93. The Bureau received no comments on the subject, therefore, it adopts all of the proposals concerning the auction stopping rules. Auction No. 45 will begin under the simultaneous stopping rule and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 45, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

94. In the *Auction No. 45 Comment Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

95. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for

situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

96. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

97. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

98. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

99. In the *Auction No. 45 Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 45 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 45, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

$0.0250 * MHz * License Area Population with a minimum of $1,000 per license. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

100. One commenter proposed that the Bureau lower the minimum opening bids, reasoning that lower minimum opening bids will permit more small businesses to compete in the auction. The Bureau declines to adopt this proposal because it does not agree with the premise underlying the commenter's position. Although as, the commenter asserts, one result of using minimum opening bids is acceleration of the competitive bidding process, the Bureau disagrees with the commenter's assertion that it sets the minimum opening bids at an ''overly high'' level to accelerate the pace of the auction. Minimum opening bids accelerate the competitive bidding process because they reduce the number of rounds in which the amounts of the bids submitted would be significantly below the amounts of the winning bids. The Bureau believes that the minimum bid levels proposed are well below the levels of the likely winning bids, and are not so high as to discourage competition. The commenter has provided no evidence to support its contention that the proposed minimum opening bids are too high. Because the Bureau is not persuaded that the proposed minimum opening bids are unreasonable, the Bureau adopts its proposal. Therefore, the Bureau believes they will not impede any party, including a small business that is willing and able to use the spectrum to provide cellular service. Moreover, the Commission has sought to provide small businesses with an opportunity to successfully compete against larger, well-financed bidders for cellular RSA licenses by defining three tiers of small businesses that are eligible for bidding credits.

101. The specific minimum opening bids for each license are set forth in Attachment A of the *Auction No. 45 Procedures Public Notice.*

102. The minimum opening bids that the Bureau adopts are reducible at its discretion. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum, opening bid on specific licenses.

iii. Minimum Acceptable Bids and Bid Increments

103. In the *Auction No. 45 Comment Public Notice,* the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureau received no comment on this issue.

104. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 45 Procedures Public Notice.*

105. The Bureau adopts its proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 45 if circumstances warrant.

iv. High Bids

106. At the end of each bidding round, the Automated Auction System determines the standing high bid for each license based on the gross dollar amounts of the bids received for each license.

107. In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

108. During a bidding round, a bidder may submit bids for as many licenses as

it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

109. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 45.

110. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

111. The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

112. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

113. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment.* The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

114. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum, opening bid. The additional bid amounts for licenses that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

115. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

116. See Attachment F of the *Auction No. 45 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

117. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

118. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The one round in which withdrawals are utilized, the Bureau proposed, would be at the bidder's discretion. The Bureau received no comments on this issue.

119. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 45.

120. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

121. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, it concludes that, for Auction No. 45, adopting a limit on their use to one round is appropriate. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or ''gaming'' in this auction.

122. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to one round. This round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in this round. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the minimum acceptable bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid

amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

123. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

124. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

125. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 45 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

126. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking on a link in the Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

127. As noted in Part II.G, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction45@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 45. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

128. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Denise Coca of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

129. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

130. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable entrepreneur, small, and very small business bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

131. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 45. Winning bidders that are entrepreneurs, small businesses, or very small businesses must include an exhibit demonstrating their eligibility for entrepreneur, small, and very small business bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

132. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

133. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its

application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

134. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's auctions web site at http://wireless.fcc.gov/auctions by clicking on the *Tribal Land Credits* link.

D. Default and Disqualification

135. Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

E. Refund of Remaining Upfront Payment Balance

136. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 45 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

137. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW, Room 1–C863, Washington, DC 20554.

138. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Kelly Quinn,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 02–8255 Filed 4–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, April 9, 2002, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Technical Revision to Update FDIC Forms Regulation, Part 304.

Discussion Agenda

Memorandum and resolution re: Policy Statement Regarding Minority-Owned Depository Institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 2, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–8391 Filed 4–3–02; 11:33 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning an Internet based survey for the review of publications developed by the National Earthquake Reduction Program.

SUPPLEMENTARY INFORMATION: Over the past 20 years, the Federal Government, originally through the Office of Emergency Preparedness and continued by the Federal Emergency Management Agency's (FEMA) National Earthquake Hazards Reduction Program (NEHRP) office, developed and produced over 120 documents to address client needs in the area of earthquake loss reduction. In order to better address the needs of users of the publications, FEMA desires to perform an internet based survey of the user community to identify the viability of the currently available publications as well as identify gaps in information in order to better serve the public need to address earthquake preparedness.

Collection of Information

Title: National Earthquake Hazards Reduction Program Review of Publications.

Types of Information Collection: New.

Form Numbers: Survey will be Internet based; form numbers have not been developed.

Abstract: FEMA will undertake this effort through in Internet-based survey to determine which publications are effective, which are in need of modification and which should be retired. In addition, FEMA will determine the need for additional publications, filling the information gaps identified in the review process.

Affected Public: Business or other for-profit; State, Local, or Tribal Government; Federal Government; Not-for-profit institutions; Individuals and households.

Estimated Total Annual Burden Hours: 288.

FEMA Form	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A x B x C)	Estimated annual cost per hours per respondent
Internet Survey	1,150	1	.25	288	$43.14
Total	1,150	1	.25	288	$12,424.32

Estimated Cost: $12,424.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Anita Vollmer, program Specialist, Federal Emergency Management Agency, (202) 646–2727 for additional information. You may contact Ms. Muriel B. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.anderson@fema.gov.*

Dated: March 29, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resource Planning Directorate.

[FR Doc. 02–8200 Filed 4–4–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, April 10, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule: Affordable Housing Program Amendments
- Final Rule: Amendment of 12 CFR 985.8(b)—Minimum Number of Scheduled Office of Finance Board meetings
- Appointment of Public Interest Director
- Federal Home Loan Bank of Atlanta Capital Plan

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–8372 Filed 4–3–02; 10:32 am]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Matthew A. Lipski, Washington University in St. Louis: Based on the report of an investigation conducted by the Washington University in St. Louis (WUSL) and additional analysis conducted by ORI in its oversight review of related records, the U.S. Public Health Service (PHS) found that Matthew A. Lipski, former research patient assistant for WUSL on a subcontract from Hipco, Inc., engaged in scientific misconduct by falsifying and fabricating data in research supported by National Institutes of Health (NIH) Phase II Small Business Innovation Research (SBIR) grant 2 R44 AG12317–03, ''Effect of padded underwear on hip fracture incidence.''

Specifically, PHS found that Mr. Lipski falsified and fabricated data in a study examining whether wearing an undergarment with force distributing and absorbing pads positioned over the trochanteric regions of elderly nursing home residents could significantly reduce the number of hip fractures. From July 2000 through October 2000, Mr. Lipski falsified and fabricated observational patient data in multiple research records. Due to concerns over the reliability of all of Mr. Lipski's data, none of his data were used in the study. No publications required correction or retraction.

Mr. Lipski has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of three (3) years, beginning on March 20, 2002:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Mr. Lipski's participation is proposed or which uses him in any capacity on PHS supported research, or that submits a report of PHS-funded research in which Mr. Lipski is involved, must concurrently submit a plan for supervision of his duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of his research contribution. A copy of the supervisory plan must also be submitted to ORI by the institution.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–8230 Filed 4–4–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–37]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Bioterrorism Needs Assessment For Hospitals—New—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). In October–November 2001, following the reports of anthrax cases, the infection control community indicated to the Division of Healthcare Quality Promotion that there was a need for more bioterrorism-related information. A needs assessment was created and pilot tested in eight hospitals to assist DHQP in providing guidance to hospitals for preparedness and response. The needs assessment will gather information that will help the Division and other areas of CDC in evaluating CDC strategies for identifying and developing the materials and communication mechanisms that hospitals need most to adequately prepare for and respond to possible bioterrorism events in the future. The Division of Healthcare Quality Promotion has a more than 30-year history of being seen as a reliable source of information to the infection control community. Our objective is to determine the needs of hospitals so they are adequately prepared to recognize and treat bioterrorism-related diseases and prevent further transmission of disease. This will ultimately enable them to do their jobs better, identify bioterrorism events more quickly, and prevent morbidity and mortality.

The needs assessment will assess the bioterrorism planning and preparedness, resources and communication, impact of anthrax events, surveillance for bioterrorism-related diseases, education and training, and information needs in hospitals. The data from responding hospitals will be used to develop improved methods of communication to healthcare providers and facilities, establish the best way for CDC to disseminate materials, assure disaster plans are in place, and determine what information from CDC is of greatest need to healthcare facilities.

The data collection will use web-based technology to gather information in a systematic fashion to better assist hospitals. These topics were chosen for the needs assessment by staff members of the Division of Healthcare Quality Promotion, who provided expertise to healthcare facilities after the September 11th attacks. There are no costs to the respondents. The table below shows the estimated annual burden in hours to complete the needs assessment.

Title	No. of respondents	No. of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Bioterrorism needs assessment for heathcare facilities	4,000	1	15/60	1,000
Total				1,000

Dated: March 26, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–8224 Filed 4–4–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02082]

Population-Based Surveillance of Autism Spectrum Disorders and Other Developmental Disabilities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Population-Based Surveillance of Autism Spectrum Disorders and Other Developmental Disabilities. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010.'' This announcement is related to the focus area of Maternal, Infant and Child Health.

The purpose of the program is to enhance an existing system or develop and implement a new system to undertake a multiple source surveillance methodology, from existing data records, for determining the prevalence of autism and other developmental disabilities, such as mental retardation, cerebral palsy, and vision and hearing impairments, in three through ten-year-old children within a geographically-defined area (combination of States, Statewide, or regions within a State). This program augments CDC's ongoing extramural surveillance program for autism and other developmental disabilities.

Quantifiable and measurable outcomes of the cooperative agreement will be measured against the ''Government Performance Results Act'' performance goal to find causes and risk factors for birth defects in order to develop prevention strategies.

B. Eligible Applicants

Assistance will be provided only to the Health Departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian Tribal Governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Competition is limited to State Health Departments because they maintain public health responsibility for these health conditions, and their record systems and expertise are essential to program success. State agencies, or their bona fide agents, applying under this announcement, that are other than the official State Health Department must provide written concurrence on the application from the official State Health Department. If an applicant is acting as an agent for their State Health Department, the Health Department will be expected to assign a liaison to participate in major activities of the program.

To be eligible, applicants must document a study population of at least 30,000 live births per year within a State, a contiguous area of a State (such as the catchment of a local health agency), or a contiguous area comprising a combination of States.

Applicants who are unable to document the minimum study population size based on live birth data from their State Health Department or proxy data from the US Census Bureau (based on 2000 census data, or 1999 Postcensal estimates) will be determined ineligible.

The applicant should include this information as part of the abstract. If it is not included, then the application will be determined as nonresponsive and returned without review.

Note: Only one application will be accepted from each State or combination of States, and the latter must specify which State is the lead applicant.

Title 2 of the United States Code, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $700,000 is available in FY 2002 to fund two to three awards. It is expected that the award will begin on September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop or enhance a population-based epidemiologic surveillance system for autism spectrum disorders and other developmental disabilities to generate timely population-based data. Activities may include, but not be limited to, development or enhancement of surveillance case definitions, multiple source case ascertainment methods (*e.g.,* from educational and medical sources), and data collection instruments.

b. Establish or enhance a multiple-source methodology for case ascertainment by developing collaborative relationships with appropriate professionals and organizations.

c. Develop or enhance a plan for training community service providers to improve case ascertainment.

d. Implement or enhance quality assurance procedures to ensure that study protocols are followed.

e. Develop or enhance an evaluation plan for estimating the validity and completeness of the surveillance system.

f. Develop, implement, and evaluate a plan to use surveillance data to improve community and service provider awareness of Autism Spectrum Disorders (ASD) and other developmental disabilities and/or access of children with ASD and other developmental disabilities to comprehensive, community-based, family-centered care.

g. Collaborate with other State surveillance programs for autism and other developmental disabilities. Participate in scheduled meetings and existing activities.

h. Disseminate findings of the surveillance activities for the professional community and the public to increase public health awareness.

2. CDC Activities

a. Assist recipient in the development and implementation of surveillance activities including the development of a standardized surveillance case definition.

b. Provide current scientific information on surveillance methods, as requested, including the identification of potential sources for surveillance.

c. Assist recipient in the development of quality assurance procedures.

d. Provide assistance in the development of an evaluation plan for the completeness of the surveillance system.

e. Facilitate communication/coordination among the surveillance programs, to improve efficiency of activities and quality of surveillance data.

f. Provide technical consultation regarding data analyses.

E. Application Content

The applicant should use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, unreduced font, unbound, and unstapled.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before May 22, 2002, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal as stated in section ''A. Purpose'' of this announcement. Measures must be objective/quantitative and must measure the intended outcome. The Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding the Problem (20 points)

a. Extent to which applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement;

b. Extent to which applicant understands the issues, challenges, and barriers associated with developing and implementing population-based surveillance for ASD and other developmental disabilities;

c. Extent to which applicant understands the issues, challenges, and barriers associated with case ascertainment for ASD; and

d. Extent to which applicant describes the need for funds to develop/enhance ASD and other developmental disabilities surveillance in their State.

2. Goals and Objectives (20 points)

a. Extent to which applicant clearly describes the short-term and long-term goals and measurable objectives of the project;

b. Extent to which applicant's goals and objectives are realistic and are consistent with the stated goals and purpose of this announcement;

c. The degree to which applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Technical Approach (30 points)

a. The extent to which the applicant describes the planning process, including specific planning objectives, strategies for achieving these objectives, and describes an approach to surveillance of autism and other developmental disabilities.

b. Extent to which applicant describes the methods they will use to: (1) Identify all relevant sources for surveillance case ascertainment for ASD and other developmental disabilities within the study area; (2) obtain permission to access records from relevant sources; (3) develop standard case definitions for ASD and other developmental disabilities and implement a strategy to conduct multiple-source case ascertainment; (4) train community service providers to improve case ascertainment; (5) develop and implement quality assurance procedures and an evaluation plan for the surveillance system; (6) develop and implement a plan to use surveillance data to improve public awareness of ASD and other developmental disabilities and/or access to care of affected children; and (7) develop an analytic and dissemination plan, and prepare manuscripts.

c. The extent to which the applicant demonstrates its collaboration with health and education services that would be appropriate sources of cases for the surveillance system (by letters of support which address the level of support, activities, and involvement).

4. Collaborative Efforts (10 points)

a. Extent to which applicant demonstrates the ability to collaborate with multiple sources such as school systems, diagnostic centers, health/mental health service providers and other intervention service providers for the purpose of case ascertainment (include written assurances).

b. Extent to which applicant demonstrates their willingness to collaborate with other State surveillance programs for autism and other developmental disabilities to develop and implement joint project efforts.

c. Extent to which collaborative efforts with other relevant programs are documented (such as Part C, State developmental disabilities programs, genetics programs etc.).

5. Staffing and Management System (10 points)

a. Extent to which the applicant demonstrates that the proposed Project Director or Principal Investigator is knowledgeable regarding autism, developmental disabilities, and surveillance issues, as evidenced by publications, presentations, or other materials that document prior work.

b. Extent to which key personnel have qualifications, skills and experience in epidemiologic methods, public health surveillance, data management and analysis to develop and implement surveillance in ASD and other developmental disabilities, as evidenced by publications, presentations, or other materials that document prior work.

c. Extent to which applicant has the ability and experience to manage and

coordinate surveillance related activities for this project.

d. Extent to which applicant demonstrates expertise in abstracting and reviewing records.

e. Extent to which there is appropriate dedicated staff and staff time to develop and implement the project.

f. Extent to which applicant provides an appropriate time line, which includes activities, percent of time staff will work on this project, and responsibilities/duties for assigned personnel.

g. Extent to which applicant demonstrates an organizational structure (include an organizational chart) and facilities/space/equipment that are adequate to carry out the activities of the program.

6. Evaluation Plan (10 points)

a. Extent to which applicant describes an evaluation plan that will monitor reliability, progress, timeliness, and completeness of the objectives and activities of the project.

b. Extent to which applicant describes a study to evaluate the completeness of ascertainment of children throughout this ongoing surveillance program.

7. Human Subjects Review (not scored)

Does the applicant adequately address the requirements of 45 CFR part 46 for the protection of human subjects?

8. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. Applicants should include in their first year budget two trips to CDC (Atlanta), for up to two persons and two days each trip.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of 1. Semiannual progress reports, no more than 30 days after the end of the report period. The progress reports should include:

a. A brief project description;

b. A comparison of the actual accomplishments to the goals and objectives established for the period;

c. The progress report will include a data requirement that demonstrates measures of effectiveness. In the case that established goals and objectives are not accomplished, discuss the reason for the goals and objectives not being accomplished, as well as the anticipated corrective action needed to achieve the goals and objectives; and

d. Other pertinent information, including preliminary findings from the analysis of any available data; or the need to change an activity.

e. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance

Number

This program is authorized under sections 301, 311 and 317(C) of the Public Health Service Act, [42 U.S.C. Sections 241, 243 and 247b-4 as amended]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC homepage Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For business management technical assistance, please contact:

Sheryl L. Heard, Grants Management Specialist, Assistance and Acquisition Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2723, Email address: *SHeard@cdc.gov.*

For program technical assistance, contact: Catherine Rice, Project Officer Developmental Disabilities Team, National Center on Birth Defects and Developmental Disabilities Centers for Disease Control and Prevention 4770 Buford Hwy, NE (F–15) Atlanta, GA 30341 Telephone: 770–488–7202 *Email address: CRice@cdc.gov.*

Dated: April 1, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–8225 Filed 4–4–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02081]

Cooperative Agreements for the Centers for Birth Defects Research and Prevention; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for state based Centers for Birth Defects Research and Prevention (CBDRP). This program addresses the ''Healthy People 2010'' focus area of Maternal, Infant, and Child Health.

The purpose of the program is to support: (1) The enhancement and/or expansion of population-based birth defects surveillance systems; (2) the development and expansion of the epidemiological research capability of the state CBDRP; (3) the participation of the state CBDRPs in the National Birth Defects Prevention Study (NBDPS); and (4) the utilization, implementation, and evaluation of the surveillance data for local and collaborative studies into birth defects research including environmental exposures, gene-gene interactions, and gene-environment interactions. Quantifiable and measurable outcomes of the cooperative agreement will be measured against the ''Government Performance Results Act'' performance goal to find causes and risk factors for birth defects in order to develop prevention strategies.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Current awardees funded under Program Announcement (PA) 96043 are also eligible. To be considered eligible, applicants should have ongoing access to data generated from a state-based

birth defects surveillance (ascertainment) program based on a population of not less than 35,000 live births per year within the State or defined region. The surveillance data will provide the source of the birth defect research cases from one or two defined regions, preferably contiguous geographic areas, with a minimum of 35,000 live births and a maximum of 75,000 live births. Applicants should not utilize sampling as a means of including a larger geographic area (e.g. should not select a sample of cases from an area with 100,000 live births.) Applicants should also have a suitable source for obtaining controls from the same population from which cases are derived. Applicants should have the capability of contributing approximately 400 interviews (300 cases and 100 controls) per year to the NBDPS. Additionally, the applicant must provide a letter from the appropriate State health agency designating the applicant as a bona fide agent if applicable. This information should be placed directly behind the face page of the application. Applications that fail to submit the evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $6,500,000 is available in FY 2002 to fund seven to nine awards. It is expected that the awards will range from $750,000 to $1,000,000 with the average award around $900,000. The awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

These awards may be used for personnel services, equipment, travel, and other costs related to project activities. Project funds may not be used to supplant State funds available for birth defects surveillance or prevention, health care services, patient care, nor construction.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement methods and approaches which will improve or expand the capacity of the applicant's existing surveillance system to ascertain cases and generate timely population-based data of birth defects including, if possible, the integration of prenatal diagnoses into the birth defects registry. Make any necessary modifications to the birth defect surveillance system to comply with NBDPS case definitions. The NBDPS case definitions and other information developed by the current grantees may be obtained from the programmatic technical assistance point-of-contact in the ''Where to Obtain Additional Information'' section.

b. Analyze and disseminate the surveillance data generated by the surveillance system on an annual basis including rates and trends of major birth defects to any interested parties.

c. Evaluate the surveillance methodology used including, but not limited to such factors as improvement or expansion of case ascertainment, improvement in timeliness, etc.

d. Develop the epidemiological research capability, including infrastructure, of each CBDRP to support future birth defects research.

e. Develop and implement local studies. Examples of local study topics include but are not limited to the following:

(1) An evaluation of the methods related to the primary prevention of birth defects;

(2) An evaluation of the potential teratogenicity of drugs related to the possible causes of birth defects;

(3) An evaluation of the potential environmental causes of birth defects;

(4) An evaluation of the genetic factors influencing the occurrence of birth defects;

(5) An evaluation of the behavioral causes of birth defects;

(6) An evaluation of effects of twinning and multiple birth pregnancies;

(7) An evaluation of the medical and other costs associated with birth defects; and

(8) An evaluation of the costs associated with birth defects prevention programs and estimated human and fiscal savings.

f. As part of the NBDPS, conduct approximately 400 maternal interviews (300 cases and 100 controls) per year using the collaboratively agreed-upon computer-assisted-telephone-interview (CATI) questionnaire. Contribute the data to the NBDPS collaborative study for inclusion in the combined Centers database for dissemination to all Centers. The NBDPS methods and protocols should be collaboratively agreed-upon by all of the cooperative agreement awardees. The awardees should use all of the agreed-upon methods and protocols including the CATI, clinical, and biologics database formats to input, maintain, and backup all data in the NBDPS databases. Use the NBDPS databases for birth defects research. Use generally accepted epidemiological methods to evaluate and publish the results in peer-reviewed journals.

g. As part of NBDPS, obtain buccal samples or other biologics, as agreed-upon or specified in the future, from the case and control infants and their parents. In a timely manner, send half of the collected genetic material from each subject (mother, father, infant) to a central facility for long-term storage. Demonstrate quality control/quality assurance by participating in NBDPS exercises to evaluate each laboratory. Utilize the genetic material for birth defects research. Analyze and publish the results in peer-reviewed journals.

2. CDC Activities

a. Participate in designing, developing, and evaluating methodologies and approaches used for population-based birth defects surveillance.

b. Participate in the collection, management, and analysis of surveillance data related to birth defects.

c. Participate with the quality assurance/quality control exercises of each applicant's laboratory.

d. Participate in the development, implementation, and conduct of study protocol.

e. Participate in the sharing of information between the Centers such as abstract format, telephone interview, clinical, and biologic databases, potential research issues, etc.

f. Serve as a resource for sharing State, regional, and national data and information pertinent to the surveillance, research, and prevention of birth defects.

E. Content

Letter of Intent (LOI)

A LOI is requested for this program. The LOI will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest and plan the review more efficiently. The narrative should be no more than

two, double-spaced pages, printed on one side, with one-inch margins and 12 point font. The LOI should include the following information: this program announcement number; applicant's name and address; project director's name, phone number, and e-mail address; a brief description of the number of births in the defined geographic region and the current birth defect surveillance system; on-going or proposed birth defect research topics; and a brief description of the planned cooperative agreement activities.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in describing the program plan.

The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities. The application must contain the following:

1. *Cover Letter:* A one-page cover letter with the Principal Investigator and business office representative signatures.

2. A one-page, single-spaced, typed abstract in 12 point font must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should briefly summarize the goals and activities to be undertaken, and the applicant's organization structure. The abstract should precede the program narrative. A table of contents that provides page numbers for each of the following sections should be included. All pages must be numbered.

3. *Narrative:* The narrative should be no more than 35 double-spaced pages printed on one side, with one-inch margins, and unreduced font (12 point). The required detailed budget and detailed budget justification are not considered to be part of the program narrative. The narrative should specifically address the ''Program Requirements'' and should contain the following sections:

a. Understanding of the Public Health Impact of Birth Defects;

b. Impact on Population-Based Birth Defects Surveillance;

c. Organizational and Program Personnel Capability;

d. Utilizing Surveillance Data for Birth Defects Research—Participation in NBDPS;

e. Utilizing Surveillance Data for Birth Defects Research—Local Studies; and

f. Human Subjects Review.

4. Budget and Budget Justification

Provide a detailed budget which indicates the anticipated costs for personnel, fringe benefits, travel, supplies, contractual, consultants, equipment, indirect, and other items. Please provide a copy of the appropriate indirect rate agreement letter or cost allocation plan.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 6, 2002, submit the LOI to the official designated for programmatic technical assistance identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before June 4, 2002, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in section ''A. Purpose'' of this announcement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. For the cooperative agreement awards under PA 02081, these evaluation criteria will be used as performance measures to evaluate grantee progress in the semiannual progress reports and the future budget year continuation awards.

1. Applicant's Understanding of the Public Health Impact of Birth Defects (5 points):

a. The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement.

b. The extent to which the application reflects an understanding of the public health impact of birth defects in their State, the purpose and complexities of birth defects surveillance as it relates to their State, and the importance of birth defect research.

2. Impact on Population-Based Birth Defects Surveillance (15 points):

The extent to which the applicant describes the anticipated level of impact that this cooperative agreement will have on birth defects surveillance activities in the State. This includes:

a. Ability to improve/expand population-based birth defects surveillance;

b. Methods and assessment of the completeness of case ascertainment;

c. Timeliness of case ascertainment including information on any changes in timeliness in recent years or plans to improve timeliness;

d. Describe the level of coverage of the population;

e. Specific birth defects ascertained including the ability to comply with the standard NBDPS case definitions for all birth defects included in the study;

f. Analyzing and reporting surveillance data to appropriate State, local, and federal health officials;

g. Evaluating the surveillance methodology and quality of the surveillance data; and

h. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation;

(2) The proposed justification when representation is limited or absent;

(3) A statement as to whether the design of the study is adequate to measure differences when warranted; and

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Organizational and Program Personnel Capability (25 points):

a. The extent to which the applicant has the experience, skills, and ability to improve birth defects surveillance and use surveillance data for birth defects research.

b. The adequacy of the present staff and/or the capability to assemble competent staff to improve upon a birth defects surveillance system, and conduct birth defects research. Existing grantees under PA 96043 should demonstrate how their epidemiological research capability increased over the PA 96043 project period. If it is necessary for new applicants or existing grantees under PA 96043 to hire staff to conduct program activities, provide plans for identifying and hiring qualified applicants on a timely basis. Also, provide plans for how work on program activities will be conducted prior to hiring the necessary staff.

c. To the extent possible, the applicant shall identify all current and potential personnel who will work on this cooperative agreement including qualifications and specific experience as it relates to the requirements set forth in this announcement. The resumes/curricula vitae of key personnel such as the Principal Investigator, Study Coordinator, Clinical Geneticist, Epidemiologists, Biologics personnel, Information Technology personnel, etc. should be included in the application.

4. Utilizing Surveillance Data for Birth Defects Research—Participation in NBDPS (35 points).

The evaluation criteria is different for a new applicant and an applicant with an award under PA 96043.

a. Evaluation Criteria—New Applicant: The extent to which the applicant describes their:

(1) Ability to identify birth defects research topics, conduct epidemiological studies, and publish the findings;

(2) Ability to collaborate on research projects;

(3) Ability to prepare human subjects protocol and obtain and maintain Institutional Review Board approval;

(4) Ability to participate in ongoing activities that include interviews, clinical, and biologics data collection;

(5) Ability to maintain, update, and send data in a timely manner to a central, off-site location;

(6) Ability to perform timely interviews of cases and controls;

(7) Ability to adhere to the NBDPS biologics protocol and the ability to perform timely processing and quality assurance/quality control measures for biologics samples. Meet proficiency standards for biologic sample processing;

(8) Ability to obtain high case and control interview and/or biologic participation rates of research projects similar to the one listed in this program announcement;

(9) Ability to comply with the established NBDPS case definitions by having available the necessary clinical information and expertise; and

(10) Ability to define a geographic area with 35,000–75,000 live births per year for selection of cases and controls.

b. Evaluation Criteria—Applicant who has an award under PA 96043: The extent to which the applicant describes their:

(1) Ability to identify birth defects research topics, conduct epidemiological studies, and publish the findings. List the birth defects research letters of intent and proposals submitted for NBDPS under PA 96043 with the applicant's Principal Investigator or collaborators as a lead investigator;

(2) Ability to collaborate on research projects under PA 96043 and other collaborations;

(3) Compliance with the approved CDC Institutional Review Board (IRB) human subjects protocol (except for protocol changes required by local IRBs) and a history of obtaining and maintaining IRB approvals in a timely manner;

(4) Ability to utilize computer-assisted-telephone-interview (CATI), clinical, and biologics databases for research, including consistently maintaining, updating, and sending data in a timely manner to a central, off-site location;

(5) History of timely interviews of NBDPS cases and controls;

(6) Ability to adhere to the NBDPS biologics protocol and the ability to perform quality assurance/quality control measures and meet proficiency standards for biologic sample processing;

(7) Ability to obtain a minimum case and control interview participation rate of 70 percent and a minimum biologic participation rate of 50 percent for mothers and infants. Higher participation rates are desirable. Demonstrate improvements in the participation rates;

(8) Consistent participation in PA 96043 working groups, committee activities, CATI evaluation, and data sharing activities;

(9) Compliance with the established NBDPS case definitions and the availability of the necessary clinical information and expertise;

(10) Ability to define a geographic area with 35,000–75,000 live births per year for selection of cases and controls; and

(11) Technological ability, capability, and information technology support to consistently utilize the NBDPS standard software, formats, timely replication of data, etc.

5. Utilizing Surveillance Data for Birth Defects Research—Local Studies (20 points):

The evaluation criteria is different for a new applicant and an applicant with an award under PA 96043.

a. Evaluation Criteria—New Applicant: The extent to which the applicant describes their:

(1) Ability to identify birth defects research topics, conduct epidemiological studies, and publish the findings. Describe prior accomplishments and future plans for local birth defects research;

(2) Ability to collaborate on research projects;

(3) Ability to prepare human subjects protocol and obtain Institutional Review Board approval;

(4) Use of birth defects surveillance data to address local areas of concern;

(5) Ability to perform quality assurance/quality control measures and meet proficiency standards for biologic sample processing;

(6) Ability to obtain adequate case and control interview and/or biologic participation rates of research projects similar to the one listed in this program announcement; and

(7) Dissemination of local research findings at national scientific meetings and in peer-reviewed journals.

b. Evaluation Criteria—Applicant who has an award under PA 96043: The extent to which the applicant describes their:

(1) Ability to identify birth defects research topics, conduct epidemiological studies, and publish the findings. List the local birth defects research projects in progress and completed under PA 96043. Describe prior accomplishments and future plans for local birth defects research;

(2) Ability to collaborate on research projects under PA 96043 and other collaborations;

(3) Compliance with the approved CDC Institutional Review Board (IRB) human subjects protocol (except for protocol changes required by local IRBs) and a history of obtaining and maintaining IRB approvals in a timely manner;

(4) Use of birth defects surveillance data to address local areas of concern;

(5) Ability to perform quality assurance/quality control measures and meet proficiency standards for biologic sample processing; and

(6) Dissemination of local research findings at national scientific meetings and in peer-reviewed journals.

6. Human Subjects Review (not scored):

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)

7. Budget Justification and Adequacy of Facilities (not scored):

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports which should include:

a. A brief project description;

b. A comparison of the actual accomplishments to the goals and objectives established for the period;

c. The progress report will include a data requirement that demonstrates measures of effectiveness. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity from the project;

d. Other pertinent information, including preliminary findings from the analysis of available data.

e. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the Application Kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 311 and 317(C) of the Public Health Service Act [42 U.S.C. 241, 243, and 247b–4 as amended]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Sheryl L. Heard, Grants Management Specialist, Acquisition and Assistance Branch B, Centers for Disease Control and Prevention, Announcement 02081, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2723, Email address: *slh3@cdc.gov.*

Programmatic technical assistance and copies of NBDPS guideline and protocol information may be obtained from:

Larry D. Edmonds, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 4770 Buford Highway N.E., Atlanta, GA 30341–3724, Telephone: (770) 488–7171, Email address: *lde2@cdc.gov.*

Dated: April 1, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–8226 Filed 4–4–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Tribal Plan (Form ACF–118–A).

OMB No.: 0970–0198.

Description: The Child Care and Development Fund (CCDF) Tribal Plan serves as the agreement between the applicant (Indian Tribes, tribal consortia and tribal organizations) and the Federal government that describes how tribal applicants will operate (CCDF Block Grant programs. The Tribal Plan provides assurances that the CCDF funds will be administered in conformance with legislative requirements, federal regulations at 45 CFR parts 98 and 99 and other applicable instructions or guidelines issued by the Administration for Children and Families (ACF). Tribes must submit a new CCDF Tribal plan every two years in accordance with 45 CFR 98.17.

Respondents: Tribal CCDF Programs (262 in total).

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Tribal Plan	262	1	17.5	4,585
CCDF Tribal Plan Amendments	262	1	1.5	393
Estimated Total Annual Burden Hours				4,978

Note: CCDF Tribal Plans are submitted biannually. This collection burden has been calculated to reflect an annual burden.

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: March 28, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–8198 Filed 4–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0399]

Agency Information Collection Activities; Announcement of OMB Approval; Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Rapid Response Surveys'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 2002 (67 FR 3722), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0457. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8192 Filed 4–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0266]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Device Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device Registration and Listing'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 16, 2001 (66 FR 52629), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0387. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8194 Filed 4–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0277]

Agency Information Collection Activities; Announcement of OMB Approval; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Reports of Corrections and Removals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 12, 2001 (66 FR 52140), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0359. The approval expires on March 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: March 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8229 Filed 4–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 10, 2002, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD, 301–652–2000.

Contact Person: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider the efficacy of new drug application (NDA) 21–431, acamprosate, (Lipha Pharmaceuticals, Inc.) proposed for the maintenance of abstinence from alcohol in patients with alcohol dependence who have withdrawn from alcohol and want to maintain their abstinence. On May 9, 2002, the background material for this meeting will be posted at the Psychopharmacologic Drugs Advisory Committee docket site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year ''2002'' and scroll down to ''Psychopharmacologic Drugs Advisory Committee''.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 1, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sandra Titus at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 27, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–8195 Filed 4–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0011]

Medical Devices: Draft Guidance on Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Draft Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Draft Guidance for Industry and FDA.'' This draft guidance document was developed as a special control to support the classification of intraoral devices for snoring and intraoral devices for snoring and obstructive sleep apnea into class II and to provide guidance to manufacturers attempting to establish that their intraoral devices for snoring and obstructive sleep apnea are substantially equivalent to a predicate device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to classify these devices. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments concerning this draft guidance by July 5, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Draft Guidance for Industry and FDA'' to the Division of Small Manufacturers, International and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Susan Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Draft Guidance for Industry and FDA.'' Intraoral devices to treat snoring are removable medical devices that are fitted in the patient's mouth to reduce or eliminate snoring. In some cases the devices may also be used to treat obstructive sleep apnea. Currently, intraoral devices for snoring and/or sleep apnea are unclassified. FDA is proposing to classify these devices into class II. FDA intends that the draft guidance document, if finalized, will serve as the special control for intraoral devices for snoring and/or obstructive sleep apnea. The draft guidance document offers recommendations to the regulated industry and FDA staff about the content and format of a premarket notification submission (510(k)) for such devices in order to establish safety and effectiveness. The draft guidance document is intended to facilitate the assembly of necessary data, maintain consistency of reviews, and provide for a more efficient regulatory process.

II. Significance of Guidance

The draft guidance represents the agency's current thinking on intraoral devices for snoring and obstructive sleep apnea. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if

such approach satisfies the applicable statutes and regulations.

The draft guidance document is being issued consistent with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115). The draft guidance document is issued as a level 1 guidance in accordance with the GGP regulations.

III. Electronic Access

In order to receive ''Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Draft Guidance for Industry and FDA'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 1378 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets/default.htm.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding the draft guidance by July 5, 2002. Submit two copies of any comments, 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. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8348 Filed 4–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: Young Drivers Intervention Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Young Drivers Intervention Study.

Type of Information Collection Request: Revision.

OMB No.: 0925–0467.

Expiration Date: 08/31/2002.

Need and Use of Information Collection: The purposes of this study are (1) to determine the impact of parental actions to monitor and control their adolescents' driving behavior on adolescent driving behavior and motor vehicle crashes, and (2) to test the efficacy of educational persuasive communications in promoting parental restriction of their adolescent's risky driving behavior. The specific questions addressed in this study include: (1) Are parents' perceptions about dangers associated with adolescent driving associated with parental involvement in their adolescent's driving experiences? (2) Is a parent-teen driving agreement an effective way of increasing parental involvement and reducing adolescent risky driving? (3) Does increased parental involvement reduce risky driving behaviors and decrease traffic tickets and crashes among adolescents? A sample of 4000 adolescents and their parents are recruited through department of motor vehicles offices when the teen applies for a learner's permit, randomized to one of two treatment conditions and interviewed by telephone within a few weeks of obtaining a permit and again at licensure, 3-month, 6-months, and 12-months after licensure. Parents are asked about their expectations and parental management practices regarding teen driving. Adolescents are asked about their driving practices, their parents' rules and restrictions regarding driving, and their driving experience. The driving records for each adolescent will be obtained from the state motor vehicle administration and examined at the end of the 24-month period. Parent-teen dyads in Condition #1 receive mailed information about motor vehicle safety. Parents in Condition #2 receive mailed educational newsletters, a videotape, and a model parent-teen driving agreement.

Frequency of Response: On occasion, 2–3 times each year for two years.

Affected Public: Individuals or households.

Type of Respondents: Teenaged children and parents.

The annual reporting burden is as follows:

Estimated number of Respondents: 14134.

Estimated Number of Responses per Respondent: 1.33.

Average Burden Hours Per Response: .50.

Estimated Total Annual Burden Hours Requested: 9399. The annualized cost to respondents is estimated at: $47, 333. There are no capital costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, Division of Epidemiology, Statistics, and Prevention Research, National Institute of Child Health and

Human Development, Building 6100, 7B05, 9000 Rockville Pike, Bethesda, Maryland, 20892–7510, or call non-toll free number (301) 496–5674 or e-mail your request, including your address to *bm79K@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 28, 2002.

Thomas E. Hooven,

Associate Director for Administration, NICHD.

[FR Doc. 02–8329 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–P

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 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 Cancer Institute Special Emphasis Panel, Novel Technologies for Noninvasive Detection, Diagnosis and Treatment of Cancer.

Date: May 2–3, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Sherwood Githens, PHD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892. (301) 435–1822.

(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: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8311 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, 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.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: April 22–23, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To set priorities and goals with the new Director of the National Cancer Institute (NCI).

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Elaine Lee, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892. 301/594–3194.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8312 Filed 4–4–02; 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, Development of High-Yield Technologies for Isolating Exfoliated Cells in Body Fluids.

Date: April 17, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, Scientific Review Administrator, Special Review And Resources Branch, Division Of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Boulevard, Room 8039, Rockville, MD 20892–7405. 301/496–7421.

(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: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8313 Filed 4–4–02; 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 section 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 Initial Review Group, Subcommittee A—Cancer Centers.

Date: April 15, 2002.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: David E. Maslow, PhD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405, 301/496–2330.

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: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8324 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative 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 provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: April 10–11, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Copley Marriott, 110 Huntington Avenue, Boston, MA 02116.

Contact Person: Martin H. Goldrosen, PhD, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6706 Democracy Blvd, Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331. *goldrosm@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.

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8319 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Genomic and Genetic Approaches to Plaque Rupture.

Date: May 8, 2002.

Time: 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alessandra Bini, PhD, Scientific Review Administrator, Review Branch, Room 7204, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301–435–0299, *binia@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8306 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cytoskeletal Regulation of Lung Endothelial Pathobiology.

Date: May 8, 2002.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alessandra Bini, PHD, Scientific Review Administrator, Review Branch, Room 7204, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301–435–0299. *binia@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and

Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8307 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Interrelationship between Heart Lung and Blood Diseases RFA.

Date: May 23, 2002.

Time: 8 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Arthur N. Freed, PHD, Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892. (301) 435–0280. *freeda@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8314 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, DNA Microarray Facilities RFA.

Date: May 21, 2002

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Irina Gordienko, Scientific Review Administrator, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, 301–435–0270

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8315 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Innovative Research Grant Program.

Date: May 13, 2002.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Rockledge II, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Health Scientist Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8316 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Sickle Cell Center Review.

Date: May 6–8, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Diane M. Reid, MD, Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8325 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: National Heart, Lung, and Blood Special Emphasis Panel, Ancillary Studies in Heart, Lung, & Blood Disease.

Date: April 26, 2002.

Time: 1 pm to 5 pm.

Agency: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce A. Hunter, PHD, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20872.

(Catalog of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8326 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLB Mentored Patient Oriented Research Career Development Award

Date: May 13–14, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Robert B. Moore, PHD, Scientific Review Administrator, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–3541, *mooreb@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8327 Filed 4–4–02; 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 Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, RFA AA–02–002—Research on Alcohol Health Disparities.

Date: May 9–10, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787. *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, RFA AA02–008—Effects of Alcohol on HIV Invasion Across the Blood Brain Barrier or Placental Barrier.

Date: May 15, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eugene G. Hayunga, PHD, Chief, Scientific Review Branch, OSA, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, MSC 7003, Bethesda, MD 20892–7003, 301–443–2860. *ehayunga@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8308 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Child Health and Human Development Special Emphasis Panel.

Date: May 10, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., 5th Floor, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8309 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Large-Scale Collaborative Project Awards.

Date: April 11, 2002.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur L. Zachary, PHD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892. (301) 594–2886. *zacharya@nigms.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. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

District, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8310 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Assembly and Working Groups Meetings. The parent committee for this workgroup is the National Longitudinal Study of Environmental Effects on Child Health and Development Advisory Committee.

The meetings will be open to the public, 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. To register for the meetings, visit the registration Web site at: *http://NCS.iqsolutions.com,* send an email message to: *NCSmeet@iqsolutions.com,* or call 301–984–1471 ext. 279.

Name of Committee: National Children's Study Working Groups and Study Assembly Meetings.

Date: Working Groups: April 8, 2002, 8 a.m. to 6:30 p.m. April 9, 2002, 8 a.m. to 12 p.m. Study Assembly: April 9, 2002, 1 p.m. to 5 p.m. Registration begins: April 7, 2002, 1 p.m. April 8–9, 2002, 7 a.m.

Agenda: Summary: The National Institute of Child Health and Human Development (NICHD), National Institutes of Health, Department of Health and Human Services is announcing a series of meetings co-sponsored by the Environmental Protection Agency, the National Institute of Environmental Health Sciences, and the Centers for Disease Control and Prevention. IQ Solutions, Inc., a government contractor, is coordinating the logistics of the meetings. Members of Working Groups focusing on various issues related to study planning will meet on Monday, April 8 and Tuesday, April 9. Tuesday, April 9 will also consist of the Study Assembly meeting. The purpose of the Study Assembly meeting is to discuss the status of planning this longitudinal study of environmental effects on the well-being of children. Content of the meeting will include a status report on development of planning for the study thus far, and reports on specific issues including, for example, proposed hypotheses for the Study, study design issues, and the timeline for the remainder of the planning phase. The Study Assembly is made up of all stakeholders interested in the Study. Its purpose is to disseminate information to members and to serve as a conduit for bringing information and views from individuals and various organizations to the Study organization. The Study Assembly is open to anyone who indicates an interest

in the Study, and includes representatives of all stakeholders, both inside and outside of government, advocacy groups, industry, academic institutions, state and local governments, and community groups. To become a member of the Study Assembly, interested persons should send an e-mail to: *NCS@mail.nib.gov.* Study Assembly members are welcome as observers during the other open meetings of this series.

Place: Sheraton Premiere Hotel, 8661 Leesburg Pike, Vienna, Virginia.

Contact Person: Peter M. Scheidt, M.D., Medical Officer, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 7B03, Bethesda, MD 20892. (301) 451–6421. *Ncs@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.

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8317 Filed 4–4–02; 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 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 Mental Health 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 interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 9–10, 2002.

Closed: May 9, 2002, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: May 10, 2002, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Acting Director's report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PHD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

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.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(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: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8318 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, April 2, 2002, 2 p.m. to April 2, 2002, 2:30 p.m., NIEHS–East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC, 27709 which was published in the **Federal Register** on March 13, 2002, FR 67: 11352.

The telephone conference meeting will be held on 04/08/2002 at 1 p.m. in Research Triangle Park, NC instead of on 04/02/2002 as previously advertised. The meeting is closed to the public.

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8321 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 Institutes of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 2, 2002.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific

Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8322 Filed 4–4–02; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Diabetes Clinical Trial.

Date: April 29, 2002.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Boulevard, Room 749, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Liver Transplantation.

Date: May 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

Date: May 3, 2002.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594–8898.

(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: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8323 Filed 4–4–02; 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: April 9, 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: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

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: April 10, 2002.

Time: 1 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: Mary Clare Walker, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

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: April 12, 2002.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892. (301) 435–1225. *politisa@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: April 15, 2002.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

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: April 16, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: John Bishop, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 16, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Calls).

Contact Person: Cheryl M. Corsaro, PHD, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892. (301) 435–1045, *corsaroc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 16, 2002.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: to review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PHD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892. (301) 435–1779, *riverse@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 16, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, PHD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892. (301) 435–3554. *shirleym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 1, 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: Nancy Shinowara, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814. (301) 435–1173. *shinowan@drg.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 2002.

Time: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PHD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. (301) 435–1781. *th88q@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mariela Shirley, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892. (301) 435–3554. *shirleym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 24, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. (301) 435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 25, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mariela Shirley, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health. 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892. (301) 435–3554. *shirleym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 25, 2002.

Time: 5:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mariela Shirley, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7848, Bethesda, MD 20892. (301) 435–3554. *shirleym@csr.nih.gov.*

(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: March 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–8320 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH) Notice of an Expert Panel Meeting To Assess the Current Validation Status of In Vitro Endocrine Disruptor Screening Methods; Request for Comments

SUMMARY: Pursuant to Public Law 103–43, notice is hereby given of a meeting sponsored by the NIEHS and the National Toxicology Program (NTP), and organized by the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM). At this meeting, an expert panel (Panel) will assess the current validation status of in vitro endocrine disruptor screening methods and develop recommendations for their further validation. The meeting will take place on May 21–22, 2002, from 8:30 a.m. to 5 p.m., at the Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Durham, NC 27703. The meeting is open to the public with attendance limited only by the space available.

Evaluation of In Vitro Endocrine Disruptor Screening Methods

A request for data evaluating the performance and reliability of endocrine disruptor screening methods and the nomination of expert scientists was previously published (**Federal Register**, Vol. 66, No. 57, pp. 16278–16279, March 23, 2001, available at *http://iccvam.niehs.nih.gov/methods/endocrine.htm*). This notice also announced that ICCVAM and NICEATM are coordinating an expert panel meeting to assess the current validation status of in vitro estrogen receptor (ER) and androgen receptor (AR) binding and transcriptional activation assays and to review proposed minimum performance criteria for defining an acceptable screening assay. During development of

the Background Review Documents (BRDs) for the in vitro ER and AR assays being considered at this review, ICCVAM and NICEATM determined that no validation studies have been completed. With agreement from EPA, the NICEATM and ICCVAM decided to proceed with an expert panel evaluation of the current status of ER and AR binding and transcriptional activation assays and with development of recommendations for their future validation. At this meeting, the Panel will review each of four BRDs (see below) and develop conclusions and recommendations on the following:

- The relative priority that should be given to specific assays recommended for further evaluation in validation studies.
- The adequacy of the specific protocols recommended for validation studies.
- The adequacy of the minimum procedural standards recommended for each type of assay.
- The adequacy and appropriateness of substances recommended for validation studies.

Following the completion and submission of validation studies on in vitro ER and AR assays, an independent peer review panel will be convened to review these studies and propose minimum performance criteria.

Agenda

The public meeting will take place May 21–22, 2002, at the Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Durham, NC 27703. The meeting will begin at 8:30 a.m. and conclude at 5 p.m. each day. On the morning of May 21st, there will be a brief orientation on ICCVAM and the ICCVAM test method review process, followed by the Panel's evaluation of the BRDs for the ER binding and transcriptional activation assays. It is anticipated that review of the ER BRDs will continue on the morning of May 22nd, after which the review of the BRDs for the AR binding and transcriptional activation assays will take place. The Panel will evaluate the current status of each of the four different types of in vitro assays and develop recommendations for their future validation. A detailed agenda will be available prior to the meeting at the ICCVAM/NICETATM web site (*http://iccvam.niehs.nih.gov*) or by contacting NICEATM (contact information below). Summary minutes and a final report of the Panel will be available following the meeting at the ICCVAM/NICEATM web site. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NICEATM.

Availability of Background Review Documents

NICEATM has prepared four BRDs, one for each type of assay being evaluated (ER and AR binding assays and ER and AR transcriptional activation assays). Copies of each BRD may be obtained on the ICCVAM/NICEATM web site at *http://iccvam.niehs.nih.gov*, or by contacting NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–3398, (fax) 919–541–0947, (email) *iccvam@niehs.nih.gov*.

Request for Comments

NICEATM invites the submission of written comments on each of the BRDs. When submitting written comments please include appropriate contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable). Written comments and additional information should be sent by mail, fax, or email to NICEATM at the address listed above by noon, May 10, 2002. All written comments received before the meeting will be posted on the ICCVAM/NICEATM web site and made available to the Panel members, ICCVAM agency representatives and experts, and also to attendees at the meeting.

The meeting is open to the public and time will be provided for the presentation of public oral comments at designated times during the Panel review. Members of the public who wish to present oral statements at the meeting (one speaker per organization) should contact NICEATM (at the address above) no later than noon, May 10, 2002. Speakers will be assigned on a consecutive basis and up to seven minutes will be allotted per speaker. Persons registering to make comments are asked to provide a written copy of their statement in advance so that copies can be distributed to the Panel. Written statements can supplement and expand the oral presentation. Each speaker is asked to provide contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable).

Background Information on ICCVAM and NICEATM

ICCVAM was established in 1997 to coordinate cross-agency issues relating to the validation, acceptance, and national/international harmonization of toxicological testing methods. Composed of representatives from fifteen Federal regulatory and research agencies that use or generate toxicological information, ICCVAM promotes the scientific validation and regulatory acceptance of toxicological test methods that enhance agencies' ability to make decisions on health risks, while refining, reducing, and replacing animal use wherever possible. ICCVAM was authorized as a permanent interagency committee of the NIEHS, under the NICEATM, on December 19, 2000, through passage of the ICCVAM Authorization Act of 2000 (Public Law 106–545, available at *http://iccvam.niehs.nih.gov/PL106545.htm*). Public Law 106–545 directs the ICCVAM to coordinate the technical review of new, revised, and alternative test methods of interagency interest. NICEATM provides operational and scientific support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of federal agencies. Additional information about ICCVAM and NICEATM can be found at the following web site: *http://iccvam.niehs.nih.gov*.

Dated: March 27, 2002.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–8328 Filed 4–4–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–02]

Notice of Proposed Information Collection for Public Comment—Application Requirements for the Resident Opportunities and Self-Sufficiency Technical Assistance (ROSS–TA) Program and Consultant Application Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment Due Date: June 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected, and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application Requirements for the Resident Opportunities and Self-Sufficiency Technical Assistance (ROSS–TA) Program and Consultant Application Requirements.

OMB Control Number: 2577–

Description of the need for the information and proposed use: Eligible program applicants and consultants must submit information for review and to be selected to participate in the ROSS–TA Program. The ROSS–TA Program provides short-term technical assistance (TA) and consultant services, no more than 30 billable days over a period of 90 calendar days to ROSS grantees. ROSS grantees must briefly state the problem and where technical assistance is needed. Eligible consultants must identify specific skills that Identify their capabilities and interests, experience working with resident groups, statement of work, and criminal record information.

Agency form numbers, if applicable: HUD–52364, HUD–52366, HUD–52367, HUD–52368 and HUD–52369.

Members of affected public: Local, State, or Tribal Governments, Businesses or Other For-Profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response; 200 grantees, 700 consultants, total 900 responses; one-time submission per grantee response; average three times a year per consultant response; average hours for grantee response is 8 hours; average hours for consultant response is 20 hours; the total reporting burden is 43,600.

Status of the proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 28, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT

PUBLIC HOUSING RESIDENT OPPORTUNITIES AND SELF SUFFICIENCY TECHNICAL ASSISTANCE PROGRAM (ROSS – TA)

APPLICATION FOR TECHNICAL ASSISTANCE – GRANTEES

Date of Application: _____
Name of Grantee: _____
Name of Contact Person: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Phone: _____ Fax: _____ E-Mail: _____

Name of Executive Director: _____
Address: _____
Phone #: _____
Fax #: _____
E-mail: _____

Field Office Code: _____ Date of Request: _____
Field Office: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Name of Contact Person: _____
Phone #: _____
Fax #: _____
E-Mail: _____

ROSS Applicant type: ___Public Housing Agency ___Resident Association
___Intermediary Resident Organization ___Nonprofit

Funding Category: _____ **Year Funded:** _____
ROSS Grant #: _____ **Tribe:** _____
Tribally Designated Entity: _____

State the TA Objective:

_____
_____
_____
_____

Form **HUD-52364**

Briefly State the Problem the ROSS Grantee is Experiencing:

_____

_____

_____

_____

Please Check Area(s) Where Technical Assistance is Needed:

- ❑ ___ Grantees who are having difficulty with residents getting involved and participating in their housing development and inability to document the barriers that prevent building and maintaining opportunities for self-sufficiency;
- ❑ ___ Grantees who lack ability to develop self-sufficiency programs;
- ❑ ___ Grantees who lack expertise in creating resident management corporations or developing management capabilities;
- ❑ ___ Grantees who are having difficulty in developing, and/or maintaining partnerships within the community for the purpose of encouraging a sense of affiliation regarding supportive services and outreach activities with residents;
- ❑ ___ Grantees who lack progress in providing job training and evaluation as a means to prepare residents for specific jobs;
- ❑ ___ Grantees who have difficulty in developing training and counseling, including job search assistance and placement and linkages to employees;
- ❑ ___ Grantees who are not able to develop strategies to address conflicts related to gang violence and establishment of violence free zones; and
- ❑ ___ Applicants with special circumstances, such as elderly and disabled residents, whose needs could be met under the scope of this program.

Has the Field Office requested HUD-Initiated TA? Yes _____ No _____
If yes, please provide details of previous requests including the date, activities and results/outcomes.

_____ _____

Signature Date

Form **HUD-52364**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT

Resident Opportunities and Self-Sufficiency Technical Assistance Program (ROSS-TA) Consultant Application

Part 1: Personal Information

Last Name_____ First Name_____
SS#_____ Home Phone (including area code)_____
Mailing Address_____
Business_____
Street Address_____
City, State & Zip Code_____
Business Phone (including area code)_____
Business Fax (including area code)_____

Part 2: Skills Inventory

Please identify the types of skills you possess and where you feel you would be most effective in providing technical assistance. Refer to the categories on the back of this form. These categories are defined into specific Skill Areas. Please review the categories listed, **according to the level of expertise and practice**, and then list the specific Skill Areas (e.g., A101, D105, etc.) that best fit your capabilities and interests in the spaces provided below:

Skill1	Skill 2	Skill 3	Skill 4	Skill 5	Skill 6	Skill 7	Skill 8
Skill 9	Skill 10	Skill 11	Skill 12	Skill 13	Skill 14	Skill 15	Skill 16

Part 3: Work References (Please list at least three references)

Name and Address of Reference	City, State, and Zip Code	Phone Number (include area code)
1.		
2.		
3		

Additional Skills or Areas of Expertise:

Do you have experience working with persons who:

1. Speak only Spanish Yes ___ No ___
2. Speak only Asian Language (s) Yes ___ No ___
3. Are Native Americans Yes ___ No ___

Describe major work experience with Public Housing Resident Organizations, Resident Advisory Boards, PHA Boards or other related Public Housing Organizations:

Do you have a criminal record? Yes ___ No ___
(Having a criminal record may not prevent you from participating in this program)

If you checked "Yes" please explain: (attach additional information if necessary)

CONSULTANT RESOURCE INVENTORY QUESTIONNAIRE (CRIQ)

A – Management and Business Development

A 101 ___ Development of Resident-led Businesses or Cooperatives
A 102 ___ Development of Credit Unions
A 103 ___ Management Systems and Techniques
A 104 ___ Organizational Strategic Planning
A 105 ___ Business Management
A 106 ___ Knowledge of Development of Revolving Loan Funds
A 107 ___ Knowledge of Operation and Management of Financial Systems

B – Apprenticeship and Construction Programs

B 101 ___ Renovation, Conversion, and Repair
B 102 ___ Pre-Apprenticeship Activities
B 103 ___ Apprenticeship Activities
B 104 ___ Training Skills on Construction
B 105 ___ Training Skills on the Removal of Toxic Substances
B 106 ___ Training Skills on Lead-Based Paint Abatement

C –Resident Capacity Building

C 101 ___ Board Training in Community Organizing
C 102 ___ Board Development Training
C 103 ___ Development of Leadership Skills
C 104 ___ Management-related Employment Training and Counseling
C 105 ___ Home Ownership Training
C 106 ___ Fair Housing Requirements

D – Support and Prevention Programs

D 101 ___ Child Care Services
D 102 ___ Knowledge of Supportive Health Care Services (such as: substance and alcohol abuse, mental health, wellness programs)
D 103 ___ Life Skills Training
D 104 ___ Crisis Intervention
D 105 ___ Peer Support Groups
D 106 ___ Parenting Counseling
D 107 ___ Development of Programs for Youth (i.e., youth leadership, mentoring, peer pressure reversal, goal planning)
D 108 ___ Remedial Education
D 109 ___ Literacy Training
D 110 ___ ESL Instruction
D 111 ___ Computer Skills Training

E– Delivery Models for Elderly and Persons with Disabilities

E 101 ___ Development of Programs for People with Disabilities
E 102 ___ Development of Support Programs for Elderly
E 103 ___ Knowledge of Development about Nutritional and Wellness Programs
E 104 ___ Knowledge about Community and other Resources

F – Conflict Resolution/Mediation

F 101 ___ Communication Skills
F 102 ___ Listening Skills
F 103 ___ Training to Address Racial, Ethnic, and Other Diversity Issues
F 104 ___ Skills in Dispute Resolution and Reconciliation
F 105 ___ Experience in Dealing with Gang Violence
F 106 ___ Experience in Developing Violence-Free Zones

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

RESIDENT OPPORTUNITIES AND SELF-SUFFICIENCY TECHNICAL ASSISTANCE (ROSS-TA) PROGRAM

SELECTION OF ROSS-TA CONSULTANT FOR: Year:_____
Request #:

Date form completed: _____
Description of Request for ROSS-TA:
_____
_____
Grantee Name: _____
Name of Contact Person: _____
Title: _____
Address: _____
_____
_____
_____
Phone Number: _____ Fax: _____
E-mail: _____

Consultant: # _____ **Skills Code (s)**____, _____, _____
1. Name: _____ _____
Address: _____
_____
_____
Phone Number: _____
Fax: _____
E-Mail: _____
Fee: _____

SELECTED: ___YES ___NO

Consultant #: _____ **Skills Code (s)**____, _____, _____
2. Name: _____ _____
Address: _____
_____
_____
Phone Number: _____
Fax: _____
E-Mail: _____
Fee: _____

SELECTED: ___YES ___NO

Form HUD-52367

Consultant #: _____ **Skills Code (s)**____, _____, _____

3. Name: _____ _____

Address: _____

_____

_____

Phone Number: _____

Fax: _____

E-Mail: _____

Fee: _____

SELECTED: ___**YES** ___**NO**

If any of these consultants are not selected please explain why:

_____

_____

_____

_____

_____

_____

_____

_____

Please mail this form back to NCCED within thirty calendar days in order for NCCED to process selection or provide a new list of selected consultants:

NCCED
ROSS-TA Program
1030 15th Street, NW
Suite 325
Washington, D.C. 20005

Form **HUD-52367**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT

RESIDENT OPPORTUNITIES AND SELF-SUFFICIENCY (ROSS-TA) PROGRAM

CONSULTANT'S STATEMENT OF WORK

Once the consultant has been selected to work with a specific grantee, it is expected that the consultant and the grantee communicate to discuss the extent of services needed. This will enable the consultant to have knowledge of the type of program the grantee is seeking to develop or enhance and the difficulties in developing the program. NCCED, the consultant and grantee will complete the Statement of Work (SOW) addressing the areas listed below. The SOW will then be submitted to HUD for final approval. It is very important to understand that the consultant will only be reimbursed for 30 days of work, and the work must be completed in less than 90 days from the date the statement of work was approved with the exception of the technical assistance initiated and requested by HUD. **Any work that has been initiated before the date authorized will not be compensated.**

A. **A: Statement of the Problem or Area in Need of Assistance**
Please include information provided from the grantee.

B. **B: Activities**

- Activities to carry out the work according to the needs of the grantee, including specific activities that will show how the technical assistance requested will address these needs.

C. **C: Products to be Delivered**

- List of products to be delivered throughout the length of TA.

D. **D: Timeline**

- The timeline should address the specific activities and when the products are going to be delivered during the time of the contract.

E. **E: Estimated Budget According to Expenses and Hours/Days Allocated**

F. **F: Milestones**
Please match the milestones to the timeline.

Form **HUD-52368**

STATEMENT OF WORK FOR CONSULTANTS

TA starting date: _____

Name of Grantee: _____
Name of Contact Person: _____
Address: _____
City: _____
State _____
Zip Code: _____
Phone #: _____
Fax: #: _____
E-mail: _____

G. **Statement of Problem or Area in Need of Assistance**

H. **Activities to carry out the work (in narrative)**

I. **Products (please specify what types of products are going to be developed during the TA and expected date of completion).**

J. **Timeline (please attach the Timeline in a different sheet)**

K. **Budget (please include a line item budget including estimated expenses and number of hours/days expected to complete the technical assistance)**

Form **HUD-52368**

L. Milestones (according to the timeline activities and products)

Milestones

Activity or Product:	Date:

Signature of Consultant

Date

Form **HUD-52368**

Technical Assistance Final Evaluation Form

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

ROSS Program

NAME OF GRANTEE: _____
CONTACT PERSON: _____
ADDRESS: _____
TELEPHONE: _____
FAX: _____

ROSS Applicant Type: ___ Public Housing Agency ___ Resident Association
___ Intermediary Resident Organization ___ Nonprofit
Funding Category: _____ Year Funded: _____
ROSS Grant #: _____ Tribe: _____
Tribally Designated Entity: _____

Please complete the information below and check the answer that best describes the quality of services received from the consultant:

1. Type (s) of services received:

   ___Technical Assistance ___Training

   Other: _____

2. Please specify what you expected from the technical assistance.

3. Did the technical assistance or services received meet your expectations?

   __a. Met all expectations __c. Met some expectations __e. Met no expectations
   __b. Met most expectations __d. Met very few expectations

4. Please specify which expectations were addressed and how.

   _____
   _____
   _____
   _____

5. Please specify which expectations were *not* met and why not.

   _____
   _____
   _____
   _____

Form **HUD-52369**

6. Was the mode of services (TA or training) delivered appropriate to resolve your problem?

___ Yes ___ No

Please explain and provide suggestions if you have any:

_____
_____
_____
_____
_____

7. How would you rate the *knowledge* and *ability* of the TA provider?

___Excellent
___Good
___Adequate
___Poor
___Very Poor
___Don't know

Comments:

_____
_____
_____

8. How would you rate the *actual performance* of the provider in delivering the technical assistance?

___Excellent
___Good
___Adequate
___Poor
___Very Poor
___Don't know

Comments:

_____
_____
_____

9. Overall, how would you rate the *usefulness* of this Technical Assistance project?

___Excellent
___Good
___Adequate
___Poor
___Very Poor
___Don't know

10. Do you have any other comments, suggestions, or recommendations regarding this Technical Assistance effort?

_____
_____
_____

Form **HUD-52369**

[FR Doc. 02–8199 Filed 4–4–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory to excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with the applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Ms. Julie Jones-Conte, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Program Integration Office, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; Navy: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 28, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 4/5/02

Suitable/Available Properties

Buildings (by State)

Tennessee

Courthouse/Fed. Bldg.
101 W. Summer Street
Greeneville Co: Greene TN 37743–
Landholding Agency: GSA
Property Number: 54200210027
Status: Excess
Comment: 17,241 sq. ft. office bldg. w/25 parking spaces, presence of asbestos, subject to Historic Preservation Covenants
GSA Number: 4–G–TN–0652

Land (by State)

New Jersey

0.27 acres
209 Bay Road
Ocean City Co: NJ 08226–
Landholding Agency: GSA
Property Number: 54200210023
Status: Excess
Comment: Environmental conditions exist which impact occupancy of property, endangered species within one mile
GSA Number: 1–U–NJ–645

Unsuitable Properties

Buildings (by State)

California

Bldg. 799
Naval Air Station
North Island Co: CA
Landholding Agency: Navy
Property Number: 77200210124
Status: Excess
Reason: Extensive deterioration

Kentucky

7 Bldgs.

Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Location: 02715, 02717, 02719, 02721, 02723, 02725, 02727
Landholding Agency: Army
Property Number: 21200210079
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 02736, 05326
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200210080
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02738
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200210081
Status: Unutilized
Reason: Extensive deterioration

New York

Bldg. OK1
Coast Guard Station
Alexandria Bay Co. Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210017
Status: Unutilized
Reason: Secured Area

Bldg. OK2
Coast Guard Station
Alexandria Bay Co. Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210018
Status: Unutilized
Reason: Secured Area

Bldg. OK3
Coast Guard Station
Alexandria Bay Co. Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210019
Status: Unutilized
Reason: Secured Area

Bldg. OG1
Coast Guard Station
Alexandria Bay Co. Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210020
Status: Unutilized
Reason: Secured Area

Bldg. OG2
Coast Guard Station
Alexandria Bay Co. Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210021
Status: Unutilized
Reason: Secured Area

Virginia

Bldg. WB–61
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210125
Status: Unutilized
Reason: Extensive deterioration

Bldg. WB–63
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210126
Status: Unutilized
Reason: Extensive deterioration

Bldg. WB–64
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210127
Status: Unutilized
Reason: Extensive deterioration

Bldg. WB–66
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210128
Status: Unutilized
Reason: Extensive deterioration

Bldg. WB–67
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200210129
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Puerto Rico

Parcel 2E
Naval Security Group
Sabana Seca Co: Toa Baja PR
Landholding Agency: GSA
Property Number: 54200210024
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–PR–496

Parcel 2R
Naval Security Group
Sabana Seca Co: Toa Baja PR
Landholding Agency: GSA
Property Number: 54200210025
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–PR–494

Parcel 2W
Naval Security Group
Sabana Seca Co: Toa Baja PR
Landholding Agency: GSA
Property Number: 54200210026
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–PR–495

[FR Doc. 02–7950 Filed 4–4–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 2003 Annual Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2003 annual funding agreements with self-governance tribes and lists programmatic targets for each of the non-BIA bureaus, pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2003.

ADDRESSES: Inquiries or comments regarding this notice may be directed to the Office of Self-Governance (MS–2548, MIB), 1849 C Street NW., Washington, DC 20240–0001. Telephone (202) 219–0240 or to the bureau points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination and Education Assistance Act Amendments of 1994 (Public Law 103–413, the ''Self-Governance Act'' or the ''Act'') instituted a permanent tribal self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Self-Governance Act, the Secretary of the Interior is required to publish annually:
(1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and
(2) programmatic targets for these bureaus.

Under the Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is ''otherwise available to Indian tribes or Indians,'' can be administered by a tribal government through a self-governance agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracting under Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93–638). Section 403(b)(2) also specifies that ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities, or portions thereof, that are of ''special geographic, historical, or cultural significance'' to a self-governance tribe.

Under section 403(k) of the Self-Governance Act, annual agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

Response to Comments

The Department provided the proposed list to the Self-Governance Tribes on January 14, 2002, for their review and comment. No comments were received. Several minor editorial and technical changes provided by Interior's bureaus were incorporated.

II. Annual Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior

A. Bureau of Land Management (none)
B. Bureau of Reclamation (4)
  Gila River Indian Community
  Chippewa Cree Tribe of the Rocky Boy's Reservation
  Karuk Tribe of California
  Yurok Tribe
C. Minerals Management Service (none)
D. National Park Service (1)
  Grand Portage Band of Lake Superior Chippewa Indians
E. Office of Surface Mining and Reclamation Enforcement (none)
F. U.S. Fish and Wildlife Service (none)
G. U.S. Geological Survey (none)

III. Eligible Programs of the Department of the Interior non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance annual funding agreements because they are either ''otherwise available to Indians'' under Title I and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating tribe. The lists represent the most current information on programs potentially available to Tribes under a Self-Governance agreement.

The Department will also consider for inclusion in annual funding agreements other programs or activities not included below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Programs of the Bureau of Land Management (BLM)

BLM management responsibilities cover a wide range of areas, such as recreational activities, timber, range and minerals management, wildlife habitat management and watershed restoration. In addition, BLM is responsible for the survey of certain Federal and tribal lands. Two programs provide tribal services: (1) Tribal and allottee minerals management; and (2) Survey of tribal and allottee lands.

BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, dependent upon availability of funds, the need for specific services, and the Self-Governance tribe demonstrating a special geographic, cultural, or historical connection, may also be available for inclusion in self-governance agreements. Once a tribe has made initial contact with BLM, more specific information will be provided by the respective BLM State office.

Tribal Services

1. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations, and inspection, enforcement and production verification of Indian coal and sand and gravel operations: are already available for contracts under Title I of the Act and therefore may be available for inclusion in an annual funding agreement.

2. *Cadastral Survey.* Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and therefore may be available for inclusion in an annual funding agreement.

Other Activities

1. *Cultural Heritage.* Cultural heritage activities, such as research and inventory, may be available in specific States.

2. *Forestry Management.* Activities, such as environmental studies, tree planting, thinning and similar work, may be available in specific States.

3. *Range Management.* Activities, such as re-vegetation, noxious weed control, fencing, construction and maintenance of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. *Riparian Management.* Activities, such as facilities construction, erosion control, rehabilitation, and similar activities, may be available in specific States.

5. *Recreation Management.* Activities, such as facilities construction and maintenance, interpretive design and construction, and similar activities, may be available in specific States.

6. *Wildlife and Fisheries Habitat Management.* Activities, such as construction and maintenance, interpretive design and construction, habitat protection and improvement projects, and similar activities, may be available in specific States.

7. *Wild Horse Management.* Activities such as wild horse round ups, removal, and disposition, including operation and maintenance of wild horse facilities may be available in specific States.

The above programs under ''Other Activities'' are available in many states for competitive contracting. However, if they are of special geographic, historical or cultural significance to a participating Self-Governance tribe, they may be available for annual funding agreements. Tribes may also discuss additional BLM-funded activities with the relevant State office in relation to negotiating specific self-governance agreements.

For questions regarding Indian Self-Governance, contact Jerry Cordova, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240–0001, telephone: (202) 452–7756, fax: (202) 452–7701. General information on all contracts available in a given year through the BLM can be obtained from the BLM National Business Center, P.O. Box 25047, Bldg 50, Denver Federal Center, Denver, CO 80225–0047.

B. Eligible Programs of the Bureau of Reclamation

Reclamation operates a wide range of water resource management projects for irrigation, hydroelectric power generation, municipal and industrial water supplies, flood control, outdoor recreation, enhancement of fish and wildlife habitats, and research. Most of Reclamation's activities involve construction, operations and maintenance, and management of water resources projects and associated facilities. Components of the following water resource management and

construction projects may be eligible for self-governance agreements.

1. Klamath Project—CA, OR
2. Trinity River Restoration Program—CA
3. Central Valley Project (Trinity Division)—CA
4. Newlands Project—NV, CA
5. Washoe Project—NV, CA
6. Colorado River Front Work/Levee System—AZ, CA, NV
7. Lower Colorado Indian Water Management Study—AZ, CA, NV
8. Yuma Area Projects—AZ, CA
9. Central Arizona Project—AZ, NM
10. Middle Rio Grande Project—NM
11. Indian Water Rights Settlement Projects—as Congressionally authorized.

For questions regarding self-governance contact Barbara White, Reclamation Self-Governance Coordinator, Native American Affairs Office, Bureau of Reclamation (W–6100), 1849 C Street NW., Washington, DC 20240–0001, telephone: (202) 513–0631, fax: (202) 513–0311.

C. Eligible Programs of the Minerals Management Service (MMS)

MMS provides stewardship of America's offshore resources and collects revenues generated from mineral leases on Federal and Indian lands. MMS is responsible for the management of the Federal Outer Continental Shelf, which are submerged lands off the coasts that have significant energy and mineral resources. Within the offshore minerals management program, environmental impact assessments and statements, and environmental studies, may be available if a self-governance tribe demonstrates a special geographic, cultural, or historical connection.

MMS also offers mineral-owning tribes other opportunities to become involved in MMS's Royalty Management Program functions. These programs address the intent of Indian self-governance but are available regardless of self-governance intentions or status and are a good prerequisite for assuming other technical functions. Generally, royalty management programs are available to tribes because of their status as Indians. Royalty management programs that may be available to self-governance tribes are as follows:

1. *Audit of tribal royalty payments.* Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in MMS delegated audits, this program is offered as an optional alternative.)

2. *Verification of tribal royalty payments.* Financial compliance verification and monitoring activities, production verification, and appeals research and analysis.

3. *Tribal royalty reporting, accounting and data management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. *Tribal royalty valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

5. *Royalty Management of Allottee Leases.* Royalty management of allottee leases.

6. *Online monitoring of royalties and accounts.* Online computer access to reports, payments, and royalty information contained in MMS accounts. MMS will install equipment at tribal locations, train tribal staff, and assist tribe in researching and monitoring all payments, reports, accounts, and historical information regarding their leases.

7. *Royalty Internship Program.* An orientation and training program for auditors and accountants from mineral producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance agreement but have not yet acquired mineral revenue expertise via a FOGRMA section 202 contract.

For questions regarding self-governance contact David Izon, Royalty Liaison Office, Minerals Management Service (MS–4241), 1849 C Street NW, Washington, DC 20240–0001, telephone: (202) 208–3512, fax: (202) 208–3982.

D. Eligible Programs of the National Park Service (NPS)

The National Park Service administers the National Park System made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. NPS maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of these programs may be eligible for inclusion in a self-governance annual funding agreement. The listing below was developed considering the geographic proximity to, and/or traditional association of a self-governance tribe with, units of the National Park system, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement. This listing is not all inclusive, but is representative of the types of programs which may be eligible for tribal participation through annual funding agreements.

1. *Ongoing Programs and Activities.* Components of the following programs are potentially eligible for inclusion in a self-governance annual funding agreement.

a. Archeological surveys
b. Comprehensive management planning
c. Cultural resource management projects
d. Ethnographic studies
e. Erosion control
f. Fire protection
g. Gathering baseline subsistence data—AK
h. Hazardous fuel reduction
i. Housing construction and rehabilitation
j. Interpretation
k. Janitorial services
l. Maintenance
m. Natural resource management projects
n. Range assessment—AK
o. Reindeer grazing—AK
p. Road repair
q. Solid waste collection and disposal
r. Trail rehabilitation
s. Watershed restoration and maintenance

2. *Special Programs.* Aspects of these programs may be available if a self-governance tribe demonstrates a geographical, cultural, or historical connection.

a. Beringia Research
b. Elwha River Restoration

Locations of National Park System Units in Close Proximity to Self-Governance Tribes. Aspects of ongoing programs and activities may be available at park units with known geographic, cultural, or historical connections with a self-governance tribe.

1. Lake Clark National Park and Preserve—AK
2. Katmai National Park and Preserve—AK
3. Glacier Bay National Park and Preserve—AK
4. Klondike Gold Rush National Historical Park—AK
5. Sitka National Historical Park—AK
6. Kenai Fjords National Park—AK
7. Wrangell-St. Elias National Park & Preserve—AK
8. Western Arctic Parklands—AK
9. Gates of the Arctic National Park & Preserve—AK

10. Yukon Charlie Rivers National Preserve—AK
11. Casa Grande Ruins National Monument—AZ
12. Joshua Tree National Park—CA
13. Redwood National Park—CA
14. Whiskeytown National Recreation Area—CA
15. Hagerman Fossil Beds National Monument—ID
16. Bear Paw Battlefield, Nez Perce National Historical Park—ID
17. Boston Harbor Islands, a National Park Area—MA
18. Cape Cod National Seashore—MA
19. New Bedford Whaling National Historical Park—MA
20. Sleeping Bear Dunes National Lakeshore—MI
21. Voyageurs National Park—MN
22. Grand Portage National Monument—MN
23. Glacier National Park—MT
24. Great Basin National Park—NV
25. Bandelier National Monument—NM
26. Fort Stanwix National Monument—NY
27. Cuyahoga Valley National Recreation Area—OH
28. Hopewell Culture National Historical Park—OH
29. Chickasaw National Recreation Area—OK
30. Effigy Mounds National Monument—IA
31. Olympic National Park—WA
32. San Juan Islands National Historic Park—WA
33. Mt. Rainier National Park—WA
34. Ebey's Landing National Historical Reserve—WA

For questions regarding self-governance contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service (MS–3410), 1849 C Street NW, Washington, DC 20240–0001; telephone: (202) 208–5475, fax: (202) 273–0870.

E. Eligible Programs of the Office of Surface Mining and Reclamation Enforcement (OSM)

OSM regulates surface coal mining and reclamation operations, and reclaims abandoned coal mines, in cooperation with States and Indian tribes.

1. *Abandoned Mine Land Reclamation Program.* This program which restores eligible lands mined and abandoned or left inadequately restored is available to Indian tribes.

2. *Control of the Environmental Impacts of Surface Coal Mining.* This program includes analyses, NEPA documentation, technical reviews, and studies. Where surface coal mining exists on Indian land, certain regulatory activities that are not inherently Federal are available to Indian tribes.

For questions regarding self-governance contact Maria Mitchell, Office of Surface Mining Reclamation and Enforcement (MS–210-SIB), 1951 Constitution Ave. NW, Washington, DC 20240, telephone: (202) 208–2865, fax: (202) 291–3111.

F. Eligible Programs of the U.S. Fish and Wildlife Service (FWS)

The mission of FWS is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. FWS also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Self-Governance Act.

Some elements of the following programs may be eligible for inclusion in a self-governance annual funding agreement. The listing below was developed considering the proximity of an identified self-governance tribe to a National Wildlife Refuge or National Fish Hatchery, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement. This listing is not all-inclusive but is representative of the types of programs which may be eligible for tribal participation through an annual funding agreement.

1. *Subsistence Programs within Alaska.*

2. *Fish & Wildlife Technical Assistance, Restoration & Conservation:*

a. Fish & wildlife population surveys
b. Habitat surveys
c. Sport fish restoration
d. Capture of depredating migratory birds
e. Fish & wildlife program planning
f. Habitat restoration activities

3. *Endangered Species Program:*

a. Cooperative management of conservation programs
b. Development and implementation of recovery plans
c. Conducting status surveys for high priority candidate species
d. Participation in the development of habitat conservation plans, as appropriate

4. *Education Programs:*

a. Interpretation
b. Outdoor classrooms
c. Visitor center operations
d. Volunteer coordination efforts on- and off-refuge

5. *Environmental Contaminants Program:*

a. Analytical devices
b. Removal of underground storage tanks
c. Specific cleanup activities
d. Natural resource economic analysis
e. Specific field data gathering efforts

6. *Hatchery Operations:*

a. Egg taking
b. Rearing/feeding
c. Disease treatment
d. Tagging
e. Clerical/facility maintenance

7. *Wetland & Habitat Conservation and Restoration:*

a. Construction
b. Planning activities
c. Habitat monitoring and management

8. *Conservation Law Enforcement.*

All law enforcement efforts under cross-deputization

9. *National Wildlife Refuge Operations & Maintenance:*

a. Construction
b. Farming
c. Concessions
d. Maintenance
e. Comprehensive management planning
f. Biological program efforts
g. Habitat management
h. Fire Management

Locations of Refuges and Hatcheries with close proximity to Indian Tribes:

1. Alaska National Wildlife Refuges—AK
2. Alchesay National Fish Hatchery—AZ
3. Humboldt Bay National Wildlife Refuge—CA
4. Kootenai National Wildlife Refuge—ID
5. Agassiz National Wildlife Refuge—MN
6. Mille Lacs National Wildlife Refuge—MN
7. Rice Lake National Wildlife Refuge—MN
8. National Bison Range—MT
9. Ninepipe National Wildlife Refuge—MT
10. Pablo National Wildlife Refuge—MT
11. Mescalero National Fish Hatchery—NM
12. Sequoyah National Wildlife Refuge—OK
13. Tishomingo National Wildlife Refuge—OK
14. Bandon Marsh National Wildlife Refuge—OR
15. Dungeness National Wildlife Refuge—WA
16. Makah National Fish Hatchery—WA

17. Nisqually National Wildlife Refuge—WA
18. Quinault National Fish Hatchery—WA
19. San Juan Islands National Wildlife Refuge—WA

For questions regarding self-governance contact Patrick Durham, Fish and Wildlife Service (MS3012), 1849 C Street NW, Washington, DC 20240–0001, telephone: (202) 208–4133, fax: (202) 501–3524.

G. Eligible Programs of the U.S. Geological Survey (USGS)

The mission of the U.S. Geological Survey is to provide information on biology, geology, hydrology, and cartography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. Information includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure and dynamic processes of the earth. Information on these scientific issues is developed through extensive research, field studies, and comprehensive data collection to: evaluate natural hazards such as earthquakes, volcanoes, landslides, floods, droughts, subsidence and other ground failures; assess energy, mineral, and water resources in terms of their quality, quantity, and availability; evaluate the habitats of animals and plants; and produce geographic, cartographic, and remotely-sensed information in digital and non-digital formats. No USGS programs are specifically available to American Indians or Alaska Natives. Components of the following programs may have a special geographic, cultural, or historical connection with a self-governance tribe:

1. *Mineral, Environmental, and Energy Assessments.*
2. *USGS Earthquake Hazards Reduction Program.*
3. *Water Resources Data Collection and Investigations.*
4. *Biological Resources Inventory, Monitoring, Research and Information Transfer Activities.*

For questions regarding self-governance contact Sue Marcus, National American Indian/Alaska Native Liaison, U.S. Geological Survey, 107 National Center, Reston, VA 20192, telephone: (703) 648–4437, fax: (703) 648–5470.

IV. Programmatic Targets.

During Fiscal Year 2003, upon request of a self-governance tribe each non-BIA bureau will negotiate annual funding agreements for its eligible programs beyond those already negotiated.

Dated: March 12, 2002.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 02–7386 Filed 4–4–02; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1310–AC]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting on May 9, 2002 at the Miles City Field Office, main conference room, 111 Garryowen Road, Miles City, Montana starting at 8 a.m. Primary agenda topics include updates on the Sage Grouse Technical Committee and Pompey's Pillar, reports on the Protest Resolution process and rangeland monitoring, and a presentation on Public Land access.

The meeting is open to the public and the public comment period is set for 1 p.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Linda Reder, Acting Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2824.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: March 5, 2002.

Aden L. Seidlitz,

Associate Field Manager.

[FR Doc. 02–8197 Filed 4–4–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Construction of City of Riverton Water Treatment Plant

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of application for grant funding; public comment period on request to fund the City of Riverton Water Treatment Plant.

SUMMARY: OSM is announcing its receipt of a grant application from the Wyoming Department of Environmental Quality, Abandoned Mine Land Division (AMLD). Wyoming is requesting $745,000 from the Abandoned Mine Land Reclamation Fund to pay 50 percent of the cost of building a City of Riverton Water Treatment Plant. In its application, the State proposes paying for part of the construction cost as a public facility project that will benefit a community impacted by mineral mining.

This notice describes when and where you may read the grant application for funding the City of Riverton Water Treatment Plant. It also sets the time period during which you may send written comments on the request to us.

DATES: We will accept written comments until 4 p.m., m.s.t., May 6, 2002.

ADDRESSES: You should mail or hand-deliver written comments to Guy V. Padgett, Casper Field Office Director, at the address shown below. You may read Wyoming's grant application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. Also, we will send one free copy of the grant application to you if you contact OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2403, 100 East ''B'' Street, Casper, Wyoming 82601–1918.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6555.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that

we withhold their home address from the rulemaking [or administrative] record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking [or administrative] record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However we will not consider anonymous comments. We will take all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) program. The purpose of the AMLR program is to reclaim and restore lands and waters that were adversely affected by past mining. The program is funded by a reclamation fee paid by active coaling mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under state, Federal, or other laws.

Title IV of SMCRA allows States to submit AMLR plans to us. We, on behalf of the Secretary review those plans and consider any public comments were receive about them. If we determine that a State has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State may apply to us for money to fund specific projects that will achieve the goals of its approved plan. We follow the requirements of the Federal regulations at 30 CFR Parts 874, 875, and 886 when we review and approve such applications.

II. Background on the Wyoming AMLR Plan

The Secretary of the Interior approved Wyoming's AMLR plan on February 14, 1983. You can find background information on the Wyoming AML program, including the Secretary's findings and our responses to comments, in the February 14, 1983 **Federal Register** (48 FR 6536).

Wyoming changed its plan a number of times since the Secretary first approved it. In 1984, we accepted the State's certification that it had addressed all known coal-related impacts in Wyoming that were eligible for funding under its program. As a result, the State may now reclaim low priority on-coal reclamation projects. You can reads about the certification and OSM's acceptance in the May 25, 1984, **Federal Register** (49 FR 22139). At the same time, we also accepted Wyoming's proposal that it will ask us for funds to reclaim any additional coal-related problems that occur during the life of the AML program as soon as it becomes aware of them. In the April 13, 1992, **Federal Register** (57 FR 12731), we announced our decision to accept other changes in Wyoming's plan that describe how it will rank eligible coal, non-coal, and public facility projects for fundings. Those changes also authorized the Governor of Wyoming to elevate the priority of a project based upon the Governor's determination of need and urgency. They also expanded the State's ability to construct public facilities under section 411 of SMCRA. We approved additional changes in Wyoming's plan concerning non-coal lien authority and contractor eligibility that improved the efficiency of the State's AML program. That approval is described in the February 21, 1996, **Federal Register** (61 FR 6537).

Once a State certifies that it has addressed all remaining abandoned coal mine problems and the Secretary concurs, then it may request funds to undertake abandoned non-coal mine reclamation, community impact assistance, and public facilities projects under section 411(b), (e), and (f), of SMCRA.

State law and regulations that apply to the proposed Abandoned Coal Mine Land Program City of Riverton Water Treatment plan funding request include Wyoming Statute 35–11–1202 and Wyoming Abandoned Mine Land Regulations, Chapter VII, of the Wyoming Abandoned Mine Program.

III. Wyoming's Request to Fund the Cost of the City of Riverton Water Treatment Plant

The Wyoming Department of Environmental Quality will submit to us a grant application in the fall of 2003. In that application, Wyoming will ask for $745,000 to pay for a part of the cost of constructing the city of Riverton water treatment plant. The Governor of Wyoming certified the need and urgency to fund this project prior to completing the State's remaining inventory of non-coal reclamation work, as allowed by section 411(f) of SMCRA. That certification says the project is in a community impacted by mineral mining activities. The requested funding in the 2003 grant is 50 percent of the project's total cost. Money for the balance of the project cost will come from the city of Riverton reserves.

This project addresses the need for upgrades in the Riverton Water Treatment Plant to meet EPA standards for lead and copper, and insure a safe drinking water supply for the citizens of Riverton. The Governor's certification states that the safety hazards impacting the city of Riverton water users warrant funding of this project before the remaining inventory of non-coal projects are completed.

IV. How We Will Review Wyoming's Grant Application?

We will review the grant application using regulations at 30 CFR 875.15; specifically subsections 875.15(e) (1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on Wyoming's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total cost involved; (4) documentation from other local, State, Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the State, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before the priority projects relating to the protection of public health and safety or the environment from the damages caused by past mining activities, and (7) an analysis and review of the procedure Wyoming used to notify and involve the public in this request, and a copy of all comments received and their resolution by the State. Wyoming's application for the City of Riverton Water Treatment Plant project contains the information described in these seven subsections.

Section 875.15(f) requires us to evaluate all comments we receive and determine whether the funding meets the requirements of section 875.15(e) (1) through (7) described above. It also requires us to determine if the request is in the best interests of the State's AML program. We will approve Wyoming's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

V. What To Do if You Want to Comment on the Proposed Project

We are asking for public comments on Wyoming's request for funds to pay for part of the cost of constructing the city of Riverton water treatment plant. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to Wyoming's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Casper Field Office, we will not necessarily consider them in our final decision or include them in the administrative record.

Dated: March 28, 2002.

Guy Padgett,

Director, Casper Field Office.

[FR Doc. 02–8232 Filed 4–4–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–428 (Preliminary) and Investigations Nos. 731–TA–992–1005 (Preliminary)]

Oil Country Tubular Goods From Austria, Brazil, China, Colombia, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–428 (Preliminary) and antidumping investigations Nos. 731–TA–992–1005 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria of certain oil country tubular goods, provided for in subheadings 7304.21.30, 7304.21.60, 7304.29.10, 7304.29.20, 7304.29.30, 7304.29.40, 7304.29.50, 7304.29.60, 7305.20.20, 7305.20.40, 7305.20.60, 7305.20.80, 7306.20.10, 7306.20.20, 7306.20.30, 7304.60.40, 7306.20.60, and 7306.20.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Austria, and by reason of such imports from Austria, Brazil, China, Colombia, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by May 13, 2002. The Commission's views are due at Commerce within five business days thereafter, or by May 20, 2002.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 29, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on March 29, 2002, by counsel on behalf of IPSCO Tubulars, Inc., Camanche, IA; Koppel Steel Corp., Ambridge, PA; Lone Star Steel Co., Dallas, TX; Maverick Tube Corp., Chesterfield, MO, Newport Steel Corp., Newport, KY; and United States Steel Corp., Pittsburgh, PA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with the investigations for 9:30 a.m. on April 19, 2002, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than April 17, 2002, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submission

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 24, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: The investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: April 2, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–8330 Filed 4–4–02; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day notice of information collection under review; certificates for health care benefits.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 4, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Certificates for Health Care Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–15). Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected in this process is used by the credentialing organization to determine if the alien is eligible to receive a certificate. The Certificate is then submitted to the INS by an alien in order to obtain an immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,000 respondents at 2 hours per response and 14,000 applicant responses at 1.66 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 37,240 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536; (202) 514–3291. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be director to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–8187 Filed 4–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 60-Day notice of information collection under review; application for authorization to issue health care certificates; Form I–905.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 4, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Authorization to Issue Health Care Certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–905. Business and Trade Services, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The data collected on this form is used by the Service to determine eligibility of an organization to issue certificates to foreign health care workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 4 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 28, 2002.

Richard A Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–8188 Filed 4–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 29, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 219–8904 or email Howze-Marlene@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Application for EFAST–1 Electronic Signature and Codes for EFAST Transmitters and Software Developers.

OMB Number: 1210–0117.

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit institutions.

Frequency: On Occasion.

Number of Respondents: 7,200.

Number of Annual Responses: 7,200.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 2,400.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services:) $2,736.00

Description: Section 104 of the Employment Retirement Income Security Act of 1974, as amended, requires that administrators of pension and welfare plans (collectively, employee benefit plans), and employers sponsoring certain fringe benefit plans and other plans of deferred compensation, file returns/reports annually with the Secretary of Labor concerning the financial condition and operation of the plans. The EFAST–1 is used by filers of Forms 5500 and 5500–EZ and software developers who wish to participate in an electronic filing program. EFAST–1 will transmit filer signatures and declarations to the EFAST system so that program participants may receive secure codes for electronic submission. The electronic signatures and other codes also provide future verification of a filer's standing as a qualified participant in the electronic filing program and a means of contact for information exchange and publication distribution between the filer, transmitter, or software developer and the Department.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–8263 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503

((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Miner's Claim for Benefits Under the Black Lung Benefits Act; (2) Employment History; (3) Miner Reimbursement Form.

OMB Number: 1215–0052.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: On Occasion.

Total Respondents/Responses: 20,200.

Total Burden Hours: 9,116.

Form	Respondents/responses	Estimated time per response (min)	Burden hours
CM–911	4,800	45	3,600
CM–911a	5,900	40	3,933
CM–915	9,500	10	1,583

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $4,060.75.

Description: The Black Lung Benefits Act of 1977, as amended, 30 U.S.C. 901 et. seq., provides for the payment of benefits to coal miners who are totally disabled by black lung disease, and to certain survivors. The CM–911 is the application for benefits. The CM–911a, which is completed along with the CM–911, renders a complete history of employment and is used to establish employment criteria for benefit eligibility. CM–915 is the standard data collection form used by miner payees when requesting reimbursement for black lung related medical services. If the information were not collected, the requirement of the Act would not be met and the potential for making improper reimbursements to the miner payees would increase and, in some cases, delay program reimbursements on medical treatment claims.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Pre-Hearing Statement.

OMB Number: 1215–0085.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: On Occasion.

Number of Respondents: 6,800.

Number of Annual Responses: 6,800.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 1,088.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,595.50.

Description: Title 20, CFR 702.317 provides for the referral of claims under the Longshore and Harbor Workers' Compensation Act. This Act provides benefits to workers' injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The LS–18 is used to refer cases to the Office of Administrative Law Judges for formal hearings under the Act. The information obtained is used to establish and clarify the issues involved and to prepare cases for formal hearings. If the information were not collected, there would not be a uniform method of referring cases for formal hearings or a means to determine the issues involved for resolution.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Affected Public: Individuals or households.

Frequency: On occasion.

Number of Respondents: 4,500.

Number of Annual Responses: 4,500.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 4,500.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,665.00.

Description: The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923(b) and 20 CFR 725.544(c) authorize the Black Lung program to collect information to determine whether or not the recovery of any Black Lung or Federal Employees' Compensation (FECA) overpayment may be waived compromised, terminated, or collected in full. The OWCP–20 collects information to ascertain the financial profile of beneficiaries who have been overpaid benefits, and their ability to repay. If the information were not collected, Black Lung and FECA would have little basis to decide on collection proceedings.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Claim for Continuance of Compensation.

OMB Number: 1215–0154.

Affected Public: Individuals or households.

Frequency: Annually.

Number of Respondents: 5,900.

Number of Annual Responses: 5,900.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 492.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,006.00.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act, 5 U.S.C. 8133. Under the Act, eligible dependents of deceased employees receive compensation benefits on account of the employee's death. The CA–12 is used to

obtain information on marital status of beneficiaries in death cases, in order to determine continued entitlement to benefits under the provisions of the Federal 'Employees' Compensation Act. If the information were not collected the OWCP could not ensure that death benefits being paid are correct and that payments are not made to ineligible survivors.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–8264 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 2974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,349; Willametee Industries, Inc. (Currently Know as Weyerhaueser), Saginaw Planer, Saginaw, OR

TA–W–40,370; Valley Precision Tool, Inc., Tower City, PA

TA–W–40,679; Eaton Corp., Powertrain and Specialty Controls Div., Sanford, NC

TA–W–40,515; IEC Electronics, Newark, NY

TA–W–39,947; Martin Marietta Magnesia Specialties, Inc., Manistee, MI

TA–W–40,887; Spicer Driveshaft Manufacturing, Inc., Div. Of The Dana Corp., Lima, OH

TA–W–40,369; Tempel Steel Corp., Formerly Known as PSW Industries, Michigan City, IN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–40,816; Connolly North America, LLC, El Paso, TX

TA–W–40,026; PCS Phosphate, A Div. Of Potash Corp., Aurora, NC

TA–W–40,945; Barry of Laredo, R.G. Barry Corp., Laredo, TX

TA–W–40,417; NTN-Bower Corp., Hamilton, AL

TA–W–40,962; Western Power Products, Hood River, OR

TA–W–40,543; Steelcase Wood Div., Fletcher, NC

TA–W–40,992; Saco Lowell, Inc., Easley, SC

TA–W–40,110; Delta Woodside Industries, Delta Mills Furman Plant, Fountain Inn, SC

TA–W–40,183; Optical Coating Laboratories, Inc., JDS Uniphase, Rochester, NY

TA–W–40,531; Price Pfister, Pacoima, CA

TA–W–41,001; Oxford Automotive, Oscoda Div., Oscoda, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–41,083; Ellery Homestyles LLC, Pinefluff, NC

TA–W–40,715; Steward and Stevenson Power, Inc., Albuquerque, NM

TA–W–40,734; Modular Mining Systems, Tucson, AZ

TA–W–40,847; Brunswick Foreign Trade Zone, Inc., Brunswick, GA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–41,055; Portex, Inc., Formerly Simsportex, A Subsidiary of Smiths Group PLC, Fort Myers, FL

TA–W–40,465; Hershey Foods Corp., Pennsburg Plant, Pennsburg, PA

TA–W–40.602; Chemwest Systems, Inc., Portland, OR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–39,996; PixTech, Inc., Boise, ID; August 29, 2000

TA–W–40,075; Pohlman Foundry Co., Inc., Buffalo, NY: September 6, 2000

TA–W–40,347; Phelps Dodge Miami, Inc., Claypool, AZ: November 2, 2000

TA–W–40,437; Thomas Henshall Silk Finishing Co., Inc., Paterson, NJ: October 18, 2000

TA–W–40,540; Beta Steel Corp., portage, IN: December 26, 2000

TA–W–40,650; Signal Transformer Col, Inwood, NY: November 7, 2000

TA–W–40,740; Corning, Inc., Greenville Plant, Greenville, OH: December 27, 2000

TA–W–40,935; Nice Ball Bearing Co., A Subsidiary of Roller Bearing Corp., Kulpsville, PA: January 22, 2001

TA–W–40,989, California Cedar Products Co., Stockton, CA: January 18, 2001

TA–W–41,046, STS Corp., Hialeah, FL: January 12, 2001

TA–W–41,072; Fourth, Inc., Altex, LLC, Charlotte, NC: January 29, 2001

TA–W–41,089; Weavexx, A Xerium Co., Greeneville, TN: February 10, 2001.

TA–W–41,100; Russell Yarn—Alex City Operations Alexander City, AL: February 2, 2001.

TA–W–41,059; Envy of California, Bakersfield, CA: January 10, 2001

TA–W–41,019; Sims Manufacturing Co., Inc., Rutland, MA: February 19, 2001

TA–W–40,986; FDB, Inc., Lincolnton, GA: January 30, 2001

TA–W–40,948; Boero, Inc., Oakland, CA: January 29, 2001

TA–W–40,942; The Bilrite Corp., Ripley, MS: November 19, 2001

TA–W–40,922; Emerson Electric Co., Alco Controls Div., Hazlehurst, GA: December 17, 2000

TA–W–40,857 & A, B, C; Fairbanks Morse Engine, Beloit, WI, Norfolk, VA, Seattle, WA and Houston, TX: December 13, 2000

TA–W–40,853; Hayes Lemmerz International, Inc., Wheels Business Unit, Somerset, KY: November 26, 2000

TA–W–40,688; Sanmina, Inc., A Subsidiary of Sanmina-SCI Co., Clinton, NC: January 28, 2001

TA–W–40,676 & A; Tyco Electronics, American Ave., Greensboro, NC and Piedmont Triad Parkway, Greensboro, NC: December 3, 2000
TA–W–40,591; Parker Hannifin Corp., Gear Pump Div., Sarasota, FL: October 17, 2000
TA–W–40,485; Dyersburg Corp., Charlotte, NC: March 30, 2000
*TA–W–40,468; DT Magnetics International, Inc., Dover, NH: October 22, 2000*q
TA–W–40,455; Phelps Dodge Bagdad, Inc., Bagdad, AZ: November 13, 2000
TA–W–40,402; Prime Tanning, St. Joseph, MO: October 24, 2000
TA–W–40,358; Conectl Corp. (Formerly Preco New Products), Boise, ID: October 29, 2000
TA–W–40,156; Jem Sportswear, San Fernando, CA: September 17, 2000
TA–W–39,928; C.L. Fashion Express, Inc., Panorama City, CA: August 16, 2000
TA–W–39,749; BHP Copper, Inc., Pinto Valley, Miami, AZ: July 11, 2000
TA–W–39,631; Merix Corp., Forest Grove, OR: January 20, 2001
TA–W–38,948; C.B. Cummings & Sons Co., Norway, ME: March 21, 2000

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05253; Matco Electronics, Matco East Distribution Center, Verona, VA
NAFTA–TAA–05554; Tempel Steel Co., Formerly Known as PSW Industries, Michigan City, IN
NAFTA–TAA–05575; Saturn Electronics and Engineering, Inc., Hudson, NH
NAFTA–TAA–05649; IEC Electronics, Newark, NY
NAFTA–TAA–05671; Beta Steel Corp., Portage, IN
NAFTA–TAA–05721; Steelcase Wood Div., Fletcher, NC
NAFTA–TAA–05813; CHF Industries, Inc., Loris, SC
NAFTA–TAA–05891; Fort Dearborn Co., Coldwater, MI
NAFTA–TAA–05361; Delta Woodside Industries, Inc., Delta Mills Furman Plant, Fountain Inn, SC
NAFTA–TAA–05520; Willamette Industries, Inc., (Currently Known as Weyerhaueser), Saginaw Planer, Saginaw, OR
NAFTA–TAA–05830; D and M Tool, Inc., Meadville, PA
NAFTA–TAA–05832; Pittsburgh Annealing Box Co., LLC, Pittsburgh, PA
NAFTA–TAA–05867; Tracy Minntronix Corp., Tracy, MN
NAFTA–TAA–05883; Midwest International, d/b/a Midwest Manufacturing Co., Stanberry, MO
NAFTA–TAA–05948; Textile Parts and Machine Co., Gastonia, NC

The workers firm does not produce an article as required for certification under Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended.

NAFTA–TAA–05894; Puget Sound Energy, Inc., Bellevue, WA
NAFTA–TAA–05811; Thomson Multimedia, Inc., Indianapolis, IN
NAFTA–TAA–05779; Brunswick Foreign Trade Zone, Inc., Brunswick, GA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–05862; SMT Automotive Group, Schrader Machine and Tool, Hanover, MI

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05675; STS Apparel Corp., Hialeah, FL: December 8, 2000

NAFTA–TAA–05808; Fourth, Inc., Altex, LLC, Charlotte, NC: January 31, 2001

NAFTA–TAA–05876; Lamb Technicon, A Div. of Unova, Warren, MI: February 19, 2001

NAFTA–TAA–5929; Oxford Automotive, Oscoda Div., Oscoda, MI: December 21, 2000

NAFTA–TAA–05365; C.L. Fashion Express, Inc., Panorama City, CA: August 16, 2000

NAFTA–TAA–05704; Odetics, Inc., GYYR CCTV Div., Anaheim, CA: November 26, 2000

NAFTA–TAA–05959; Hoffman Enclosures, Inc., A Pentair Co., Anoka, MN: January 15, 2001

NAFTA–TAA–05817; Parker Hannifin Corp., Gear Pump Div., Sarasota, FL: October 17, 2000

NAFTA–TAA–05924; Takata Restraint Systems, Inc., Cheraw, SC: January 24, 2001

NAFTA–TAA–05939; Tractech, Inc., Delco Remy, Warren, MI: March 2, 2001

NAFTA–TAA–05321; Satilla Manufacturing Co.,Inc., Blackshear, GA: September 14, 2000

I hereby certify that the aforementioned determinations were issued during the month of March, 2002. Copies of these determinations are available for inspection in room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 29, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–8267 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41, 010]

Dupont Beaumont Works, Beaumont, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2002, in response to a worker petition which was filed by the company on behalf of workers at Dupont Beaumont Works, Beaumont, Texas.

An active investigation covering the petitioning group of workers is already in process (TA–W–40,949). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of March 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–8273 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request if filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 15, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 15, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Dated: Signed at Washington, DC, this 19th day of February, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 02/19/2002]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,821	Gethchell Gold (Comp)	Golconda, NV	01/03/2002	Gold.
40,822	Daniel Measurement (Comp)	Statesboro, GA	09/05/2001	Valves and Turbines.
40,823	Glenayre Electronics (Wkrs)	Quincy, IL	01/10/2002	Messaging Voice Platform, Paging Switch.
40,824	Fort Dearborn Co. (Wkrs)	Coldwater, MI	01/08/2002	Labels for Food Containers.
40,825	Artex International (Wkrs)	West Point, MS	10/16/2001	Tables Linens.
40,826	Leemah Electronics (Wkrs)	San Francisco, CA	11/30/2001	Circuit Boards.
40,827	Argus International (Wkrs)	Medley, FL	01/07/2002	Cut Fabrics for Garments.
40,828	Citizens Gas and Coke (IBEW)	Indianapolis, IN	01/21/2002	Foundry and Blast Furnace Coke.
40,829	Scientific Molding (Wkrs)	Brownsville, TX	12/04/2001	Spiral Saws.
40,830	Wire Rope Corp. of America (Wkrs)	Kansas City, MO	01/16/2002	Drawn Bright Wire.
40,831	Burrows Packaging Corp (Wkrs)	Little Falls, NY	12/31/2001	Food Containers.
40,832	King Press Corp (Comp)	Joplin, MO	12/18/2001	Printing Presses.
40,833	Pittsburgh Annealing Box (USWA)	Pittsburgh, PA	12/18/2001	Steel Fittings and Welding.
40,834	Levolor Kirsch Window (Comp)	Westminster, CA	01/28/2002	Window Blinds.
40,835	Leybold Vacuum USA (Wkrs)	Export, PA	12/07/2001	Dry Vacuum Pumps.
40,836	Badger States Tanning (Wkrs)	Milwaukee, WI	01/18/2002	Suede Leather Splits for Shoes.
40,837	Golden Books Publishing (Comp)	Racine, WI	01/10/2002	Customer Support—Publish Children Books.
40,838	Pannier Corp. (IAW)	Pittsburgh, PA	12/11/2001	Metal Tags, Printers, Lasers.
40,839	BMP America (Comp)	Portland, OR	01/07/2002	Components—Office Automation Industry.
40,840	Bradley Scott (UNITE)	Fall River, MA	10/26/2001	Ladies' and Men's Jackets.
40,841	FCI USA (Wkrs)	Emigsville, PA	01/07/2002	Electrical Connectors.

[FR Doc. 02–8270 Filed 4–4–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 15, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 15, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of February, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 02/25/2002]

TA-W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
40,842	Milwaukee Electric Tool (Wkrs)	Blytheville, AR	11/05/2001	Electric Tools.
40,843	Superior Millings (Wkrs)	Hurley, WI	01/16/2002	Rough-Cut Green Lumber.
40,844	General Electric Co (Wkrs)	Pittsfield, MA	08/08/2001	Accounting Services.
40,845	Clearpine Mouldings, Inc. (Co.)	Prineville, OR	01/08/2002	Door Frames.
40,846	Praxair, Inc. (TRLU)	Niagara Falls, NY	01/14/2022	Industrial Gases.
40,847	Brunswich Foreign Trade (Co.)	Brunswick, GA	01/15/2001	Rents Out Warehouse Facilities.
40,848	Wateree Textile Corp (Wkrs)	Lugoff, SC	01/10/2002	Synthetic Fabrics.
40,849	Denso Sales California (Co.)	Long Beach, CA	01/02/2002	Automotive Tubes and Hoses.
40,850	New Bold Corporation (Wkrs)	Rocky Mt, WA	12/13/2001	Credit Card Imprinters.
40,851	Owens Illinois (Wkrs)	Newburyport, MA	11/09/2001	Blow Molding Plastic Containers.
40,852	Amarillo Cooper Refinery (Co.)	Amerillo, TX	01/03/2002	Cooper: Cathodes, Rod, Cake.
40,853	Hayes Lemmerz (Wkrs)	Somerset, KY	11/24/2002	Aluminum Wheels—Automobiles.
40,854	MAC Specialties (Co.)	Oceanside, NY	01/09/2002	Moam Balls.
40,855	Quebecor World Kingsport (USWA)	Kingsport, TN	02/06/2002	Printed Books.
40,856	Powermatic Corp. (USWA)	McMinnville, TN	01/04/2002	Wood Working Machinery.
40,857	Goodrich Corp., Fairbanks (Wkrs)	Beloit, WI	12/13/2001	Large Diesel and Dual Fuel Engines.
40,857A	Fairbanks Morse Engine (Wkrs)	Norfolk, VA	12/13/2001	Large Diesel and Dual Fuel Engines.
40,857A	Fairbanks Morse Engine (Wkrs)	Seattle, WA	12/13/2001	Large Diesel and Dual Fuel Engines.
40,857C	Fairbanks Morse Engine (Wkrs)	Houston, TX	12/13/2001	Large Diesel and Dual Fuel Engines.
40,858	National Oilwell (Wkrs)	McAlester, OK	01/04/2002	Pumps and Pump Parts.
40,859	Jacmel Jewels (Wkrs)	Long Island, NY	11/27/2001	Fine Jewelry.
40,860	Inovec, Inc. (Co.)	Eugene, OR	01/25/2002	Optimizers.
40,861	Master Design Furniture (Wkrs)	Eupora, MS	02/06/2002	Bed Room, Dining Room Furniture.
40,862	Brother Industries USA (Co.)	Bartlett, TN	10/31/2001	Typewriter Parts.
40,863	MacDermid Graphic Arts (UNITE)	Adams, MA	02/06/2002	Printing Sleeve Cylinders.
40,864	ECC Card Clothing (Co.)	Fall River, MA	01/14/2002	Textile Machine Parts.
40,865	Sonoco Products (Co.)	Lincolnton, NC	02/05/2002	Paper Cores.
40,866	Tuscarora (Co.)	Cortland, NY	10/29/2001	Packaging Materials.
40,867	Chase Collections (Co.)	Fall River, MA	01/04/2002	Ladies' Dresses.
40,868	Lopal Securities, Inc. (UNITE)	New York, NY	11/29/2001	Police Uniforms.
40,869	Continental Tire North (Co.)	Barnesville, GA	01/02/2002	Tire Cord.
40,870	Porex Technologies (Wkrs)	College Point, NY	01/02/2002	Porous Plastic Components.
40,871	TRW Aeronautical Systems (Wkrs)	Aurora, OH	12/07/2001	Power Generators.
40,872	Hein Werner (Co.)	Baraboo, WI	01/02/2002	Collision Repair Equipment.

[FR Doc. 02–8271 Filed 4–4–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 15, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 15, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of February, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 02/11/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,772	O-Cedar Brands (Comp)	Portland, IN	01/31/2002	Brushes, Mops and Brooms.
40,773	S–B Power Tool (Comp)	Walnut Ridge, AR	01/24/2002	Power Tools.
40,774	Frederick Goldman (Comp)	New York, NY	12/18/2001	Fine Jewelry.
40,775	Pillowtex (Comp)	Tarboro, NC	01/04/2002	Cotton Yarn.
40,776	PerkinElmer Life Science (Comp)	Beltsville, MD	01/04/2002	Cloned Receptors.
40,777	New Era Textile Parts (Comp)	Gastonia, NC	01/02/2002	Card Screens used in Textile Industry.
40,778	NACCO Materials Handling (Comp).	Greenville, NC	01/29/2002	Forklift Trucks and Parts.
40,779	Bulklift International (UNITE)	Carpentersville, IL	11/21/2001	Packaging Bags.
40,780	OZ–Gedney Mfg. (Wkrs)	Brooklyn, NY	01/09/2002	Electrical Fittings.
40,781	Creative Leather & Vinyl (Wkrs)	Milwaukee, WI	10/18/2001	Cut & Sew Leather Parts.
40,782	Philadelphia Mixers (IAM)	Palmyra, PA	01/30/2002	Mixers—Construction Work.
40,783	Intertape Polymer Group (Wkrs)	Richmond, KY	12/21/2001	Pressure Sensitive Tape.
40,784	Camtech Tool and Mold (Wkrs)	Meadville, PA	12/20/2001	Plastic Injection Molds.
40,785	Boeing Company (UAW)	Long Beach, CA	01/02/2002	Commercial Aircrafts.
40,786	LTV Steel Corp (Comp)	Cleveland, OH	12/26/2001	Railroads Serving Steel Facilities.
40,786A	LTV Steel Corp (Comp)	Cleveland, OH	12/16/2001	Railroads Serving Steel Facilities.
40,786B	LTV Steel Corp (Comp)	Cleveland, OH	12/16/2001	Railroads Serving Steel Facilities.
40,787	GE Capital Modular Space (Comp)	Devon, PA	11/02/2002	Rent Trucks, Lease Portable Schools.
40,788	Carey Industries (Comp)	Danbury, CT	01/29/2002	Textile Dyestuff.
40,789	Ferro Corporation (USAW)	Pittsburgh, PA	01/15/2002	Glass Enamels.
40,790	Springs Industries (Comp)	Fort Mill, SC	01/14/2002	Woven Greige Fabrics.
40,791	Lea Industries (Comp)	Waynesville, NC	12/05/2001	Furniture.
40,792	American Drew (Comp)	No. Wilkesboro, NC	12/05/2001	Furniture.
40,793	ATR Wire and Cable Co. (Comp)	Danville, KY	01/04/2002	Radial Tires.
40,794	Frederick Goldman (Comp)	New York, NY	12/14/2001	Jewelry.
40,795	J and E International (Comp)	El Paso, TX	12/29/2001	Sales & Distribution of Copper Tubing.
40,796	Theo. Tledemann and Son (Comp)	Mallwah, NJ	10/25/2001	Casket Interiors.
40,797	Hazen Group (The) (UNITE)	Secaucus, NJ	01/04/2002	Ladies' Sportswear.
40,798	Owen Federal Bank (Wkrs)	West Palm Beach, FL	01/07/2002	Mortgage Loan Servicing.
40,799	Pinnacle/Tandycraft (Wkrs)	Pocahontas, AR	01/11/2002	Metal Photo Frames.
40,800	Ohio Magnetics (Wkrs)	Maple Heights, OH	01/21/2002	Lifting and Separating Magnets.
40,801	LTV Steel Corp (Wkrs)	Cleveland, OH	01/18/2002	Railroad Serving Steel Facilities.
40,802	Geotemps, Inc (Wkrs)	Hurley, NM	01/09/2002	Mining Personnel Services.
40,803	Lodestar Industrial (Comp)	Colville, WA	11/29/2001	Environmental Systems.
40,804	Cabinet Works LLC (Wkrs)	Jeffeson City, TN	12/05/2001	Television Cabinets.
40,804A	Distinctive Woodworks LLC (Wkrs)	Jefferson City, TN	12/05/2001	Television Cabinets.
40,805	Valeo Climate Control (Comp)	Decatur, IL	12/03/2001	Evaporator assemblies for Auto.
40,806	PA-Ted Spring Co. (Comp)	El Paso, TX	10/10/2001	Compression, Extension & Torsion Springs.
40,807	Down East Woodcrafters (Comp)	Skowhegan, ME	01/09/2002	Wooden Lathe.
40,808	Crown, Cork and Seal (Wkrs)	S. Connellsville, PA	01/04/2002	Metal Paper Lined Closures.
40,809	Cascade General (Comp)	Portland, OR	05/31/2001	Ship Repair Services.
40,810	Solon Manufacturing (Comp)	Skowegan, ME	01/15/2002	Wooden Paint Paddles.
40,810A	Solon Manufacturing Co (Comp)	Solon, ME	01/15/2002	Wooden Paint Paddles.

[Petitions Instituted on 02/11/2002]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,810B	Solon Manufacturing Co (Comp)	Plymouth, NH	01/15/2002	Wooden Paint Paddles.
40,811	Materials Processing (Comp)	Riverview, MI	01/08/2002	Coated Axles—Automotive.
40,812	GeoComm Corp (Comp)	El Paso, TX	01/16/2002	Provide Telecommunication Services.
40,813	Blough Wagner Mfg Co. (Comp)	Middleburg, PA	01/15/2002	Ladies' Knit Activewear.
40,813A	Blough-Wagner Mfg Co. (Comp)	Elysburg, PA	01/15/2002	Ladies Activewear.
40,814	Master Lock (Wkrs)	Milwaukee, WI	01/25/2002	Laminated and Combination Locks.
40,815	Bernhardt Furniture (Comp)	Lenoia, NC	01/17/2002	Home and Office Wood Furniture.
40,816	Connolly North America (Comp)	Highland Park, MI	11/01/2001	Finished Leather.
40,817	Northshore Mining Co. (Comp)	Silver Bay, MN	12/19/2001	Iron Ore Pellets.
40,817A	Northshore Mining Co. (Comp)	Babbitt, MN	12/19/2001	Iron Ore Pellets.
40,818	Agfa Corporation (Comp)	Brevard, NC	01/25/2002	Medical X-Ray Film and Polyester Base.
40,819	Schumacher Electric (Comp)	Hoopeston, IL	01/28/2002	Transformers and Lead Assemblies.
40,820	John Solomon, Inc (Comp)	Somerville, MA	01/10/2002	Waistbands, Pockets—Textiles.

[FR Doc. 02–8268 Filed 4–4–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,579]

VDO North America LLC; Winchester, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 14, 2002, in response to a petition filed by a company official on behalf of workers at VDO North America LLC, Winchester, Virginia.

The petitioner has requested that the petition be withdrawn with the intention to refile the petition when increased company imports of product transferred offshore become evident. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 25th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–8272 Filed 4–4–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of data on practices related to the substate allocation of funds allotted to states under the Workforce Investment Act (WIA).

A copy of the proposed survey can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 4, 2002.

ADDRESSES: Alberta F. Baker, U.S. Department of Labor, Employment and Training Administration/Office of Policy and Research, 200 Constitution Avenue, NW., Room N–5629, Washington, DC 20210, (202) 693–3642 (this is not a toll-free number), *ABAKER@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The data obtained from this survey will provide information on the allocation strategies used by states, the extent to which they relay exclusively on factors identified explicitly by WIA, and the extent to which they have plans to alter their allocation strategies in future years. Collection of this information is necessary for ETA to fulfill the requirements of WIA 171(c)(2)(B) for a study concerning improvements in the WIA allocation formula. There are two principal goals of the data collection: (1) To provide a national snapshot of the different allocation strategies states have adopted or are considering adopting, and (2) to identify alternative mechanisms by which states might consider allocating funds, which can then be incorporated into quantitative models estimating how allocations differ as a result of these alternative strategies.

Under the WIA, funds for both the adult and youth programs are to be allocated primarily using formulas specified in the Act itself. These formulas are very similar to those used in the Job Training Partnership Act (JTPA), which WIA replaces. Under WIA, however, states can allocate up to thirty percent of their adult and youth funding using alternative criteria than those specified in the Act. Thus, although many states continue to allocate criteria, obtaining results that differ, perhaps markedly, from those they would have received under JTPA. Examining these alternative strategies may provide lessons about the impact of allocation on the organizational and financial stability of local workforce investment boards, and, states' ability to provide financial resources that target the individuals that Congress intended the Act to serve. States experience with alternative formulas may also provide

insights which may be used to improve the formulas for allotments to states.

II. Review Focus

The Department of Labor is particularly interested in comments which: (a) Enhance the utility, quality and clarity of the information to be collected; (b) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (c) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information.

III. Current Actions

DOL is seeking Office of Management and Budget (OMB) Approval to collect data on the allocation strategies used by states, the extent to which they relay exclusively on factors identified explicitly by WIA, and the extent to which they have plans to alter their allocation strategies in future years. There are two principal goals of the data collection: (1) To provide a national snapshot of the different allocation strategies states have adopted or are considering adopting, and (2) to identify alternative mechanisms by which states might consider allocating funds, which can then be incorporated into quantitative models estimating how allocations differ as a result of these alternative strategies.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Study of the WIA Allocation Formula.

OMB No: 1205–0NEW.

Affected Public: State, Local, or Tribal Government.

Total Respondents: 52.

Frequency: Once.

Total Responses: 52.

Average Time per Response: 60 minutes.

Estimated Total Burden Hours: 52.

Total Burden Cost (assuming $30/hour staff time): $1,560.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: April 1, 2002.

Gerard F. Fiala,

Administrator.

[FR Doc. 02–8265 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05624]

AVX Corporation; Vancouver, WA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 25, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 3, 2002, and was published in the **Federal Register** on January 11, 2002 (67 FR 1511).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of electric capacitors at AVX Corporation, Vancouver, Washington was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. The company did not shift production of electric capacitors to Canada or Mexico and did not import electric capacitors from Canada or Mexico. The predominant cause of worker separations at the subject plant was a domestic shift of production to an affiliated facility.

The petitioner alleges that the company did not shift plant production of electric capacitors to Mexico, but that production remained in the United States. The petitioner further indicates that subject plant activities of testing, visual inspecting, packaging, quality assurance and shipping functions were shifted to Mexico.

The shift in activities related to testing, visual inspecting, packaging, quality assurance and shipping functions from the subject plant to Mexico is irrelevant, since those worker groups are engaged in support activities (non-production) rather than actual production of electric capacitors. Those workers are separately identifiable from the workers engaged in the production of electric capacitors.

The workers engaged in activities related to testing, visual inspecting, packaging, quality assurance and shipping at the subject firm do not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

Conclusion

After review of the application for reconsideration and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 25th day of March 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–8269 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because

of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than April 15, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than April 15, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29 day of March 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
J. Allen Steel (USWA)	Pittsburgh, PA	02/22/2002	NAFTA–5,870	steel beams.
OSRAM Sylvania (Wkrs)	Winchester, KY	02/15/2002	NAFTA–5,871	Halogen quartz capsules.
Trinity Rail Group (Wkrs)	Clinton, IL	02/22/2002	NAFTA–5,872	railcards.
Precision Kidd Steel (Co.)	Aliquippa, PA	02/22/2002	NAFTA–5,873	cold finished steel bar and wire.
Bestform (Wkrs)	Windber, PA	02/19/2002	NAFTA–5,874	intimate apparel.
C.G. Bretting (IAMAW)	Ashlord, WI	02/19/2002	NAFTA–5,875	machinery.
Lamb Technicon (UAW)	Warren, MI	02/19/2002	NAFTA–5,876	custom machine tools.
NIBCO, Inc. (Co.)	S. Glen Falls, NY	12/19/2001	NAFTA–5,877	brass plumbing fittings.
Fab Mac, LLC (Co.)	Drain, OR	02/18/2002	NAFTA–5,878	golf components.
Conagra Grocery Products (UFCW)	Milton, PA	02/20/2002	NAFTA–5,879	can foods.
Victaulic Co. of America (USWA)	Easton, PA	02/20/2002	NAFTA–5,880	coupling and pipe fittings.
Marathon Electric (IBEW)	Wausau, WI	02/19/2002	NAFTA–5,881	electric motors generators.
Marathon Elc—Regal Behiot (Wkrs)	West Plains, MO	02/15/2002	NAFTA–5,882	electric motors.
Midwest International (Wkrs)	Stanberry, MO	02/20/2002	NAFTA–5,883	flex plate assembly.
Boeing Corporation (UAW)	Long Beach, CA	02/05/2002	NAFTA–5,884	military transport air craft components.
Price Pfister (Wkrs)	Pacomia, CA	02/06/2002	NAFTA–5,885	faucets and hardware.
Trinity Industries (Wkrs)	Springfield, MO	02/15/2002	NAFTA–5,886	railroad cars.
Vertiflex Product (Co.)	Irwindale, CA	02/15/2002	NAFTA–5,887	computer furniture.
Pillowtex (Co.)	Tarboro, NC	02/15/2002	NAFTA–5,888	yarn.
Trailmobile, LLC (PACE)	Charlestown, IL	02/20/2002	NAFTA–5,889	semi trailers.
Kraft Foods (Co.)	Holland, MI	02/13/2002	NAFTA–5,890	lifesavers hard candy and mints.
Fort Dearborn (Wkrs)	Coldwater, MI	02/14/2002	NAFTA–5,891	paper labels.
Garvin Industrial (Wkrs)	Grand Haven, MI	02/22/2002	NAFTA–5,892	metal stampings.
Metso Minerals (PACE)	Clintonville, WI	02/21/2002	NAFTA–5,893	bulk materials conveyers.
Puget Sound Energy (Wkrs)	Bellevue, WA	02/22/2002	NAFTA–5,894	energy system infrastructures.
Jabil Circuit (Wkrs)	Meridian, ID	02/01/2002	NAFTA–5,895	circuit boards.
Brach's Confections (Co.)	Chicago, IL	02/25/2002	NAFTA–5,896	candy.
ITW Jemco (Wkrs)	Minooka, IL	02/13/2002	NAFTA–5, 897	lamps and switches.
R.C.M. Mfg. (UNITE)	Fall River, MA	02/22/2002	NAFTA–5, 898	women's and children's coats.
Renfro Corporation (Wkrs)	Star, NC	02/25/2002	NAFTA–5, 899	children's socks.
Johnston and Murphy (Co.)	Nashville, TN	02/25/2002	NAFTA–5, 900	welted men's shoes.
Dawson Furniture (Co.)	SWebb City, MO	02/25/2002	NAFTA–5, 901	solid wood household furniture.
ASSA Ablow Door Group LLC (Wkrs)	Harlingen, TX	01/17/2002	NAFTA–5, 902	industrial metal doors and frames.
Bacou Dalloz (Co.)	Reading, PA	02/22/2002	NAFTA–5, 903	protective respiratory equipment.
Bacou Dalloz (Co.)	Snow Hill, NC	02/20/2002	NAFTA–5, 904	non-respiratory protective equipment.
Laclede Steel (USWA)	Fairless Mills, PA	02/20/2002	NAFTA–5, 905	pipe products.
Laclede Steel (USWA)	Alton, IL	02/14/2002	NAFTA–5, 906	pipe products.
Lee Fashion Fabrics (Co.)	Gloversville, NY	07/24/2001	NAFTA–5, 907	Apparel Fabric.
Lee Dyeing Co. of North America (Co.)	Gloversville, NY	07/24/2001	NAFTA–5, 907	Apparel Fabrics.
TRW, Inc. (Co.)	Cookville, TN	02/25/2002	NAFTA–5, 908	head curtain bags.
Volk Packaging (Co.)	Biddeford, ME	02/28/2002	NAFTA–5, 909	corrugated box.
Liebert (Co.)	Delaware, OH	03/01/2002	NAFTA–5, 910	exchange cabinet.
Modine Manufacturing (Co.)	LaPorte, IN	02/28/2002	NAFTA–5, 911	radiators.
Timesavers (IBT)	Minnesota, MN	07/28/2002	NAFTA–5, 912	large speedbelt sanders.
JDS Uniphase (Wkrs)	Bloomfield, CT	02/21/2002	NAFTA–5, 913	switch products.
Cedar Hill (Co.)	Ansonville, NC	02/28/2002	NAFTA–5, 914	t-shirts, sweatshirts, knit tops.
Greenbrier Company (The)—Gunderson (Wkrs) .	Portland, OR	02/26/2002	NAFTA–5, 915	welding and painters.
Seigel Robert of Arkansas (Wkrs)	Wilson, AR	02/28/2002	NAFTA–5, 916	plastic automotive parts.
Kraft Foods (Co.)	Minneapolis, MN	02/26/2002	NAFTA–5, 917	gelatins.
Britax Heath Tecna (Wkrs)	Bellingham, WA	02/19/2002	NAFTA–5, 918	aircraft interiors.
Sonoco Products (Co.)	Lincolnton, NC	02/26/2002	NAFTA–5, 919	fabric and carpet yarn.
Spectra Products (Co.)	Grand Haven, MI	02/26/2002	NAFTA–5, 920	fabricated wood and metal parts.
Devant, LTD (Co.)	Monroe, NC	02/25/2002	NAFTA–5, 921	terrycloth towels.
Gates Rubber Company (USWA)	Galesburg, IL	02/27/2002	NAFTA–5,922	hydraulic and industrial hose.
David White (Wkrs)	Berlin, WI	02/21/2002	NAFTA–5,923	tripod rod.
Takata Restraint Systems (Co.)	Cheraw, SC	02/27/2002	NAFTA–5,924	air bag restraint systems.
Master Lock (UAW)	Milwaukee, WI	01/05/2002	NAFTA–5,925	laminated locks and combination locks.
Jordan Lumber and Supply (Co.)	Mt. Gilead, NC	02/25/2002	NAFTA–5,926	lumber.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Doerun Sportswear (Co.)	Doerun, GA	02/26/2002	NAFTA–5,927	apparel.
Perkinelmer Life Sciences (Co.)	Beltsville, MD	01/22/2002	NAFTA–5,928	cloned receptors.
Oxford Automotive (Co.)	Oscoda, MI	01/02/2002	NAFTA–5,929	automotive metal stampings.
Siemens VDO Automotive Co.	Winchester, VA	03/05/2002	NAFTA–5,930	fuel systems.
Hewmet Castings (Wkrs)	Wichita Falls, TX	03/08/2002	NAFTA–5,931	turbo components.
ADC Telecommunications (Wkrs)	LeSueur, MN	03/07/2002	NAFTA–5,932	telecommunication.
Condial Corporation (Wkrs)	Charlottesville, VA	03/07/2002	NAFTA–5,933	telephones and phone systems.
Sheldahl (Wkrs)	Horthfield, MN	02/27/2002	NAFTA–5,934	flexible circuitry.
Metso Minerals Industries (GMP)	Birmingham, AL	03/06/2002	NAFTA–5,935	pump parts & casting for Crushing equip.
Metso Minerals Industrials (IAM)	Appleton, WI	03/06/2002	NAFTA–5,936	stone crushing & screening equipment.
Denso Sales California (Co.)	Long Beach, CA	03/05/2002	NAFTA–5,937	automotive tuba, hoses & air conditioning.
York International (Co.)	Blyria, OH	03/06/2002	NAFTA–5,938	heating and air conditioning products.
Tractech, Inc. (Wkrs)	Warren, MI	03/04/2002	NAFTA–5,939	differentials.
Vision Metals (USWA)	Lynn, MI	03/06/2002	NAFTA–5,940	steel tubing.
Basf (Wkrs)	Wyandotte, MI	03/06/2002	NAFTA–5,941	vitamins.
BBI Enterprises (UAW)	Alpena, MI	03/06/2002	NAFTA–5,942	thermal molded insulator products.
Steltze Aspen Mills (Wkrs)	Colombia, MT	03/06/2002	NAFTA–5,943	landscape timbers.
Invensys Climate Controls (Co.)	Brownsville, TX	03/05/2002	NAFTA–5,944	plastic moldings parts.
Dunham Bush (Co.)	Harrison, VA	01/30/2002	NAFTA–5,945	heating units.
Modern Tool and Die (Wkrs)	Indianola, MS	02/28/2002	NAFTA–5,946	press and tubing fabrication.
Limited Edition Shirt (Co.)	Ranshaw, PA	03/08/2002	NAFTA–5,947	uniforms and security shirts.
Textile Parts and Machine (Wkrs)	Gastonia, NC	03/04/2002	NAFTA–5,948	machine parts.
Schaeff (Wkrs)	Sioux City, IA	03/04/2002	NAFTA–5,949	electric stand up forklifts.
Beacon Blankets (Wkrs)	Swannanoa, NC	03/05/2002	NAFTA–5,950	acrylic, cotton woven blankets.
Solid Wood (Co.)	Olympia, WA	03/05/2002	NAFTA–5,951	Softwood and hardwood green veneer.
Abitibi Consolidated (PACE)	Lufkin, TX	03/11/2002	NAFTA–5,952	paper products.
Honeywell (Wkrs)	Elyria, OH	03/13/2002	NAFTA–5,953	truck brake system.
F.L. & J.C. Codman Co. ( )	Rockland, MA	03/13/2002	NAFTA–5,954	special machinery used for automotive.
Swanson-Erie Corporation ( )	Erie, PA	03/14/2002	NAFTA–5,955	automatic assembly equipment.
Process Mfg., Inc. (wkr)	Richmond, KY	03/14/2002	NAFTA–5,956	automotive metal stamping dies.
Alliant Techsystems Inc. ( )	Radford, VA	03/13/2002	NAFTA–5,957	M–14 propellant.
Wellman Thermal Systems, Inc. (Compa) .	Shelbyville, IN	03/14/2002	NAFTA–5,958	heating elements.
Gem-Dandy Inc (worke)	Madison, NC	03/15/2002	NAFTA–5,959	belts, wallets and suspenders.
LUWA Bahnson (wkrs)	Charlotte, NC	03/15/2002	NAFTA–5,960	air filtration equipment.
A.O. Smith Corp. (wkrs)	McMinnville, TN	03/15/2002	NAFTA–5,961	fractional horsepower design engineering.
Parksley Apparel (wkr)	Parksley, VA	03/14/2002	NAFTA–5,962	women's blouses.
Valeo Climate Control (N/A)	Grand Prairie, TX	03/18/2002	NAFTA–5,963	automatic air conditioning condensers.
Levolor Kirsch Window Fashions (NA)	Shamokin, PA	03/14/2002	NAFTA–5,964	metal mini-blinds and rollershades.
Intertape Polymer (Compa)	Marysville, MI	03/15/2002	NAFTA–5,965	automotive masking and stamping tape.
Bristol Tank & Welding Co, Inc. (Compa) .	Langhorne, PA	03/14/2002	NAFTA–5,966	fuel oil tanks.
Simmons Foods, Inc. (NA)	McAlester, OK	03/14/2002	NAFTA–5,967	chicken.
Hutchinson Sealing Systems, Inc. (Compa) .	Newfields, NH	03/06/2002	NAFTA–5,968	automobile sealing systems.
General Electric (Compa)	Somersworth, NH	03/14/2002	NAFTA–5,969	transformers.
Penn-Union Corp ( )	Edinboro, PA	03/18/2002	NAFTA–5,970	electrical connector components.
Spring Food Industries (NA)	Spindale, NC	03/18/2002	NAFTA–5,971	T shirts.
Diesel Recon (NA)	Charleston, SC	3/18/2002	NAFTA–5,972	gas and diesel remanufactured engines.
Xerox Corporation (Compa)	El Sequndo, CA	3/18/2002	NAFTA–5,973	printed wiring board.
Quality Component, Inc. (N/A)	Klamath Falls, OR	3/18/2002	NAFTA–5,974	metal fabricated connectors.
S.D. Warren Company/Sappi Fine Paper ( ) .	Skowhegan, ME	3/18/2002	NAFTA–5,975	Coated Paper.
Tuscarora Yarns, Inc (Comp)	Kinston, NC	3/18/2002	NAFTA–5,976	Yarn.
Progress Lighting (IBEW)	Philadelphia, PA	3/12/2002	NAFTA–5,977	Lighting Fixtures.
Fourply, Inc (Comp)	Grants Pass, OR	3/11/2002	NAFTA–5,978	Plywood.
Erie Forge and Steel (USWA)	Erie, PA	3/08/2002	NAFTA–5,979	Raw Steel, Billets, Ingots.
Jantzen, Inc (Comp)	Portland, OR	3/11/2002	NAFTA–5,980	Ladies' Swimwear.
Truman Logging, Inc (Comp)	Rexford, MT	3/18/2002	NAFTA–5,982	Logs.
Blough-Wagner Manufacturing (Comp)	Middleburg, PA	3/13/2002	NAFTA–5,982	Ladies' Knitwear.
Freightliner (Worke)	Cleveland, NC	3/18/2002	NAFTA–5,983	Trucks.
Mansfield Plumbing Products	Kilgore, TX	3/12/2002	NAFTA–5,984	Plumbing Fixtures.
Gulfstream Aerospace Technologies (UAW) .	Oklahoma City, OK	3/18/2002	NAFTA–5,985	Aircraft.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Nice Ball Bearings, Inc (USWA)	Kulpsville, PA	3/13/2002	NAFTA–5,986	Ball Bearings.
Alco Lebanon Works (wkr)	Lebanon, PA	3/13/2002	NAFTA–5,987	light gage steel and foil.
Douglas Furniture of California, LLC (Compa) .	Rendono, CA	3/08/2002	NAFTA–5,988	furniture.
Specialty UltraVision, Inc. (N/A)	Campbell, CA	3/04/2002	NAFTA–5,989	contact lenses.
Optek Technology, Inc. (Compa)	Carrollton, TX	3/25/2002	NAFTA–5,990	electronic components.
TNS Mills, Inc. (N/A)	Rockingham, NC	3/18/2002	NAFTA–5,991	textile yarn.
Spring Ford Industries (Wkrs)	Gatonia, NC	3/21/2002	NAFTA–5,992	beaching fabric.
Spring Food Industries (Wkrs)	Rutherfordton, NC	3/20/2002	NAFTA–5,993	knit t-shirts.
Lucent Technologies	Eugene, OR	3/21/2002	NAFTA–5,994	electronic switches.
Emerson Tool (IBU)	Manominee, MI	03/22/2002	NAFT–5,995	vacuum cleaners.
Riverside Paper-Kerwin Paper Mill (PACE) .	Kensington Appleton, WI .	03/20/2002	NAFTA–5,996	groundwood construction paper.

[FR Doc. 02–8266 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5615]

Kurt Manufacturing Company, Minneapolis, MN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NATA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 5, 2001, in response to a petition filed on behalf of workers at Kurt Manufacturing Company, Minneapolis, Minnesota.

The workers' petition is invalid. Each of the petitioners is employed in a different division of Kurt Manufacturing. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–8275 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–005641]

VDO North America LLC, Winchester, VA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on December 18, 2001, in response to a petition filed by a company official, on behalf of workers at VDO North America LLC, Winchester, Virginia. Workers produce fuel systems, instrument clusters and other products.

The petitioner has requested that the petition be withdrawn with the intention to resubmit the petition no more than 40 days prior to the beginning of the shift in production of two product lines from the subject plant to Mexico. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 25th day of March, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–8274 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 1, 2002)
MA020002 (Mar. 1, 2002)
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MA020005 (Mar. 1, 2002)
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KS020020 (Mar. 1, 2002)
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NV020001 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and Many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Services (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of March 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–8060 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0223(2002)]

Standard on Slings; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comment concerning its proposal to extend OMB approval of the information-collection requirements of its general industry standard regulating the use of slings (29 CFR 1910.184). OSHA is also proposing to increase the burden-hour estimate for these information-collection requirements.[1] The paperwork provisions of this standard require employers to attach tags or markings giving information about the capability of the slings, to conduct inspections, keep records, and retain proof-testing certificates for slings that have been repaired. Each of these provisons prevents employees from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling.

DATES: Submit written comments on or before June 4, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0223(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in its Standard on Slings is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to increase its estimate of the burden hours imposed by the existing paperwork requirements.

requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Standard on Slings (*i.e.,* ''the Standard'') specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of each of these requirements is to prevent employees from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling.

Paragraph (e) of the Standard covers alloy steel chain slings.

Paragraph (e)(1) requires that alloy steel chain slings have permanently affixed durable identification stating size, grade, rated capacity, and reach. The information, supplied by the manufacturer, is typically marked on a metal tag and affixed to the sling.

Paragraph (e)(3)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (e)(3)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and make this record available for examination.

Paragraph (e)(4) requires the employer to retain certificates of proof testing. Employers must ensure that before use, each new, repaired, or reconditioned alloy steel chain sling, including all welded components in the sling assembly, has bee proof tested by the sling manufacturer, or an equivalent entity. The certificates of proof testing must be retained and made available for examination.

Paragraph (f) of the Standard covers wire rope slings.

Paragraph (f)(4)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraph (g) of the Standard covers metal mesh slings.

Paragraph (g)(1) requires each metal mesh sling to have a durable marking permanently affixed that states the rated capacity for vertical basket hitch and choker hitch loadings.

Paragraph (g)(8)(ii) requires that once repaired, each metal mesh sling be permanently marked or tagged, or a written record maintained to indicate the date and nature of the repairs and the person or organization that performed the repairs. Records of the repairs shall be made available for examination.

Paragraph (i) of the Standard covers synthetic web slings.

Paragraph (i)(1) requires that synthetic web slings be marked or coded to show the rated capacities for each type of hitch and type of synthetic web material.

Paragraph (i)(8)(i) prohibits the use of repaired synthetic web slings until they have been proof tested by the manufacturer or equivalent entity. Paragraph (i)(8)(ii) requires the employer to retain a certificate of the proof test and make it available for examination.

The information on the identification tags, markings or codings assists the employer in determining whether the sling can be used for the lifting task. The sling inspections enable early detection of faulty slings. The inspection and repair records provide employers with information about when the last inspection was made and about the nature of the repairs made. This information provides some assurance about the condition of the slings. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard. Proof-testing certificates give employers, employees, and OSHA compliance officers assurance that slings are safe to use. The certificates also provide the compliance officers with an efficient means to assess employer compliance with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to increase the existing burden-hour estimate and to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by its Standard on Slings (29 CFR 1910.184). The Agency is proposing to increase the total burden-hour estimate from 21,435 to 21,517 hours, an increase of 82 hours. This increase in burden hours is the result of identifying burden associated with replacing identification tags, markers, or codings if the one supplied by the manufacturer needs to be replaced. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Standard on Slings (29 CFR 1910.184).

OMB Number: 1218–0223.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 650,000 (assuming one sling per employer).

Frequency of Recordkeeping: On occasion; annually.

Average Time per Response: Varies from three minutes (.05 hour) to retain and disclose a proof-testing certificate, to 30 minutes (.50 hour) to replace a tag, mark, or code on a sling.

Total Annual Hours Requested: 21,517.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on April 1, 2002.

John L. Henshaw,

Assitant Secretary of Labor.

[FR Doc. 02–8261 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–226(2002)]

Manlifts Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Manlifts Standard (29 CFR 1910.68). The paperwork provisions of the Manlifts Standard specify requirements for developing, maintaining, and disclosing inspection records. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that manlifts are inspected on a regular basis to ensure they are in safe operating condition.

DATES: Submit written comments on or before May 6, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0226(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collection specified by the Manlifts Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha,gov,* and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cots) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Manlifts Standard (*i.e.,* ''the Standard'') specifies one paperwork requirement. Paragraph (e) of 1910.68 requires employers to have a competent designated person inspect each manlift at least once every 30 days. The manlift inspection is to cover at least the following items: Steps; step fastenings; rails; rail supports and fastenings; rollers and slides; belt and belt tension; handholds and fastenings; floor landings; guardrails; lubrication; limit switches; warning signs and lights; illumination; drive pulley; bottom (boot) pulley and clearance; pulley supports; motor; driving mechanism; brake; electrical switches; vibration and misalignment; and any ''skip'' on the up or down run when mounting a step (indicating worn gears). After an inspection, the employer must prepare a certification record that contains the date of the inspection, the signature of the person who performed the inspection, and the serial number or other identifier of the inspected manlift. Employers are to maintain the certification records and make them available to OSHA compliance officers. This paperwork requirement provides assurance to employers, employees, and compliance officers that manlifts have been inspected on a regular basis and that they are in safe operating condition, thereby preventing manlift failure. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's function, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements by the Manlifts Standard (29 CFR 1910.68). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Manlifts Standard (29 CFR 1910.68).

OMB Number: 1218–0226.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal government.

Number of Respondents: 3,000.

Frequency of Recordkeeping: Monthly.

Average Time per Reponse: 1.15 hours.

Total Annual Hours Requested: 41.400.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this Notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on April 2, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–8262 Filed 4–4–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by June 4, 2002 to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: Quantitative Evaluation for the National Science Foundation's Centers for Learning and Teaching.

OMB Control No.: 3145–(new).

Expiration Date of Approval: Not applicable.

1. Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the National Science Foundation's (NSF) Centers for Learning and Teaching (CLT). The CLT program calls for a systematic approach to the development and enhancement of the instructional workforce (kindergarten through graduate school) where professionals are educated in an environment of research and practice. For science, technology, engineering and mathematics (STEM) educators, a Center will provide opportunities to enhance content knowledge, develop teaching strategies that lead to improved student learning, facilitate the implementation of high quality instructional materials and information technology, and develop skills in using various strategies for assessing student learning. For graduate students, post-doctoral students, and interns, a Center will provide study and research opportunities with the goal of improving learning, teaching, and assessment across the educational continuum.

CLT centers are funded as Elementary, Secondary, and Informal Education (ESIE) Centers, or Higher Education Centers. The goals of the ESIE Centers include (1) Increasing the numbers of K–12 STEM educators in both formal and informal settings who have current content knowledge, implement standards-based instruction, and use information technology as an aid to learning; (2) rebuilding and diversifying the human resource base that forms the national infrastructure for STEM, including basic and advanced education for graduate and post-doctoral students who will specialize in STEM education; and (3) providing substantive opportunities for research into the nature of learning, teaching, and educational reform. The goals of the Higher Education Centers address (1) increasing the numbers of STEM faculty who implement effective teaching practice and assessment; (2) providing professional development for graduate and post-doctoral student in STEM disciplines to develop their skills as educators and to develop graduate programs in STEM education in disciplinary departments; and (3) providing substantive opportunities for research into the nature of learning, teaching, and educational reform in higher education.

This study addresses the following research questions: In what ways and to what extent are CLTs reflecting the models proposed? To what extent are the CLT centers meeting the goals of the CLT program? What is the value-added of creating CLTs for the achievement of the desired educational outcomes? To what extent does the portfolio of CLT activities appropriately meet national STEM education needs?

The data to address these questions will be gathered via surveys of the following groups: CLT faculty; CLT graduate students; CLT postdoctoral participants: CLT project directors; representatives of IHE partners; and participating K–12 teachers. All the surveys will be sample surveys with the exception of the project director survey, which will be the population. The evaluation surveys will build on the annual data collected from projects for the purpose of GPRA.

In addition to the surveys, a number of small site-specific studies will be conducted to examine the outcomes of various Center activities (*e.g.,* new teacher preparation programs, new courses and curricula, professional development for faculty and K–12 teachers). Meta analysis techniques will be employed to calculate effect sizes across similar studies.

2. Expected Respondents

The expected respondents are: CLT faculty; CLT graduate students; CLT postdoctoral participants; CLT project directors; representatives of IHE partners; and participating K–12 teachers.

3. Burden on the Public

The total estimate for this collection is 500 burden hours for a maximum of 1200 participants assuming an 80–100% response rate. The average annual reporting burden is 30 minutes per respondent. The burden on the public is negligible; the study is limited to project participants that have received funding from the NSF CLT program.

Dated: April 1, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–8248 Filed 4–4–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice; the first notice was published at 67 FR 4762 and no comments were received. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Approval Number: 3145–0062.

Expiration Date of Approval: September 30, 2002.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project

Graduate students in science, engineering, and health fields in U.S. colleges and universities, by source and mechanism of support and by demographic characteristics. An electronic/mail survey, the Survey of Graduate Students and Postdoctorates in Science and Engineering originated in 1966 and has been conducted annually since 1972. The survey is the academic graduate enrollment component of the NSF statistical program that seeks to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government'' as mandated in the National Science Foundation Act of 1950.

The proposed project will continue the current survey cycle for three to five years. The annual Fall surveys for 2002 through 2006 will survey the universe of approximately 725 reporting units at approximately 600 institutions offering accredited graduate programs in science, engineering, or health. The survey has provided continuity of statistics on graduate school enrollment and support for graduate students in all science & engineering (S&E) and health fields, with separate data requested on demographic characteristics (race/ethnicity and gender by full-time and part-time enrollment status). Statistics from the survey are published in NSF's annual publication series Graduate Students and Postdoctorates in Science and Engineering, in NSF publications Science and Engineering Indicators, Women, Minorities, and Persons with Disabilities in Science and Engineering, and are available electronically on the World Wide Web.

The survey will be sent primarily to the administrators at the Institutional Research Offices. To minimize burden, NSF instituted a Web-based survey in 1998 through which institutions can enter data directly or upload preformatted files. The Web-based survey includes a complete program for editing and trend checking and allows institutions to receive their previous year's data for comparison. Respondents will be encouraged to participate in this Web-based survey should they so wish. Traditional paper questionnaires will also be available, with editing and trend checking performed as part of the survey processing. Overall burden is expected to be reduced from 2002 to 2004 due to expanded use by institutions of the Web-based data collection system.

In Fall 2000, the survey achieved a total response rate of 99.4 percent for institutions and 99.0 percent for departments.

Estimate of Burden

Burden estimates are as follows:

	Total No. of institutions	Departments	Burden hours
Fiscal year:			
1998	722	11,718	1.83
1999	720	11,833	2.53
2000	717	11,899	2.42

Respondents: Individuals.

Estimated Number of Responses: 11,899 (from the 2000 collection).

Estimated Total Annual Burden on Respondents: 28,796 hours (from the 2000 collection).

Frequency of Responses: Annually.

Dated: April 1, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–8247 Filed 4–4–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: April 24–26, 2002.

Time: 10:00 a.m.–5:30 p.m. Wednesday, April 24, 2002. 8:30 a.m.–5:30 p.m. Thursday, April 25, 2002, 8:30 a.m.–3:00 p.m. Friday, April 26, 2002.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235 Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda

Day 1: Education and Diversity Subcommittee Meeting, Division Subcommittee Meetings.

Day 2: Directorate activities and plans, Education, Human Resources, and Diversity.

Day 3: Information Exchange, GPRA.

Dated: April 2, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–8256 Filed 4–4–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed rule, Compatibility with IAEA Transportation Safety Standards (TS–R–1) and Other Transportation Safety Amendments (10 CFR part 71).

3. *The form number, if applicable:* Not applicable.

4. *How often the collection is required:* Biennial and on occasion.

5. *Who will be required or asked to report:* NRC licensees, Certificate of Compliance (CoC) holders, and applicants for a CoC.

6. *An estimate of the number of responses:* 83 (A total of 37 responses [8 for CoC holders and applicants and 29 annualized one-time responses from licensees] plus 46 recordkeepers).

7. *The estimated number of annual respondents:* 75 (46 CoC holders and applicants and an annualized 29 one-time licensee respondents).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,505 hours (676 hours for reporting and 829 hours for recordkeeping).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The proposed rule amends NRC regulations on packaging and transporting radioactive material to be compatible with the International Atomic Energy Agency (IAEA) standards and to codify other applicable requirements. The proposed rule would add CoC holders and applicants to the list of regulated entities subject to mandatory requirements such as quality assurance program and reporting. A new subpart I, Type B(DP) Package Approval, is being created to achieve a parallel regulatory structure with part 72 regulations and to provide an alternative approach for approving Type B(DP) dual purpose packages used for storage and transport of spent fuels. If used, subpart I will reduce burden, improve effectiveness and efficiency, and ensure consistency between parts 71 and 72 requirements.

Submit, by May 6, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal my be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1F23, Rockville, MD 20852. The proposed rule indicated in ''Compatibility with IAEA Transportation Safety Standards (TS–R–1) and Other Transportation Safety Amendments' is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC worldwide web site: http://www.nrc.gov/public-involve/doc-comment/omb/index.html for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov.*

Comments and questions should be directed to the OMB reviewer by May 6, 2002:

Bryon Allen, Office of Information and Regulatory Affairs (3150–0008), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 28th day of March, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Office.

[FR Doc. 02–8245 Filed 4–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–0122, Approval No. 0122 EA–01–164]

In the Matter of J.L. Shepard & Associates, San Fernando, CA; Confirmatory Order Relaxing Order (Effective Immediately)

I

J.L. Shepherd & Associates (JLS&A) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 71, subpart H. QA activities authorized by Approval No. 0122 include: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR part 71. Approval No. 0122 was originally issued January 17, 1980. In addition to having a QA program approved by the NRC to satisfy the provisions of 10 CFR part 71, subpart H, to transport or deliver for transport licensed material in a package, JLS&A is required by 10 CFR part 71, Subpart C, to have and comply with the package's Certificate of Compliance (CoC) issued by the NRC. Based on JLS&A's failure to comply with 10 CFR part 71, QA Program Approval No. 0122 was withdrawn, by the immediately effective NRC Order, dated July 3, 2001, (66 FR 36603, July 12, 2001).

II

The NRC lacked confidence that JLS&A would implement the QA Program approved by the NRC in accordance with 10 CFR part 71, Subpart H, in a manner that would assure the required preparation and use of transportation packages in full conformance with the terms and conditions of an NRC CoC and with 10 CFR part 71. JLS&A's QA Approval No. 0122 was withdrawn by an immediately effective Order issued July 3, 2001, (July 2001 Order).

By letters dated August 16, and September 13, 2001, JLS&A responded to the July 2001 Order, and requested

that provisions of the Order be relaxed based on a showing of good cause. Specifically, JLS&A requested interim relief from the July 2001 Order based on JLS&A's proposed Near-Term Corrective Action Plan, to allow 68 shipments to 16 customers, in U.S. Department of Transportation specification packaging designated as 20WC. The NRC issued a Confirmatory Order Relaxing Order, dated September 19, 2001 (66 FR 49708, September 28, 2001), granting interim relief to allow 68 shipments to 16 customers in 20 WC packages in accordance with JLS&A's Near-Term Corrective Action Plan, through March 2002, provided JLS&A's satisfactory completion of certain commitments.

By letters dated December 7 and 10, 2001, JLS&A requested that provisions of the July 2001 Order be relaxed based on a showing of good cause. Specifically, JLS&A requested interim relief to ship an irradiator to Surry Nuclear Power Station and return the replaced unit to JLS&A's facility in California. JLS&A proposed to use the Near-Term Corrective Action Plan specified in the September 19, 2001, Confirmatory Order to allow these two shipments in U.S. Department of Transportation specification packaging designated as 20WC. The NRC issued a Confirmatory Order Relaxing Order dated December 13, 2001 (66 FR 67556, December 31, 2001), granting interim relief to allow two shipments to one customer in 20 WC packages in accordance with JLS&A's Near Term Corrective Action Plan, provided JLS&A's satisfactory completion of certain commitments.

III

By letters dated February 26, 2002, as supplemented March 13, 18, and 25, 2002, JLS&A requested that provisions of the July 2001 Order be further relaxed based on a showing of good cause. Specifically, JLS&A requested an extension of the shipment period authorized in the September 19, 2001, Order from March 31, 2002, to June 30, 2002, to allow JLS&A to complete shipment of Type B quantities of radioactive material in U. S. Department of Transportation 20WC specification packaging that was authorized by the September 19, 2001, Order. This extension of the expiration date is necessary since many of the customers did not obtain the necessary licensing approvals or to complete needed facility modifications to possess the radioactive material in time for the shipments to be completed by March 31, 2002. In addition, JLS&A requested authorization to make additional shipments to customers not approved by the September 19, 2001, Order. JLS&A proposes to use the Near-Term Corrective Action Plan specified in the September 19, 2001, Confirmatory Order. JLS&A committed to: (1) Inspect the 20WC package (both shield and overpack); (2) document the inspection in a separate report; (3) perform the shipping and inspection function only by trained personnel; and (4) have the Independent Auditor verify compliance of each shipment with the foregoing commitments and certify such compliance in the monthly reports to the NRC.

In addition, on February 26, 2002, JLS&A consented to issuance of this Confirmatory Order granting interim relief from the July 2001 Order subject to the foregoing commitments, as set forth in Section IV below, and agreed that this Confirmatory Order is to be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments will provide assurance that sufficient resources will be applied to the QA program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that JLS&A's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. The NRC staff reviewed JLS&A's relief request to determine whether to grant the requested relief with assurances that public health and safety are maintained. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be confirmed by this Confirmatory Order. This Confirmatory Order only grants additional time to complete the shipments previously authorized by the September 30, 2001, Order. Based on the above and JLS&A's consent, this Confirmatory Order is effective immediately upon issuance.

IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR parts 71 and 110, *it is hereby ordered*, effective immediately, that the July 3, 2001, *order is relaxed* to grant interim relief, through June 30, 2002, to complete shipments to customers previously authorized by the September 30, 2001 order and identified in enclosure 1 to the March 14, 2002 supplement entitled ''NT–CAP1: Shipments Contracted for Prior to July 3, 2001'', in accordance with JLS&As near-term corrective action plan, provided:

1. JLS&A uses the implementing procedures for the 1995 QA program plan, as revised, and the Near-Term Corrective Action Plan to complete an inspection of the 20WC packages involved in the shipments. The inspection will confirm that the packages and associated procedures are in conformance with 49 CFR 178.362, ''Specification 20WC wooden protective jacket.'' Each inspection will include, at a minimum, actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

2. JLS&A documents the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised 1995 QA program plan and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

3. JLS&A uses JLS&A's staff, contractors, and sub-contractors, trained in the Near-Term Corrective Action Plan and the revised 1995 QA program plan and implementing procedures for conducting the inspections listed in the above condition; and,

4. JLS&A uses the Independent Auditor to ensure that the three conditions listed above have been completed. Additionally, the Independent Auditor shall conduct monthly QA program audits and will provide NRC with a report by the 20th of each month. The Independent Auditor shall verify the compliance of each shipment with the three Conditions listed above and certify to the Commission in its monthly reports.

The Director, Office of Enforcement, or the Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind this Confirmatory Order upon demonstration of good cause by the JLS&A.

V

In accordance with 10 CFR 2.202, any person, other than JLS&A, adversely affected by this Confirmatory Order may request a hearing within 20 days of its issuance.

Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC

20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and to JLS&A. If such person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this confirmatory order.

Dated this 29th day of March 2002.

For the Nuclear Regulatory Commission.

James G. Luehman,

Deputy Director, Office of Enforcement.

[FR Doc. 02–8244 Filed 4–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

AmerGen Energy Company, LLC; Clinton Power Station, Unit 1 Environmental Assessment and Finding of No Significant Impact; Related to a Proposed License Amendment To Increase the Maximum Thermal Power Level

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to AmerGen Energy Company, LLC (AmerGen, the licensee) for the operation of the Clinton Power Station, Unit 1 (CPS), located on Clinton Lake in DeWitt County, Illinois. Therefore, pursuant to 10 CFR 51.21 and 51.35, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow AmerGen, the operator of CPS, to increase its electrical generating capacity at CPS by raising the maximum reactor core power level from 2894 MWt to 3473 MWt. This change is approximately 20 percent above the current licensed maximum power level for CPS. The change is considered an extended power uprate (EPU) because it would raise the reactor core power level more than 7 percent above the original licensed maximum power level. CPS has not submitted a previous power uprate application. A power uprate increases the heat output of the reactor to support increased turbine inlet steam flow requirements and increases the heat dissipated by the condenser to support increased turbine exhaust steam flow requirements. The licensee with input from the plant designer, General Electric Company, evaluated the proposed EPU from a safety perspective and concluded that sufficient safety and design margins exist so that the proposed increase in core thermal power level can be achieved without any risk to health and safety of the public or impact on the environment.

The proposed action is in accordance with the licensee's application for amendment dated June 18, 2001, a letter providing initial environmental information dated September 7, 2001, and additional environmental information provided in a letter dated November 29, 2001. Also, the application was supplemented by letters dated September 28, October 17, 23, 26, and 31, November 8 (2 letters), 20, 21, and 30, and December 5, 6, 7, 13 (2 letters), 20, 21, and 26, 2001, January 8, 15, 16, and 24, and March 15, 22, and 29, 2002. The proposed amendment would change the operating license and the technical specifications appended to the operating license to provide for implementing uprated power operation.

The Need for the Proposed Action

AmerGen evaluated the need for additional electrical generation capacity in its service area for the planning period 2000–2009. Information provided by the North American Electric Reliability Council showed that, in order to meet projected demands, generating capacity must be increased by at least 1.6 percent per year for the Mid-Continent Area Power Pool and the Mid-America Interconnected Network.

AmerGen determined that a combination of increased power generation and purchase of power from the electrical grid would be needed to meet the projected demands including an operating margin for reliability. Increasing the generating capacity at CPS was estimated to provide lower cost power than can be purchased on the current and projected energy market.

In addition, increasing nuclear generating capacity would lessen the need to depend on fossil fuel alternatives that are subject to unpredictable cost fluctuations and increasing environmental costs.

Environmental Impacts of the Proposed Action

At the time of the issuance of the operating license for CPS, the NRC staff noted that any activity authorized by the license would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of CPS, which was issued in May 1982. The original operating license for CPS allowed a maximum reactor power level of 2894 MWt. On September 7, 2001, Exelon submitted a supplement to its Environmental Report supporting the proposed EPU and provided a summary of its conclusions concerning the environmental impacts of the EPU at CPS. Based on the staff's independent analyses and the evaluation performed by the licensee, the staff concludes, as described further below, that the environmental impacts of the EPU are bounded by the environmental impacts previously evaluated in the FES, because the EPU would involve no extensive changes to plant systems that directly or indirectly interface with the environment. Additionally, no changes to any State permit limits would be necessary. This environmental assessment first discusses the non-radiological and then the radiological environmental impacts of the proposed EPU at CPS.

Non-Radiological Impacts at CPS

The following is the NRC staff's evaluation of the non-radiological environmental impacts of the proposed EPU on land use, water use, waste discharges, noise, terrestrial and aquatic biota, transmission facilities, and social and economic conditions at CPS.

Land Use Impacts

The EPU at CPS as proposed will require no changes to the current use of land. Modification plans as submitted do not include building any new

structures or materially altering any existing structures to implement EPU activities. With the exception of transportation of equipment and materials, and routine waste disposal, EPU activities will be confined to the area within the plant security fence. Capacity of above or below ground storage tanks is not scheduled to be changed by the EPU. Areas outside the plant security fence would not be affected in any way by the EPU implementation plan as submitted by AmerGen.

The CPS EPU includes replacement of turbine components that will be radiologically contaminated. The proposed maintenance plan includes decontamination and recycling of replaced turbine parts, or transfer to an approved offsite disposal facility. Thus, additional on-site, low-level radioactive waste storage facilities would not be needed. We conclude that the NRC staff's conclusions in the FES on land use would remain valid as a result of implementing the proposed EPU.

Water Use Impacts

No groundwater resources will be affected by the EPU. CPS uses the impounded volume of Clinton Lake (surface water) for all cooling water requirements. The licensee has stated that the EPU will result in a minimal change in the consumptive use of water from the lake. Thus, the NRC staff's conclusions in the FES on water use would continue to be valid under operating conditions expected after the EPU. Also note that in its October 1974 environmental statement for the construction of two units at the Clinton site, the NRC evaluated consumptive use of the lake water with two units operating.

Discharge Impacts

The NRC staff evaluated environmental impacts associated with the proposed EPU cooling water discharge such as fogging, icing, noise, lake water temperature changes, and cold shock.

Cooling Lake Fog and Icing

Environmental impacts such as fogging and icing could result from the increased heat load resulting from discharge of additional cooling water into Clinton Lake. However, the CPS Environmental Report addressed estimates of ground fog frequency and icing and associated environmental impacts for the current power level. These analyses included considerable conservatism, well beyond the projected 20 percent increase of release heat. The NRC staff concluded in the FES that the operation of the CPS cooling water discharge system was not harmful to the lake and surrounding environment. The NRC staff concludes that ground fog and icing that might be generated by plant operation at the uprated power level is bounded by the conclusions of the FES.

Noise

No significant changes to facilities are planned that would change the character, sources or energy of noise generated at CPS. All new equipment or components needed to modify existing equipment in order to effect the EPU will be installed within existing plant facilities. No significant increase in ambient noise levels is anticipated in any work areas within the plant. The upgraded turbines are designed to operate at the same speed as under the existing power level. The conclusions regarding noise levels in the Environmental Report remain applicable for noise levels expected under EPU conditions.

Lake Water Temperature Changes

Effluent from the circulating water coolant system is directed back to Clinton Lake. The licensee has stated that it does not expect any increase in circulating water flow as a result of the EPU. However, because more heat must be rejected from the plant, circulating water discharge temperatures will be elevated as a result of the EPU. The Illinois Environmental Protection Agency (IEPA) has established limits for this effluent in the plant's National Pollutant Discharge Elimination System (NPDES) permit in order to protect the resource. The licensee has stated that the plant will continue to be operated in compliance with established limits in the NPDES permit. Consequently, there should not be a thermal impact to the lake as a result of the EPU in excess of that already considered by IEPA. If the NPDES limits prevent operation at full power under some conditions, the licensee will either have to derate the unit during those times or request a change to its permit.

Cold Shock

Cold water shock to aquatic species occurs when the warm water discharged from the plant stops due to an unplanned shutdown. On December 18, 2000, CPS experienced a reactor trip with closure of the main steam-line isolation valves. As a result, warm water that would have entered the Clinton Lake through the discharge channel was abruptly stopped. The resulting cold shock event resulted in the loss of approximately 7,000 fish according to a shoreline survey conducted by the Illinois Department of Natural Resources.

Information submitted by the licensee suggests that the impact of the event did not significantly affect the biological health of the lake. It was stated that the number of fish lost in the cold shock event was small in comparison to the total population of fish of the lake. Additionally, there have been no reports of a noticeable decline in angler success during the subsequent fishing period.

The proposed EPU does not increase the probability of an unplanned reactor shutdown or the likelihood of occurrence of a cold shock event. Nevertheless, a cold shock event at a higher heat rejection rate than the December 18, 2000, event could result in a greater fish mortality rate if the same conditions exist. Significant heat exchange is expected to occur in the 3.1 mile discharge channel leading to the actual point of discharge. Since the increase in the heat rejection would neither significantly raise the temperature of the lake over a large area nor dramatically increase the size of the affected area, we believe that the increased number of fish that would be adversely affected by the infrequent cold shock event would be a small increase and would still not result in a long-term adverse impact to the lake fishery.

Additionally, the licensee will monitor for cold shock impact to the fish population following a plant trip scenario similar to the one experienced on December 18, 2000.

Terrestrial Biota

The FES for CPS published in May 1982 identified two endangered species that may occur in the vicinity of the site; the bald eagle (*Haliaeetus leucocephalus*) and the Indiana bat (*Myotis sodalis*). Operation of the CPS under EPU conditions is expected to have no adverse effect on land use and will not disturb the habitats of any terrestrial plant or animal species as evaluated in the FES. Extended power uprate operating conditions will not significantly increase previously evaluated environmental impacts on terrestrial biota.

Aquatic Biota

As discussed previously, the licensee has stated that it does not expect to have to increase circulating water flow as a result of the EPU. Therefore, there should be no increase in the entrainment and impingement of aquatic species at the intake structure. In addition, the licensee has indicated that it expects the discharge temperature of the water to remain within the limits

previously evaluated and approved by IEPA. As long as the plant is operated within these limits, impacts to aquatic species should not exceed those previously considered.

Human Health

In response to an NRC staff request for additional information, CPS submitted the following information regarding *Naegleria fowleri* in its letter dated November 29, 2001.

During the final regulatory review of the FES in 1982, concerns were raised that the elevated temperatures in Clinton Lake due to plant operation might increase the abundance of pathogenic *N. fowleri* and constitute a risk for primary contact water sports. *N. fowleri* is the organism that causes a potentially fatal disease known as Primary Amoebic Meningoencephalitis (PAM). Initially, the Illinois Department of Public Health (IDPH) responded to concerns raised by the Illinois Department of Natural Resources and asked for a two-year pre- and post-operational monitoring program for *N. fowleri* and proposed a ban on primary water contact water sports once the plant went operational. After further review of the initial monitoring studies and projected lake temperatures, and a specially funded medical school review of the risks, the IDPH issued a letter in 1987 stating that there was no reason to restrict primary contact water sports. The IDPH, however, requested additional *Naegleria fowleri* monitoring and lake temperature data collection by CPS. The monitoring program continued through 1990, when it was concluded that no further information was needed and that the risk of *N. fowleri* from Clinton Lake was insignificant relative to other public health risks.

The summary of the monitoring program results listed below illustrates two critical findings. The first was *N. fowleri* did exist in Clinton Lake prior to any thermal additions, and second, as expected, it was detected more frequently after thermal additions. However, even during the operational years, the frequency of *N. fowleri* in Clinton Lake was much lower than that found in ambient temperature lakes in Florida. *N. fowleri* is common in most fresh water lakes in Florida.

CPS NAEGLERIA FOWLERI MONITORING PROGRAM SUMMARY

Year	Researcher	CPS status	Total number of samples	Positive for *Naegleria fowleri*
1983	Dr. Tyndall (Oak Ridge Nat. Labs)	Pre-operational	82	0
1984	Dr. Tyndall (Oak Ridge Nat. Labs)	Pre-operational	120	0
1986	Dr. Wellings & Dr. Lewis (Fla. D.H&RS)	Pre-operational	219	1
1987	Dr. Wellings & Dr. Lewis (Fla. D.H&RS)	Start-up	103	0
1986	Dr. Huizinga (IL State University)	Pre-operational	123	1
1987	Dr. Huizinga (IL State University)	Start-up	148	2
1988	Dr. Huizinga (IL State University)	Operational	400	21
1989	Dr. Huizinga (IL State University)	Operational	176	9
1990	Dr. Huizinga (IL State University)	Operational	400	15

An increase in abundance of *Naegleria fowleri* does not directly correlate with an increase in the number of cases of PAM caused by this pathogen. As of 1998, there had only been about 54 documented cases of PAM in the entire country. Most of these cases were in Florida and a small isolated region of Virginia. The only case associated with a cooling lake was in Texas, and the victim contracted PAM from a non-heated portion of the lake.

Efforts were made to keep the IDPH informed of the *N. fowleri* monitoring results and operational changes that impacted lake temperatures. Each year the IDPH was given the *N. fowleri* monitoring data and temperature data from continuous recorders at key locations in Clinton Lake. When Illinois Power filed a petition in 1988 for a Site-Specific Adjusted Standard for higher thermal discharge limits, the IDPH was given a presentation on the modeled lake temperatures that would result from this Site-Specific Standard. The Site-Specific Standard was granted in 1992 and permitted the maximum daily average discharge temperature to be raised from 99 °F to 110.7 °F. The Station NPDES permit currently has two temperature limitations. The temperature of discharge water at the second drop structure in the discharge flume is limited to a maximum daily average temperature of 99 °F for 90 days in a calendar year, or 110.7 °F for any single day. The permit and these limits will not be changed for the EPU; therefore, the reviewed and approved heat load for Clinton Lake will not be changed.

The original monitoring program and subsequent decisions to stop monitoring and permit unrestricted recreational lake use were based on compliance with the NPDES permit and the very small risk this issue presented. Based on the above discussion, the NRC staff believes that the risk to the public associated with the microbial pathogen *N. fowleri* in the reservoir will not increase significantly and no use restrictions or additional monitoring are necessary due to power uprate operation.

Transmission Facility Impacts

Environmental impacts, such as the installation of additional transmission line equipment, or increased exposure to electromagnetic fields (EMF) and electrical shock, could result from an EPU. The licensee stated that there are no changes in operating transmission or power line right of way needed to support the EPU. An increase in main transformer capacity will be necessary to deliver the additional power to the grid but design safety margins are more than adequate to handle this increased electrical power. No new equipment or modifications will be necessary for the offsite power system to maintain grid stability.

The probability of shock from primary or secondary current systems does not increase from an EPU. Transmission lines and facilities are designed in accordance with the applicable shock prevention provisions of the National Electric Safety Code, and engineered safety margins are deemed adequate to protect against potential electric shock. The increased generator output at CPS will cause a proportional increase in the

intensity of EMFs in the vicinity of the near plant transmission lines. There is no scientific consensus regarding the health effects, if any, of exposure to electromagnetic fields. No known effects from EMF on terrestrial biota have been demonstrated. Exposure to EMFs from offsite transmission system power level increases would not be expected to increase significantly, and no health or environmental impacts have been shown to result from EMF exposure. Thus, no significant environmental impacts from changes in the transmission design and equipment are expected, and the conclusions in the FES remain valid.

Social and Economic Effects

The NRC staff received information provided by the licensee regarding socioeconomic impacts from the planned EPU, including potential impacts on the CPS workforce and the local economy. The licensee does not anticipate that the EPU will affect the size of the CPS permanent workforce, and does not expect any need to expand the labor force required for future outages. CPS contributions to the local, state and school tax bases are of significant value to the local economy. Some fraction of the plant modification costs to accommodate the EPU will accrue to the economy.

Benefits to the local community are dependent in part on the success of the EPU, and the extent to which the EPU will permit AmerGen to remain competitive in the energy market. To the extent that the EPU will extend the operating lifetime of CPS by enhancing its economic performance, the long-term benefits to the local economy will be extended. The staff expects that the conclusions in the FES regarding social and economic impacts will apply to EPU operating conditions.

In summary, the proposed EPU at CPS is not expected to cause a significant change in non-radiological impacts on land use, water use, waste discharges, noise, terrestrial and aquatic biota, transmission facilities or social and economic factors, and would have no non-radiological environmental impacts in addition to those evaluated in the FES. Table 1 summarizes the non-radiological environmental effects of the EPU at CPS.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS OF THE EPU AT CPS

Impacts	Impacts of the EPU at CPS
Land Use Impacts	No changes required to current land use.
Water Use Impacts	Minimal increase in consumptive water use expected.
Discharge Impacts	Any increases in fog formation or icing are expected to be insignificant and well within the acceptable levels determined by the FES. No significant increases in ambient noise levels are expected. No plans to increase cooling water flow. Discharge temperature will remain within NPDES limits. Lake water temperature changes both during normal operations and after unplanned shutdown will remain within accepted levels.
Terrestrial Biota Impacts	No wildlife habitat in the area will be affected because all construction will be done inside existing facilities. Known endangered species in the area will continue to be monitored.
Aquatic Biota Impacts	Temperature change in Lake Clinton is expected to remain within NPDES limits. Risk to the public from known microbial pathogens will not increase significantly.
Transmission Facilities Impacts	No changes in operating transmission voltages, onsite transmission equipment, or power line rights-of-way. Transformer capacity will increase but design safety margins considered adequate. EMF will increase proportionate to the EPU but no changes in exposure rate is expected.
Social and Economic Impacts	No change in CPS permanent or part-time work force is expected. EPU may expand tax base and enhance longevity of plant operation.

Radiological Impacts From EPU at CPS

The NRC staff evaluated radiological environmental impacts on waste streams, dose, accident analysis, and fuel cycle and transportation factors. The following is a general discussion of these issues and an evaluation of their environmental impacts.

Radioactive Waste Stream Impacts

CPS uses waste treatment systems that must be designed to collect, process and dispose of radioactive gaseous, liquid and solid waste in a controlled and safe manner, and in accordance with the requirements of 10 CFR part 20 and appendix I to part 50. The design bases for the CPS systems during normal operation limit discharges well within the limits specified in 10 CFR part 20, ''Standards for Protection Against Radiation,'' and satisfy the design objectives of appendix I to 10 CFR part 50, ''Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion, 'As Low as is Reasonably Achievable' for Radioactive Material in Light-Water Cooled Nuclear Power Reactor Effluents.'' Licensee analysis shows that these limits and objectives will continue to be met under EPU operating conditions.

Modifications planned to effect EPU operation do not include nor require any changes in the operation or design of facilities or equipment in the solid, liquid or gaseous waste handling systems. The safety and reliability of these systems are designed with sufficient margin so as to be unaffected by operating conditions associated with EPU. Neither the environmental monitoring procedures for these waste streams nor any radiological monitoring requirements of the CPS Technical Specifications and/or Offsite Dose Calculation Manual will be reduced or changed in any way by the EPU.

The EPU will not introduce any new or different radiological release pathways. Probability of operator error or equipment malfunction that might result in an uncontrolled radioactive release are estimated to remain at current levels under EPU conditions. The specific effects of EPU on each of the radioactive waste systems are discussed below.

Solid Waste

Solid radioactive wastes include solids recovered from the reactor process system, solids in contact with the reactor process system liquids or gasses, and solids used in reactor process system operation. The largest volume of solid radioactive waste at CPS is low-level radioactive waste (LLRW). Sources of LLRW at CPS

include resins, filter sludge, dry active waste, metals and oils.

The annual environmental impact of low- and high-level solid wastes related to uranium fuel cycle activities was generically evaluated by the NRC staff for a 1000 MWe reference reactor. The estimated activity content of these wastes is given in Table S–3 in 10 CFR 51.51 and would continue to be bounding for CPS at EPU operating conditions.

CPS maintains records of the volume of solid waste generated and has a documented volume reduction program with the objective to continually identify and implement volume reduction techniques. The low-level solid waste volume generated at CPS in calendar year 2000 was reported to be 111.7 cubic meters. For calendar year 2001, CPS is projecting 115 cubic meters of low-level solid waste. With volume reduction programs in effect, CPS is estimating far less than a 20 percent increase in solid waste volume due to the planned EPU.

The largest volume source of radioactive solid waste is spent resins from process wastes. Other major contributors at CPS are equipment wastes from operational and maintenance procedures, and chemical and reactor system wastes. The EPU is not projected by the licensee to significantly change the amount or type of equipment and chemical wastes generated.

CPS projects an increase in the process wastes generated from operation of the reactor water cleanup (RWCU) filter/demineralizers, and the condensate demineralizers that could be approximately proportional to the power uprate. More frequent system backwashes will occur due to an increase in the flow rate through the RWCU and condensate demineralizer systems.

The licensee estimates the increased frequency of backwashes to be less than 20 percent of current value. The purity of the coolant and filter performance will not change. The licensee projects only a small increase in solid waste volumes from these processes.

Another important source of solid waste is spent fuel. CPS reported that 188 fresh fuel bundles were loaded in the recent refueling outage, to accommodate operation under EPU conditions. The number of irradiated fuel assemblies moved to storage during future refueling outages is not expected to increase as a result of EPU because of planned and approved extended burnup and increased U-235 enrichment of the fuel used. The amount of these wastes, therefore, is not expected to increase. The spent fuel is currently stored in spent fuel facilities onsite and is not shipped offsite.

The volume and activity of waste predicted by the licensee to be generated from spent control blades and in-core ion chambers may increase slightly as a result of higher neutron flux conditions associated with EPU conditions. The NRC staff does not expect this increase to be significant and believes that it can be accommodated within existing onsite storage facilities. Therefore, the NRC staff concludes that there will not be a significant increase in the amounts, or change in the types, of solid wastes produced by the plant as a result of EPU.

Liquid Radwaste

The liquid radwaste system at CPS is designed to process and recycle the liquid waste collected so that annual radiation doses to individuals are maintained will below the guidelines in 10 CFR part 20 and 10 CFR part 50, appendix I. CPS has operated since 1992 as a zero radioactive liquid release plant, choosing to recycle all liquid wastes. CPS does not intend to change this policy as a result of EPU. Filter backwashing will increase input to the liquid radwaste system due to the 20 percent EPU, but this small increase will be recycled rather than discharged, and thus will have no effect on the environment.

CPS does not expect the EPU to result in any significant increase in the volume of liquid wastes from other sources into the liquid radwaste system. The reactor will continue to operate within present fluid pressure control bands under EPU conditions so that leakage should not increase. No changes in reactor recirculation pump flow rates are needed to accommodate the EPU. Equipment drains, floor drains or chemical waste systems will not be changed as a result of the EPU because the operating conditions of these facilities are independent of power levels.

Gaseous Radwastes

During normal operation, the gaseous effluent systems control the release of gaseous radioactive effluents to the site environment, including small quantities of activated gases and noble gases, so that routine offsite releases are below the limits of 10 CFR part 20 and appendix I to part 50 (10 CFR part 20 includes the requirements of 40 CFR part 190).

The major sources of gaseous radioactive releases at CPS are the common station heating, ventilation and air conditioning (HVAC) stack and the standby gas treatment system (SGTS) vent. Normal gaseous releases are through the common station HVAC stack. The radioactive gaseous effluents include small quantities of noble gases, halogens, particulates and tritium. Based on conservative assumptions of non-negligible fuel leakage due to defects, it is probable that gaseous radioactive release rate from the common station HVAC stack would increase in proportion to the 20 percent EPU. Current release quantities are very small and the projected radioactive gaseous effluents under EPU condition would remain within Appendix I limits.

The licensee is required to continually monitor radioactive releases in this pathway to assure that doses to members of the public are maintained within federal limits. The stack effluent alarm setpoint for the stack monitoring system is set conservatively at a level required to maintain the 10 CFR part 20 limits as specified by CPS Technical Specifications. The setpoint is 3.8 E–04 μ Ci/sec. Continuous releases at this level would result in offsite doses well below 10 CFR part 20 limits.

The FES for CPS predicted 6600 curie (ci)/yr noble gas and a 0.46 Ci/yr Iodine -131 release rates. The actual release quantities measured and reported by the licensee for the year 2000 were 5.44E–03 Ci of noble gases and 1.73 E–04 Ci Iodine -131. Assuming a proportional increase of 20 percent in these rates due to the EPU, the new actual release rates would still be well below those previously evaluated by the FES.

Particulate and tritium release rates evaluated for environmental impact in the FES were 1.75 Ci/yr and 57 Ci/yr, respectively. The actual release quantities measured and reported by CPS for the year 2000 were 3.32 E–03 Ci and 41.64 Ci respectively. The FES quantities are calculated to contribute insignificantly to public dose. Assuming a 20 percent proportional increase due to the EPU, the resulting particulate and tritium release rates will continue to be within the quantities evaluated in the FES as contributing little environmental impact.

The staff concludes that, based on information provided by the licensee and on evaluations performed in the FES, the gaseous effluent levels at EPU operating conditions will remain negligible, and in compliance with release limits of 10 CFR part 20 and the guidelines of appendix I of 10 CFR part 50.

In summary, the NRC staff concludes that the increases projected in solid and gaseous radioactive wastes that are released offsite will comply with federal

guidelines and will be well within the FES evaluations.

Radiation Levels and Dose Impacts

The NRC staff evaluated licensee projected in-plant and offsite radiation doses as a part of the review of environmental impacts of the proposed EPU at CPS.

In-Plant Radiation Impacts

On-site radiation levels and associated occupational doses are controlled by the licensee's program to maintain doses as low as reasonably achievable (ALARA) as required in 10 CFR part 20. The CPS ALARA program manages occupational dose by minimizing the time workers spend in radiation areas, maximizing distance between workers and sources, and using shielding to reduce radiation levels in work areas whenever practical. The licensee has determined that current shielding designs are adequate to compensate for any increases in dose levels as a result of the EPU.

Data provided by CPS shows that occupational dose to workers decreased significantly over the part 10 years. Based on a rolling three year average, the 2001 dose is projected to be 32 percent less than the 1990 dose. Although the EPU will potentially increase radiation levels in some parts of the work area, these increases will be compensated by continued ALARA program improvements and a continuing downward trend in occupational doses is projected by CPS.

CPS shielding design was conservative with respect to projected radiation source levels. In the original shielding analysis, concentrations of fission and corrosion products in reactor coolant water were assumed to be 2.5μ Ci/g and 0.062μ Ci/g, respectively. The actual measured combined concentration is approximately 0.016μ Ci/g. Assuming a proportional increase of 20 percent in operating radioactivity levels, the shielding design will remain bounding with a significant margin at EPU conditions. On the basis of this information, the NRC staff concludes that the expected in-plant radiation doses at CPS following the proposed EPU will be well below regulatory criteria and will not have a significant impact.

Offsite Dose Impacts

As previously discussed under Gaseous Radiological Wastes, CPS expects that the small increase in normal operational gaseous activity levels under EPU conditions will not appreciably impact the large margin between 10 CFR Part 20 limits and actual measured and reported releases. Doses from liquid effluents are currently zero and the EPU will not result in any changes in liquid radiological waste releases.

The CPS Technical Specifications implement the release guidelines of 10 CFR part 50, appendix I, which are well within 10 CFR part 20 limits. The licensee provided the following table of doses calculated under current conditions compared to projected values under the planned EPU and to Appendix I dose limits. It is apparent that the offsite doses do not change greatly and remain well within the conservative Technical Specification dose limits.

TABLE 2.—RADIOLOGICAL EFFLUENT DOSES

	Nominal values (year 2000)	EPU values (estimated)	10 CFR 50 appendix I limit
Noble Gas Gamma Air Dose (mrad)	1.59 E–07	1.91 E–07	10
Noble Gas Beta Air Dose (mrad)	2.04 E–07	2.45 E–07	20
Particulate, Iodine and Tritium (Thyroid) (mrem)	2.93 E–03	3.52 E–03	15

The planned EPU at CPS should not result in any significant increases in offsite doses from gaseous effluents, nor does the planned EPU envision the creation of any new sources of offsite dose. Radioactive liquid effluents are not routinely discharged from CPS. The annual dose contribution from skyshine is based on design basis activities. These doses are considered bounding for EPU and are a small fraction of the 40 CFR part 190 limit of 25 mrem. The NRC staff concludes that offsite doses will remain well within regulatory limits under operating conditions associated with the EPU.

Accident Analysis Impacts

The NRC staff reviewed the assumptions, impacts and methods used by CPS to assess the radiological impacts of potential accidents when operating under EPU conditions. In Section 5 of the CPS FES, three classes of postulated accidents were evaluated to determine the associated environmental impact. The licensee provided the following information regarding the impact of EPU on the assumptions and conclusions for the three environmental accident classes evaluated in the FES.

—Class 1: Incidents of Moderate Frequency. This class is also referred to as anticipated operational occurrences. The FES concluded that any incident of this type would cause releases commensurate with the limits on routine effluents. Because of facility improvements and maintenance, the actual activity concentrations of reactor coolant are considerably less than predicted by the FES. Assuming a 20 percent increase as a result of EPU activity, concentration levels would still be far below FES predictions.

—Class 2: Infrequent Accidents. There are events that might occur once during the lifetime of the plant. The licensee asserts reasonably that the planned EPU does not increase the probability of occurrence or severity of these type events. The licensee further evaluated the impact of EPU operating conditions on several typical postulated accidents in these two classes. These were off-gas system failure, radwaste storage tank release, small-break loss-of-coolant accident (LOCA), and fuel handling accident. All of these postulated events under EPU conditions were shown to result in doses that were insignificant and well within the bounding conditions of the FES, or to be so unlikely under present or EPU conditions that they do not contribute significantly to environmental impacts.

—Class 3: Limiting Faults. This class of accidents includes large-break LOCA, main steam-line break, and control rod drop accident (CRDA). The licensee modeled and analyzed these design basis accidents under EPU conditions for comparison to regulatory limits. Radiological consequences of these worst case scenarios are limited by 10 CFR part 100 for offsite doses. These accidents were conservatively analyzed by the licensee assuming an initial power level of 3039 MWt for the LOCA and 2952 MWt for CRDA. Postulated

power levels in the analysis were 105 percent and 102 percent respectively of the FES bounding analytical power level of 2894 MWt. The licensee provided the results of these calculations in the following tables.

Following a large break LOCA, the SGTS at CPS establishes and maintains a negative pressure in the secondary containment area. Any primary containment leak will be contained within the secondary containment and will be released to the outside only after passing through SGTS, which filters and treats the effluent. All releases from the SGTS are via the SGTS vent.

TABLE 3.—LOSS OF COOLANT ACCIDENT

Location	Current power level dose (rem)	EPU dose (rem)	Regulatory limit (rem)
EAB Whole Body	11	13.5	25
EAB Thyroid	225	267	300
LPZ Whole Body	3.5	4.5	25
LPZ Thyroid	86	102	300

TABLE 4.—ROD DROP ACCIDENT

Location	Current power level dose (rem)	EPU dose (rem)	Regulatory limit (rem)
EAB Whole Body	1.8E–02	2.34E–02	6.25
EAB Thyroid	1.6E–01	1.92E–01	75
LPZ Whole Body	5.6E–03	7.28E–03	6.25
LPZ Thyroid	1.8E–01	2.16E–01	75

The results of these analyses indicate that the EPU will not cause off-site accident projected doses to exceed regulatory limits. The NRC staff agrees that the assumptions used in the licensee's analysis are conservative with respect to EPU operating conditions, shielding and dose. Thus, the staff concludes that the radiological consequences of a design-basis accident under EPU conditions are within the acceptance criteria of 10 CFR part 100 and do not involve any significant impact to the human environment.

Fuel Cycle and Transportation Impacts

The environmental impact of the uranium fuel cycle has been generically evaluated by the NRC staff for a 1000 MWe reference reactor and is discussed in Table S–3 of 10 CFR 51.51. Under EPU conditions CPS will be rated at approximately 1100 MWe. Information provided by the licensee includes the following. The data presented in Tables 5–12 (10 CFR 51.51 Table S–3) and 5.5 (10 CFR 51.52 Table S–4) of the FES are based on an average burnup assumption of 33,000 MWd/MtU and a U–235 enrichment assumption of 4 wt.percent. Under EPU conditions, fuel consumption is expected to increase such that the batch average burnup of the fuel assemblies will be in excess of 33,000 MWd/MtU but less than 62,000 MWd/MtU. To support extended burnup, the U–235 enrichment levels will also increase, but will still be less than 4 wt.percent. The NRC has previously evaluated the impact of increased burnup to 62,000 MWd/MtU with U-235 fuel enrichment to 5 wt.percent on the conclusions of Table S–3. Although some radionuclide inventory levels and activity levels are projected to increase, the NRC noted that little or no increase in the amount of radionuclides released to the environment during normal operation was expected. The NRC staff determined that the incremental environmental effects of increased enrichment and burnup on transportation of fuel, spent fuel and waste would not be significant. In addition the NRC staff analysis noted environmental benefits of extended burnup such as reduced occupational dose, reduced public dose, reduced fuel requirements per unit electricity, and reduced shipments. The NRC concluded that the environmental impacts described by Table S–3 would be bounding for an increased burnup rate above that planned for the CPS EPU.

Because the fuel enrichment for the CPS EPU will not exceed 5 weight percent uranium-235 and the rod average discharge exposure will be under the 62,000 MWd/MtU burnup rate previously analyzed by the NRC, the environmental impacts of the planned EPU at CPS will continue to be bounded by their conclusions and would not be significant.

Summary

Based on NRC staff review of licensee submittals and the FES, it is concluded that the proposed CPS EPU would not significantly increase the probability or consequences of accidents, would not introduce new radiological release pathways, would not result in a significant increase in occupational or public radiation exposure, and would not result in significant additional fuel cycle environmental impacts. Accordingly the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. The following table summarizes the radiological environmental impacts of the EPU at CPS.

TABLE 5.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACT OF THE EPU AT CPS

Impact	Staff conclusion regarding impact
Radiological Waste Stream Impacts	The increases projected in solid, liquid, or gaseous radioactive wastes are either recycled (liquid), fully contained on site (solid), or are released (gaseous) at levels that comply with Federal guidelines and that are well within the FES evaluation.
Dose Impacts	Both on-site occupational doses and off-site doses will remain well within regulatory guidance and will continue to be bounded by evaluations performed in the FES.
Accident Analysis Impacts	No significant increase in probability or consequences of accidents is expected.
Fuel Cycle and Transportation Impacts	No significant increase is expected. Impacts remain within the guidelines of Table S–3 and Table S–4 of 10 CFR Part 51.

Alternatives

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, ''the no-action'' alternative). Denial of the application would result in no change in current environmental impacts; however, in the CPS vicinity other generating facilities using nuclear or other alternative energy sources, such as coal or gas, would be built in order to supply generating capacity and power needs. Construction and operation of a coal plant would create impacts to air quality, land use and waste management. Construction and operation of a gas plant would also impact air quality and land use. Implementation of the EPU would have less of an impact on the environment than the construction and operation of a new generating facility and does not involve new environmental impacts that are significantly different from those presented in the FES. Therefore, the staff concludes that increasing CPS capacity is an acceptable option for increasing power supply. Furthermore, unlike fossil fuel plants, CPS does not routinely emit sulfur dioxide, nitrogen oxides, carbon dioxide, or other atmospheric pollutants that may contribute to greenhouse gases or acid rain.

Alternative Use of Resources

This action does not involve the use of any resources different than those previously considered in the CPS FES, dated May 1982.

Comments on Draft Environmental Assessment

A draft environmental assessment (EA) and finding of no significant impact was prepared and published in the **Federal Register** on February 13, 2002. The draft EA provided a 30-day opportunity for public comment. A member of the public submitted three comments by letter dated March 2, 2002. These comments are addressed below.

The first comment concerned cold shock of fish and referenced a cold shock event at CPS in December, 2000. The commenter stated opposition to the contention in the EA that ''* * * the increase in fish mortality due to cold shock would not be significant. * * *'' The commenter states that higher temperatures can be expected to increase both the area over which a cold shock effect can occur and the fish mortality rate. The commenter maintains that no effort has been made to mitigate the increased impact of cold shock resulting from the elevated discharge temperatures and the larger affected area generated by the proposed EPU.

The commenter is correct in stating that the 20 percent EPU will result in a localized increase in the lake water temperature over a larger area of the lake. Fish mortality due to cold shock has been an extremely infrequent event on Lake Clinton; the only recorded case of a cold shock fish mortality occurred on December 18, 2000. A combination of usually cold weather coupled with the reduction in heat rejected to the lake resulted in rapidly changing conditions in and around the mouth of the discharge canal. The December 2000 event was evaluated by the Illinois Department of Natural Resources (INDR). Based on the information obtained through a shoreline survey conducted thereafter, it was concluded that the event did not result in a long-term adverse impact to the Clinton Lake fishery.

An increase in the heat rejection could increase the mortality of fish in the vicinity of the lake around the plant discharge if there are cold shock events similar to the one that occurred in December 2000. An increase in the heat rejection from the facility due to the EPU would also result in a increase in water temperature in the affected portions of the lake. Significant heat exchange is expected to occur in the 3.1 mile discharge channel leading to the actual point of discharge. Since the increase in the heat rejection would neither significantly raise the temperature of the lake over a large area nor dramatically increase the size of the affected area, we believe that the increased number of fish that would be adversely affected by the infrequent cold shock event would be a small increase and would still not result in a long-term adverse impact to the lake fishery.

The licensee will monitor for potential cold shock impact following a plant trip scenario similar to the one experienced on December 18, 2000. Additionally, the licensee has agreements in place with the IDNR that provide for notification and investigation when a cold shock event has been identified. As a result of this comment, the EA has been revised, however, the conclusion of the EA has not been changed.

The second comment concerned the socioeconomic effects of the EPU. The commenter questioned the basis for the statement in the EA that increased revenue from the sale of additional power would result in additional tax revenue thus benefit the local community. The commenter states that ''* * * the plant owners are not located in the area and the increase in taxes associated with revenue would not occur locally.'' The commenter asked that the EA identify the increased tax revenue associated with the EPU.

The staff finds that the commenter's statement is correct. While there is no direct increase in tax revenue that would be realized by the local community as a direct result of the increased revenue from the sale of additional power, it is anticipated that the assessed value of the facility may increase. The EA will be revised by deletion of the incorrect sentence. However, the staff finds that this deletion does not change the socioeconomic evaluation conclusion that the FES conclusions for pre-EPU operation will apply to EPU operation.

In his third comment, the commenter stated that the EA failed to discuss the effects of the increased steam flow on the erosion rate of the piping walls (flow-accelerated corrosion). The commenter asked if the current steam pipe monitoring program was reviewed and determined adequate for the higher

steam flow velocities and moisture conditions.

The staff finds that the commenter's statement is correct in that the draft EA did not address flow-accelerated corrosion (FAC). However, that is because FAC is a safety issue which the staff addresses in its safety evaluations. FAC has been reviewed by the staff for the CPS EPU. Based on its review, the staff concludes that the licensee has adequately demonstrated that the changes in FAC caused by the EPU will be accounted for by the licensee making modifications to its FAC program. A summary of the staff's review will be contained in the CPS EPU safety evaluation. Additionally, the Advisory Committee on Reactor Safeguards commented that the licensee's program for monitoring FAC should be rigorously conducted. Also, this issue will be followed by the staff as part of its oversight of plants that receive power uprate approvals. In conclusion, while FAC is a consideration for the CPS EPU, this comment is not within the scope of the EA and no change to the EA was necessary as a result of this comment.

Agencies and Persons Consulted

In accordance with its stated policy, on January 28, 2002, prior to issuance of this environmental assessment, the staff consulted with the Illinois State official, Frank Nizidlek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for amendment dated June 18, 2001, as supplemented by letters dated September 7 and 28, October 17, 23, 26, and 31, November 8 (2 letters), 20, 21, 29, and 30, and December 5, 6, 7, 13 (2 letters), 20, 21, and 26, 2001, January 8, 15, 16, and 24, and March 15, 22, and 29, 2002, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. 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/NRC/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 Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 29th day of March, 2002.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–8240 Filed 4–2–02; 2:02 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Issuance, Availability of Draft NUREG; Announcements of Public Workshops

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of draft NUREG for comment and announcements of public workshops.

SUMMARY: The Nuclear Regulatory Commission (NRC) is re-issuing for comment a draft of NUREG–1556, Volume 9, ''Consolidated Guidance About Materials Licenses; Program-Specific Guidance About Medical Use Licenses.'' This licensing guide is a companion to the recently published revision to 10 CFR part 35, ''Medical Use of Byproduct Material.'' The NRC is also developing additional guidance for medical use licensees and will be holding public workshops to obtain stakeholder input on content of this guidance. The NRC is especially interested in stakeholder comments that will improve the guidance to make it useful to applicants for medical use licenses, including licensees in Agreement States. The NRC is focusing on making the guidance more risk-informed and performance-based.

DATES: Commenters should submit comments on Draft NUREG–1556, Volume 9 by June 4, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. A 1-day public workshop will be held on Thursday, April 25, 2002, from 9 a.m. to 5 p.m. at NRC's headquarters; the workshop will be preceded by an open house from 8 a.m. to 9 a.m. The emphasis in this workshop will be on guidance related to therapeutic applications of byproduct materials. To ensure that adequate copies of handouts are available, persons planning to attend the workshop should contact the person designated below by April 18, 2002. A second 1-day public workshop will be held at the same location on April 30, 2002, from 9 a.m. to 5 p.m.; the workshop will be preceded by an open house from 8 a.m. to 9 a.m. The emphasis of this workshop will be on guidance related to diagnostic applications of byproduct material. To ensure that adequate copies of handouts are available, persons planning to attend the workshop should contact the person designated below by April 23, 2002. The intent of the open houses is to present the opportunity for informal interactions between attendees, both NRC staff and members of the public. A third workshop, relating to guidance for inspection of entities licensed under 10 CFR part 35, is planned for late May and will be announced in the **Federal Register** as well as on the NRC's web site (see **ADDRESSES**, below). It is also planned to post draft inspection guidance on the NRC's web site for comment.

ADDRESSES: Written comments on NUREG–1556, Volume 9 may be submitted to the Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555. You may also provide comments through the NRC's rulemaking forum / web site at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=MU—PRULE*. The NRC also plans to post draft inspection guidance at this web site for public viewing prior to the public meeting on inspection guidance planned for late May. Provisions are available at this site to upload comments as files (any format) if your web browser supports that function. For information about the web site, contact Carol Gallagher via E-mail at *CAG@nrc.gov*.

The public workshops will be held at the NRC Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Information about the workshops will also be posted at NRC's web site at *http://www.nrc.gov*; click on ''Public Meeting Schedule.''

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, Office of Industrial and Medical Nuclear Safety, Rulemaking and Guidance Branch, Mail Stop T9–C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–7608; E-mail: *RWB@nrc.gov*. Questions

about the public meeting process should be directed to Francis Cameron; Office of the General Counsel, USNRC, Washington DC 20555–000; E-mail: *FXC@nrc.gov*; telephone: (301) 415–1642.

SUPPLEMENTARY INFORMATION:

Draft NUREG–1556, Consolidated Guidance About Materials Licenses—Volume 9, Program—Specific Guidance About Medical Use Licenses

The NRC is issuing a draft of NUREG–1556, Volume 9, for public comment for a 60-day period. In addition to obtaining written comments, the staff will be conducting a public workshop on April 25, 2002, to obtain stakeholder comments on this Volume, with emphasis on therapeutic applications of byproduct materials. A second public workshop will be held on April 30, 2002, to receive stakeholder input on guidance, with emphasis on diagnostic applications of byproduct materials. Both workshops will be held in the Auditorium at NRC Headquarters in Rockville, MD.

The NRC staff is seeking input on the guidance contained in the draft NUREG, previously published for public comment in August 1998, in order to make the guidance as useful as possible to those who may seek NRC licensure under 10 CFR part 35, ''Medical Use of Byproduct Material.'' Comments received since publication of the 1998 draft have been considered by staff; these comments and NRC's responses appear in Appendix Z of the current draft. Comments about any of the guidance in Volume 9 are welcome; staff is especially interested in receiving comments on the following questions:

1. Level of Detail and Format: Is the format and level of detail in the guidance appropriate for first-time applicants? Should the guidance be more general in describing acceptable methods of meeting 10 CFR part 35 requirements? If so, please provide suggestions for revisions. Discussion about the pros and cons of providing extensive detail about safety and other procedures would be especially helpful.

2. Model Procedures: Are the model procedures helpful as written? Should they be retained or rewritten? If so, please provide suggestions for revisions.

3. Licensing Guidance Specific to Diagnostic Nuclear Medicine: The staff is considering development of a summary of the licensing requirements for diagnostic medical use of byproduct materials? Is such a document desirable? What should be provided in the guidance? How long should it be?

4. Other Guidance: Are there additional voluntary industry consensus standards or other publically available documents that should be considered for reference in NUREG–1556, Volume 9?

To facilitate the NRC's handling of comments, we request that commenters relate their comments to specific sections and/or appendices in the NUREG. This will help place the comments in context and aid in understanding how they relate to the guidance.

The NRC is placing added emphasis on conducting its regulatory activities in a risk-informed and performance-based manner. This approach is intended to be less prescriptive and allow for the implementation of programs by licensees that may be specific to their needs while meeting the regulatory requirements. In the past, applicants have requested guidance from the NRC staff on what procedures are acceptable, with the expectation that licensing process delays would thereby be avoided. Others have expressed the view that the provision of specific guidance results in the perception that the only way to receive a license is to adhere to the guidance. The NRC staff seeks to meet the needs of applicants for licensure, while not suggesting that details in the guidance are prescriptive. Comments on Volume 9 will help NRC staff to provide guidance that is helpful while not providing too much detail.

Dated at Rockville, Maryland, this 28th day of March, 2002.

For The Nuclear Regulatory Commission

Patricia K. Holahan,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 02–8243 Filed 4–4–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–2(e), SEC File No. 270–37; OMB Control No. 3235–0031

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemption from the fingerprinting requirements of Rule 17f–2 to prepare and maintain a statement supporting their claim for exemption. Approximately 75 respondents incur an annual total burden of 37.5 hours complying with the requirements of Rule 17f–2(e).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8205 Filed 4–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC—25502]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 29, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March, 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each

application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 23, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

Amivest/NFB Funds Trust [File No. 811–9719]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on March 14, 2002.

Applicant's Address: 275 Broad Hollow Rd., Melville, NY 11747.

Firstar Funds, Inc. [File No. 811–5380]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By September 26, 2001, each series of applicant had transferred its assets to a corresponding series of First American Funds, Inc., First American Investment Funds, Inc., or First American Strategy Funds, Inc., based on net asset value. Expenses of $3,936,000 incurred in connection with the reorganization were paid by U.S. Bancorp, the parent of applicant's investment adviser.

Filing Date: The application was filed on March 11, 2002.

Applicant's Address: 615 East Michigan St., PO Box 3011, Milwaukee, WI 53202–3011.

Merrill Lynch Utility Income Fund, Inc. [File No. 811–7071]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 21, 2000, applicant transferred its assets to Merrill Lynch Utilities & Telecommunications Fund, Inc. (formerly, Merrill Lynch Global Utility Fund, Inc.), based on net asset value. Expenses of approximately $169,315 incurred in connection with the reorganization were paid by applicant and Merrill Lynch Investment Managers, L.P., applicant's investment adviser.

Filing Date: The application was filed on March 1, 2002.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

The Rightime Fund, Inc. [File No. 811–4231]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 7, 2001, applicant transferred its assets to Federated Equity Funds—Federated Capital Appreciation Fund, based on net asset value. Expenses of approximately $192,575 incurred in connection with the reorganization were paid by Rightime Econometrics Inc., applicant's investment adviser, Lincoln Investment Planning, Inc., applicant's principal underwriter, and Federated Investors, Inc., the service provider for the acquiring fund.

Filing Dates: The application was filed on December 21, 2001, and amended on March 13, 2002.

Applicant's Address: 218 Glenside Ave., Wyncote, PA 19095–1594.

Van Ness Funds [File No. 811–9741]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 31, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $47,000 incurred in connection with the liquidation were paid by Whatifi Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on March 1, 2002.

Applicant's Address: c/o Whatifi Financial, Inc., 100 Unicorn Park Drive, Woburn, MA 01801.

Dresdner RCM Global Strategic Income Fund, Inc. [File No. 811–4800]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 18, 2002, applicant transferred its assets to RCM Strategic Global Government Fund, Inc., based on net asset value. Expenses of $938,506 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on February 28, 2002.

Applicant's Address: c/o Dresdner RCM Global Investors LLC, Four Embarcadero Center, San Francisco, CA 94111.

DG Investor Series [File No. 811–6607]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 11, 1998, applicant transferred its assets to ISG Funds, based on net asset value. Expenses incurred in connection with the reorganization were paid by First American National Bank, investment adviser to the acquiring fund.

Filing Dates: The application was filed on December 27, 2001, and amended on March 11, 2002.

Applicant's Address: Federated Investors Tower, 5800 Corporate Dr., Pittsburgh, PA 15237–7010.

Nomura Pacific Basin Fund, Inc. [File No. 811–4269]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 24, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on January 24, 2002, and amended on March 7, 2002.

Applicant's Address: c/o Nomura Asset Management U.S.A. Inc., 180 Maiden Ln., 26th Floor, New York, NY 10038.

Cardinal GNMA Trust, First Series and Subsequent Series [File No. 811–3948]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. By January 31, 2000, all of applicant's assets had been distributed to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on January 4, 2002, and amended on March 8, 2002.

Applicant's Address: 34 Fountain Square Plaza, Cincinnati, OH 45263.

Universal Capital Investment Trust [File No. 811–6212]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 1, 2002, applicant transferred its assets to Oak Ridge Funds, Inc., based on net asset value. All expenses incurred in connection with the reorganization were paid by Optimum Investment Advisors, L.P., applicant's investment adviser.

Filing Date: The application was filed on February 12, 2002.

Applicant's Address: 100 South Wacker Dr., Suite 2100, Chicago, IL 60606.

CDC MPT & Funds [File No. 811–9083]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By December 17, 2001, all of applicant's shareholders had voluntarily redeemed their shares at net asset value. Expenses of $15,000 incurred in connection with the liquidation were paid by CDC Investment Management Corporation, applicant's investment adviser, or its affiliates.

Filing Dates: The application was filed on January 23, 2002, and amended on March 4, 2002.

Applicant's Address: 1251 Avenue of the Americas, 16th Floor, New York, NY 10020.

Nations LifeGoal Funds, Inc. [File No. 811–7745]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 8, 2001, applicant transferred its assets to corresponding series of Nations Funds Trust based on net asset value. Expenses of $152,386 incurred in connection with the reorganization were paid by Banc of America Advisors, LLC, applicant's investment adviser.

Filing Dates: The application was filed on February 8, 2002, and amended on February 26, 2002.

Applicant's Address: 111 Center Street, Suite 300, Little Rock, AR 72201.

FT Defined Portfolios LLC [File No. 811–10015]; First Defined Sector Fund [File No. 811–10017]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 30, 2001, each applicant made a liquidating distribution to its shareholders based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on March 1, 2002. FT Defined Portfolios LLC filed an amended application on March 15, 2002.

Applicants' Address: 1001 Warrenville Road, Suite 300, Lisle, IL 60532.

Global Income Strategies Fund, Inc. (formerly Global High Yield Fund, Inc.) [File No. 811–8757]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on February 27, 2002, and amended on March 20, 2002.

Applicant's Address: c/o Fund Asset Management, L.P., P.O. Box 9011, Princeton, NJ 08543–9011.

Merrill Lynch Real Estate Fund, Inc. [File No. 811–8389]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 3, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant has retained $35,236 to cover outstanding operating expenses. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on October 9, 2001, and amended on March 8, 2002.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Mercantile Mutual Funds, Inc. [File No. 811–3567]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By June 29, 2001, each of applicant's portfolios had transferred their assets to corresponding portfolios of Firstar Funds, Inc., based on net asset value. Expenses of $590,908 incurred in connection with the reorganization were paid by Firstar Investment Research & Management Company, LLC, applicant's investment adviser.

Filing Dates: The application was filed on January 16, 2002, and amended on February 20, 2002.

Applicant's Address: 615 East Michigan St., PO Box 3011, Milwaukee, WI 53202–3011.

T. Rowe Price Short-Term U.S. Government Fund, Inc. [File No. 811–6386]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 2000, applicant transferred its assets to T. Rowe Price Short-Term Bond Fund, Inc., based on net asset value. Expenses of $12,686 incurred in connection with the reorganization were paid by T. Rowe Price Associates, applicant's investment adviser.

Filing Date: The application was filed on February 22, 2002.

Applicant's Address: 100 E. Pratt St., Baltimore, MD 21202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8207 Filed 4–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25503; File No. 812–12636]

The Equitable Life Assurance Society of the United States, et al.

March 29, 2002

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') and an order of exemption pursuant to Section 17(b) of the Act.

APPLICANTS: For purposes of the order requested pursuant to Section 26(c), The Equitable Life Assurance Society of the United States (''Equitable''), Separate Account A of Equitable (''Separate Account A''), Separate Account FP of Equitable (''Separate Account FP''), Separate Account No. 45 of Equitable (''Separate Account 45''), Separate Account No. 49 of Equitable (''Separate Account 49'') and Separate Account No. 301 of Equitable (''Separate Account 301'') (collectively, the ''Section 26 Applicants''). For purposes of the order pursuant to Section 17(b), Equitable, Separate Account A, Separate Account FP, Separate Account 45, Separate Account 49, Separate Account No. 65 of Equitable (''Separate Account 65''), Separate Account No. 66 of Equitable (''Separate Account 66''), Separate Account 301 (the separate accounts are collectively referred to herein as the ''Separate Accounts'' and individually as a ''Separate Account'') and EQ Advisors Trust (the ''Trust'') (collectively with Equitable and the Separate Accounts, the ''Section 17 Applicants'').

SUMMARY OF APPLICATION: Applicants request an order (a) approving the proposed substitution by certain insurance company separate accounts of Class IB shares of the EQ/Putnam International Equity Portfolio for Class IB shares of the EQ/T. Rowe Price International Stock Portfolio (the ''Substitution''), and (b) to permit certain in-kind transactions in connection with the proposed Substitution (''In-Kind Transactions''). (The EQ/Putnam International Equity

Portfolio is referred to herein as the ''Replacement Portfolio.'' The EQ/T. Rowe Price International Stock Portfolio is referred to herein as the ''Removed Portfolio.'')

FILING DATE: The application was filed on September 19, 2001 and amended and restated on March 21, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 23, 2002 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Peter D. Noris, Executive Vice President and Chief Investment Officer, The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, and Arthur J. Brown, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or William Kotapish, Assistant Director, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Equitable is a New York stock life insurance company that has been in business since 1859. Equitable is a wholly-owned subsidiary of AXA Financial, Inc. (''AXA Financial''). AXA Financial is a wholly-owned subsidiary of the global AXA Group, the holding company for an international group of insurance and related financial services companies.

2. Equitable serves as sponsor and depositor for each of the Separate Accounts. Separate Account A, Separate Account 301, Separate Account 45 and Separate Account 49 fund certain variable annuity contracts. Separate Account FP funds certain variable life insurance policies. Separate Account 65 and Separate Account 66 fund group pension and profit-sharing plans under group annuity contracts issued by Equitable. (The variable annuity contracts and variable life insurance policies funded by the Separate Accounts are collectively referred to herein as the ''Contracts.'')

3. Each Separate Account is a segregated asset account of Equitable and, with the exception of Separate Account 65 and Separate Account 66, is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account 65 and Separate Account 66 are excluded from registration under the 1940 Act pursuant to Section 3(c)(11) of the 1940 Act. Separate Account 65 and Separate Account 66 are not Section 26 Applicants.

4. The Trust is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act. The Trust is a series investment company and currently offers 40 separate series (each a ''Portfolio'' and collectively, the ''Portfolios''). Equitable currently serves as investment manager (''Manager'') of each of the Portfolios. Both the Removed and Replacement Portfolios are series of the Trust. The Trust does not impose sales charges for buying and selling its shares. All dividends and other distributions with respect to a Portfolio's shares are reinvested in full and fractional shares of the Portfolio to which they relate. The Trust currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. Under that distribution plan, up to 0.50% of the average daily net assets attributable to the Class IB shares of each Portfolio may be used to pay for distribution and shareholder services. The distributors for the Class IA and Class IB shares of each Portfolio are AXA Advisors, LLC (''AXA Advisors'') and AXA Distributors, Inc. (''AXA Distributors''). Under the Distribution Agreements with respect to the promotion, sale and servicing of shares of each Portfolio, payments to AXA Advisors and AXA Distributors, with respect to activities under the distribution plan, are currently limited to payments at an annual rate equal to 0.25% of the average daily net assets of each Portfolio (including the Removed and Replacement Portfolios) attributable to its Class IB shares.

5. The Trust has received an exemptive order from the Commission (''Multi-Manager Order'') that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of the Trust, and without the approval of shareholders to: (i) Select a new investment adviser or additional investment advisers (''Advisers'') for each Portfolio; (ii) enter into new Investment Advisory Agreements with Advisers (''Advisory Agreements'') and/or materially modify the terms of any existing Advisory Agreement; (iii) terminate any existing Adviser and replace the Adviser; and (iv) continue the employment of an existing Adviser on the same contract terms where the Advisory Agreement has been assigned because of a change of control of the Adviser.

6. Equitable, on its own behalf and on behalf of the Separate Accounts, proposes to exercise its contractual right to substitute a different eligible investment fund for the Removed Portfolio as a funding option under the Contracts. The Section 26 Applicants propose to substitute Class IB shares of the Replacement Portfolio for Class IB shares of the Removed Portfolio. Although each Portfolio of the Trust is authorized to issue Class IA shares, neither of the Portfolios involved in the proposed Substitution has issued any Class IA shares to date. Accordingly, no Class IA shares are involved in the proposed Substitution.

7. The Section 26 Applicants propose the Substitution as part of a continued and overall business plan by Equitable to make its Contracts more competitive and thus more attractive to existing Contract owners, and to prospective purchasers. The Substitution is also intended to simplify the prospectuses and related materials with respect to the Contracts and the investment options available through the Separate Accounts. Additionally, the Substitution will substitute shares of the Replacement Portfolio for shares of the Removed Portfolio, which has an investment objective, policies and risks substantially similar to those of the Replacement Portfolio. Furthermore, Equitable believes that the Substitution ultimately may enable Equitable to reduce certain of the costs that it incurs in administering the Contracts by consolidating overlapping and duplicative Portfolios. Finally, the

Substitution is designed to provide Contract owners with an opportunity to continue their investment in a similar Portfolio without interruption and without any cost to them. In this regard, Equitable will bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. On the effective date of the Substitution, the amount of any Contract owner's or participant's Contract value or the dollar value of a Contract owner's or participant's investment in the relevant Contract will not change as a result of the Substitution.

8. The investment objective of the Replacement Portfolio is to seek capital appreciation. To achieve this objective, the Replacement Portfolio invests primarily in equity securities of companies located in a number of different countries. Under normal circumstances, a majority of the Replacement Portfolio's assets will be invested in companies located in at least three different countries outside the United States. The countries in which the Replacement Portfolio may invest include emerging market countries. The Replacement Portfolio will not limit its investments to any particular type of company, although it generally invests in large capitalization companies, and will invest in companies whose earnings its Adviser believes to be in a relatively strong growth trend or whose securities the Adviser considers to be undervalued. The primary risks associated with an investment in the Replacement Portfolio are: (i) General equity investment risk; (ii) foreign securities risk (both emerging markets and regulatory risks); (iii) small-capitalization and mid-capitalization company risk; (iv) derivatives risk; and (v) liquidity risk.

9. Applicants state that the Removed Portfolio has an investment objective, policies and risks that are substantially similar to those of the Replacement Portfolio in that it also seeks to achieve long-term growth of capital through investment primarily in common stocks of established foreign companies. The Removed Portfolio invests substantially all of its assets in common stocks of established companies outside of the United States. The Adviser broadly diversifies the Portfolio's investments among developed and emerging market countries throughout the world. Stock selection reflects a growth style. The Removed Portfolio may purchase the stock of companies of any size, but typically focuses on large capitalization companies, and to a lesser extent, medium-sized companies. The primary risks associated with an investment in the Removed Portfolio are: (i) general equity investment risk; (ii) growth investing risk; (iii) foreign securities risk (including currency, emerging markets, regulatory, political/economic and geographic risks); and (iv) liquidity risk. Applicants assert that, after the proposed Substitution, a Contract owner or participant who allocated value to the Removed Portfolio would continue to have value allocated to a Replacement Portfolio that seeks capital appreciation through investment in foreign company stocks, and would have assumed a substantially similar level of risk.

10. The first chart below compares the advisory fees and total expenses of the Class IB shares of the Replacement Portfolio and the Removed Portfolio for the six month period ended June 30, 2001 (annualized) and the one year period ended December 31, 2001. The management fee for the Replacement Portfolio is identical to that for the Removed Portfolio. The net total expense ratio for the Replacement Portfolio was also identical to that of the Removed Portfolio for the corresponding period. With respect to the Removed and Replacement Portfolios for the period ended December 31, 2001, this is as a result of a management fee waiver and expense reimbursement agreement in effect for each of these Portfolios until April 30, 2002. Absent this agreement, the total expense ratio of the Replacement Portfolio would have been slightly higher than that of the Removed Portfolio. Applicants state that the proposed Substitution would replace the Removed Portfolio with the Replacement Portfolio, which currently has, and will have after the Substitution, a larger asset size. Generally speaking, larger funds tend to have lower expenses than comparable funds that are smaller. This is because, with a larger asset size, fixed fund expenses are spread over a larger base, lowering the expense ratios. Also, larger funds may have lower trading expenses, potentially resulting in higher returns. Applicants state that it is anticipated that the net total expense ratio of the Replacement Portfolio will be no higher than that of the Removed Portfolio as a result of the proposed Substitution due to the fee waiver and expense reimbursement agreement. In addition, it is anticipated that the total expense ratio of the Replacement Portfolio will be lower than that of the Removed Portfolio as a result of the Substitution, absent any fee waivers or expense reimbursements. The second chart below includes the fees and expenses of the Class IB shares of the Replacement Portfolio on a *pro forma* basis assuming that the Substitution had been in effect for the one year period ended December 31, 2001.

	Replacement portfolio EQ/Putnam International Equity Portfolio (Class IB)		Removed portfolio EQ/T. Rowe Price International Stock Portfolio (Class IB)	
	Six month period ended 6/30/2001 (annualized)	One year period ended 12/31/2001	Six month period ended 6/30/2001 (annualized)	One year period ended 12/31/2001
Net Assets	$344,446,000	$330,234,330	$201,898,000	$202,104,053
Management Fee [1]	0.85%	0.85%	0.85%	0.85%
Rule 12b–1 Fee	0.25%	0.25%	0.25%	0.25%
Other Expenses	0.15%	0.24%	0.15%	0.19%
Total Expenses	1.25%	1.34%	1.25%	1.29%
Fee Waiver and/or Expense Reimbursement	NA	0.09%	NA	0.04%
Net Expenses	1.25%	1.25%	1.25%	1.25%

[1] The management fee for the Replacement Portfolio on an annual basis is equal to 0.850% of the first $1 billion; 0.800% of the next $1 billion; 0.775% of the next $3 billion; 0.750% of the next $5 billion; and 0.725% thereafter. The management fee for the Removed Portfolio on an annual basis is equal to 0.850% of the first $1 billion; 0.800% of the next $1 billion; 0.775% of the next $3 billion; 0.750% of the next $5 billion; and 0.725% thereafter.

COMBINED PORTFOLIO
[One Year Period Ended 12/31/2001]

Net Assets	$532,338,383
Management Fee	0.85%
Rule 12b–1 Fee	0.25%
Other Expenses	0.17%
Total Expenses	1.27%
Fee Waiver and/or Expense Reimbursement	0.02%
Net Expenses	1.25%

COMBINED PORTFOLIO
mdash;Continued
[One Year Period Ended 12/31/2001]

11. The chart below compares the average annual total returns for the Class IB shares of the Replacement Portfolio and the Removed Portfolio for one year, three years and since inception, for the period ended December 31, 2001. The historical performance of the Replacement Portfolio for the time periods listed below has been more favorable than that of the Removed Portfolio, although there is no guarantee that this will be the case in the future.

Portfolio (Benchmark Index)	One year ended 12/31/01	Three years ended 12/31/01	Since inception (05/1/97)
Putnam Portfolio	(21.55)%	3.29%	8.18%
T. Rowe Price Portfolio	(21.79)%	(5.69)%	(1.33)%
MSCI EAFE Index	(21.44)%	(5.05)%	1.19%

12. The Section 26 Applicants will file with the Commission prospectuses and prospectus supplements that notify Contract owners and participants of Equitable's intention to substitute the Replacement Portfolio for the Removed Portfolio. The prospectuses and prospectus supplements, as appropriate, also will describe the Substitution, the Replacement and Removed Portfolio and the impact of the Substitution on fees and expenses at the underlying fund level. The Section 26 Applicants will send the appropriate prospectus or prospectus supplement (or other notice, in the case of Contracts no longer actively marketed and for which there are a relatively small number of existing Contract owners (''Inactive Contracts'')), as appropriate, containing this disclosure to all existing and new Contract owners and participants.

13. At or after the time the Commission approves the Application, the Section 26 Applicants will send to existing Contract owners and participants a supplement to the relevant Contract prospectus (or other notice in the case of Inactive Contracts) that discloses to such Contract owners and participants that the Application has been approved. Together with this disclosure, the Section 26 Applicants will send to any of those existing Contract owners and participants who have not previously received a prospectus for the Replacement Portfolio a prospectus and/or prospectus supplement for the Replacement Portfolio. New purchasers of Contracts will be provided with a Contract prospectus and/or supplement containing disclosure that the Commission has issued an order approving the Substitution, as well as a prospectus for the Replacement Portfolio. The Contract prospectus and/or supplement and the prospectus and/or prospectus supplement for the Trust, including the Replacement Portfolio, will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

14. Contract owners and participants will be sent a notice of the Substitution before the Substitution Date. The notice will inform Contract owners and participants that the Substitution will be effected on the Substitution Date and that they may transfer assets from the Removed Portfolio (or from the Replacement Portfolio following the Substitution Date) to another investment option available under their Contract without the imposition of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed for a period beginning thirty (30) days before the Substitution Date and ending no earlier than thirty (30) days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts. Within five days after the Substitution Date, Equitable will mail (i) a written notice to all Contract owners and participants affected by the Substitution informing them that the Substitution was completed and restating that they may transfer assets from the Replacement Portfolio to another investment option available under their Contract free of any applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed through a date at least thirty (30) days following the Substitution Date and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts and (ii) a confirmation of the transactions.

15. The Substitution will be effected by redeeming shares of the Removed Portfolio in-kind on the Substitution Date at its net asset value and using the proceeds of those in-kind redemptions to purchase shares of the Replacement Portfolio at its net asset value on the same date.

16. In-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of the Replacement Portfolio and the Removed Portfolio. Equitable, in consultation with the Replacement Portfolio's Adviser, will review the In-Kind Transactions to assure that the assets are suitable for the Replacement Portfolio. All assets and liabilities will be valued based on the normal valuation procedures of the Removed Portfolio and the Replacement Portfolio, as set forth in the Trust's registration statement.

17. No transfer or similar charges will be imposed by the Section 26 Applicants and, on the Substitution Date, all Contract values will remain unchanged and fully invested. Contract owners and participants will not incur any fees or charges as a result of the proposed Substitution, nor will their rights or Equitable's obligations under the Contracts be altered in any way. All expenses in connection with the proposed Substitution, including any brokerage, legal, accounting, and other fees and expenses will be paid by Equitable. The proposed Substitution will not impose any tax liability on Contract owners or participants or cause the Contract charges currently being paid by Contract owners and participants to be greater after the proposed Substitution than before the proposed Substitution. All Contract-level fees will remain the same after the proposed Substitution. The proposed Substitution will not alter in any way the benefits, including tax benefits to Contract owners and participants, or

Equitable's obligations under the Contracts. In addition, the proposed Substitution will not be treated as a transfer for purposes of assessing transfer charges or computing the number of permissible transfers under the Contracts.

18. The Section 26 Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the Substitution of Class IB shares of the EQ/Putnam International Equity Portfolio for Class IB shares of the EQ/T. Rowe Price International Stock Portfolio. The Section 17 Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act granting an exemption from Section 17(b) to the extent necessary to permit the In-Kind Transactions.

Applicable Law

Section 26(c) of the 1940 Act

1. Section 26(c) of the 1940 Act prohibits the depositor of a registered unit investment trust that invests in the securities of a single issuer from substituting the securities of another issuer without Commission approval. Section 26(c) provides that ''[t]he Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.'' Section 26(c) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs and other charges will not be incurred due to unapproved substitution of securities.

2. The proposed Substitution involves a substitution of securities within the meaning of Section 26(c) of the 1940 Act. The Applicants, therefore, request an order from the Commission pursuant to Section 26(c) approving the proposed Substitution.

3. Equitable has reserved the right under the Contracts to substitute shares of another eligible investment fund for any of the current Portfolios. The prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right. The Section 26 Applicants have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit Equitable and its Contract owners.

4. The Replacement Portfolio and Removed Portfolio have substantially similar investment objectives, policies and risks. In addition, the proposed Substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts. Any impact on the investment programs of affected Contract owners, including the appropriateness of the available investment options, should therefore be negligible.

5. Applicants also maintain that the ultimate effect of the Substitution would be to consolidate overlapping and duplicative investment options in a single Portfolio. This consolidation will permit Equitable to present information to its Contract owners and participants in a simpler and more concise manner. The anticipated streamlining of the disclosure documents should provide Contract owners and participants with a simpler presentation of the available investment options under their Contracts and related financial information.

6. Thus, the Substitution protects the Contract owners and participants who have allocated Contract value to the Removed Portfolio by: (i) providing an underlying investment option for sub-accounts invested in the Removed Portfolio that is substantially similar to the Removed Portfolio; (ii) providing such Contract owners and participants with simpler and more focused disclosure documents; and (iii) providing such Contract owners and participants with an investment option with an identical management fee and total expense ratio as the current investment option.

7. Applicants assert that the proposed Substitution is not of the type that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute investment securities in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner and participant with the right to exercise his or her own judgment, and transfer Contract values and cash values into and among other investment options available to Contract owners and participants under their Contracts. Additionally, the Substitution will not, in any manner, reduce the nature or quality of the available investment options. Moreover, the Section 26 Applicants will offer Contract owners and participants the opportunity to transfer amounts out of the affected sub-accounts without any cost or other penalty that may otherwise have been imposed until thirty days after the Substitution Date. The Substitution, therefore, will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

8. The proposed Substitution is also unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners and participants select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the Section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners also may have considered Equitable's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitution.

9. Applicants have agreed to the following terms and conditions of the Substitution:

a. The investment objectives, policies and risks of the Replacement Portfolio are substantially similar to the investment objectives, policies and risks of the Removed Portfolio, providing Contract owners and participants with a means to continue their investment goals and risk expectations;

b. The total expense ratio for the Class IB shares of the Replacement Portfolio will be equal to or less than that of the Class IB shares of the Removed Portfolio, assuming that the assets of the Replacement Portfolio do not decrease significantly from the present asset level. In this regard, for those Contract owners or participants who were Contract owners or participants on the date of the Substitution, Equitable will waive its management fee with respect to the Replacement Portfolio and/or reimburse expenses incurred by the Replacement Portfolio during the twenty-four months following the Substitution to the extent necessary to ensure that the total expense ratio for any period (not to exceed a fiscal quarter) for the Class IB shares of the Replacement Portfolio does not exceed 1.25% of the Replacement Portfolio's average daily net assets (on an annualized basis);

c. Investments in the Replacement Portfolio may be temporary investments for Contract owners and participants as each Contract owner and participant may exercise his or her own judgment as to the most appropriate investment alternative available. In this regard, the proposed Substitution retains for Contract owners and participants the investment flexibility which is a central feature of the Contracts. Additionally,

for a period beginning 30 days before the Substitution Date, and ending no earlier than 30 days after the Substitution, Contract owners and participants will be permitted to transfer value among the various investment options available under their Contract free of any otherwise applicable transfer charges, limitations, fees, or other penalties that might otherwise be imposed and such transfers will not count against the limit, if any, on the number of free transfers permitted under the Contracts;

d. The Substitution will be effected at the relative net asset values of the respective shares of the Removed Portfolio and the Replacement Portfolio, without the imposition of any transfer or similar charge by the Section 26 Applicants, and with no change in the amount of any Contract owner's or participant's Contract value or in the dollar value of his or her investment in such Contract;

e. Contract owners and participants will not incur directly or indirectly related fees or charges as a result of the Substitution. Equitable will bear all expenses incurred in connection with the Substitution and related filings and notices, including legal, accounting, brokerage and other fees and expenses. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitution than before the Substitution;

f. The Substitution will not be counted as a new investment selection in determining the limit, if any, on the total number of Portfolios that Contract owners and participants can select during the life of a Contract;

g. The Substitution will not alter or affect the insurance benefits or rights of Contract owners or participants or the terms and obligations of the Contracts;

h. Contract owners and participants would not incur any adverse tax consequences as a result of the Substitution;

i. Contract owners and participants affected by the Substitution will be sent written confirmation of the Substitution that identifies the Substitution made on behalf of the Contract owner or participant within five days following the Substitution;

j. For those Contract owners or participants who were Contract owners or participants on the date of the Substitution, Equitable will not increase sub-account or Contract expenses for a period of twenty-four months following the Substitution Date; and

k. Contract owners and participants may withdraw amounts under the Contract or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

Section 17(a) of the 1940 Act

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

2. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from Section 17(a) if: (i) the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transactions are consistent with the policy of each registered investment company concerned; and (iii) the proposed transactions are consistent with the general purposes of the 1940 Act.

3. The Section 17 Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions.

4. The Section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. The In-Kind Transactions will be effected at the respective net asset values of the Removed Portfolio and the Replacement Portfolio, as determined in accordance with the procedures disclosed in the registration statement for the Trust and as required by Rule 22c–1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract owner's or participant's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in the Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

5. Applicants state that the Section 17 Applicants will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a–7. To the extent that the In-Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a–7, the Section 17 Applicants assert that the terms of the In-Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In-Kind Transactions satisfied all of the conditions enumerated in Rule 17a–7. The Section 17 Applicants also assert that the proposed In-Kind Transactions by the Section 17 Applicants do not involve overreaching on the part of any person concerned. Furthermore, the Section 17 Applicants represent that the proposed Substitution will be consistent with the policies of the Removed Portfolio and the Replacement Portfolio, as recited in the Trust's current registration statement.

6. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the Application, the Section 26 Applicants and the Section 17 Applicants each respectively state that the proposed Substitution and the related In-Kind Transactions meet the standards of Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act, respectively, and respectfully request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8206 Filed 4–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45677; File No. SR–CBOE–2002–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Execution of Incoming RAES Orders Against Manual Quotes

March 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[3] On February 28, 2002 and March 25, 2002, the Exchange submitted Amendment Nos. 1[4] and 2[5] to the proposal, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rules 6.8 and 6.43 regarding orders entered into its Retail Automatic Execution System (''RAES'') for execution against manual quotes. Below is the text of the proposed rule change. Additions are italicized.

* * * * *

Rule 6.8: RAES Operations

(a)–(c) no change

(d)(i)–(v) no change

(vi) RAES orders will not execute against manual quotes (as defined in Rule 6.43). When a manual quote is the disseminated quote, orders submitted for automatic execution in that series shall be automatically routed to PAR, BART, or Live Ammo. When orders route to PAR or Live Ammo as a result of a manual quote, Designated Primary Market Makers (''DPMs'') will use their best efforts to attempt to ensure that the member will receive an allocation of incoming order(s) for up to his/her disseminated size.

* * * * *

Rule 6.43 Manner of Bidding and Offering

(a) Bids and offers to be effective must be made at the post by public outcry, except that bids and offers made by the Board Broker or Order Book Official shall be effective if displayed in a visible manner in accordance with Rule 7.7. All bids and offers shall be general ones and shall not be specified for acceptance by particular members.

(b) Members of the trading crowd may verbalize quotes (''manual quotes'') to be input into Exchange systems by quote reporters for dissemination to the Options Price Reporting Authority (''OPRA''). Manual quotes must be for a minimum size of five (5) contracts. A manual quote will remain as the Exchange's disseminated quote until executions deplete the size, until the market maker or floor broker withdraws the quote, or until matched or improved by Autoquote or improved by an order in the electronic Book.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.8 governs the operation of RAES. RAES generally provides for automatic executions at the Exchange's disseminated quote, regardless of whether the disseminated quote represents the Autoquote-generated price or a manual quote put up on behalf of a market maker or floor broker. Once executed, RAES trades are assigned to market makers in accordance with the procedures contained in CBOE Rule 6.8.06. CBOE Rule 6.8.06 does not provide for the automatic allocation of RAES orders to a specific market maker, even if the RAES trade occurred at that market maker's quote.

The Exchange proposes that when a manual quote[6] represents the Exchange's disseminated quote, RAES would not automatically execute an order and assign it to market participants. Rather, the Exchange's Order Routing System (''ORS'') would block incoming orders from automatic execution and instead, immediately route them to Exchange's Public Automated Routing System (''PAR''), the Exchange's Booth Automated Routing Terminal (''BART''), or Live Ammo,[7] where they would be executed manually at the disseminated price up to the disseminated size.[8] Electronic orders would continue to be blocked from receiving automatic execution as long as a manual quote is the Exchange's disseminated quote. A manual quote would remain as the Exchange's disseminated quote until executions deplete the size, until the market maker or floor broker withdraws the quote, or until Autoquote matches the manual quote.[9] The minimum size

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially submitted this proposal to the Commission on December 28, 2001 as part of File No. SR–CBOE–2001–70 and subsequently withdrew that portion of the filing relating to manual quotes. *See* Securities Exchange Act Release No. 45490 (March 1, 2002), 64 FR 25091 (March 8, 2002) (notice soliciting public comment on File No. SR–CBOE–2001–70).

[4] *See* letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Deborah Flynn, Division of Market Regulation (''Division''), Commission, dated February 27, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposed additional rule text to clarify the intended operation of the proposal.

[5] *See* letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Deborah Flynn, Division, Commission, dated March 22, 2002 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposes changes to the rule text of CBOE Rules 6.8 and 6.43 with regard to the dissemination of manual quotes. In addition, the Exchange proposes to amend CBOE Rule 6.8 regarding the obligation of Designated Primary Market Makers (''DPMs'') to use their best efforts to ensure that a member that enters a manual quote will receive an allocation of incoming order(s) for up to such member's disseminated size.

[6] *See* Amendment No. 2, *supra* note 5. Pursuant to proposed paragraph (b) to CBOE Rule 6.43, a manual quote is a quote that is verbalized by an Exchange member to be input into Exchange systems by a quote reporter for dissemination to OPRA.

[7] The Live Ammo electronic screen displays market orders or limit orders that improve the market. *See* CBOE Rule 7.4(g).

[8] *See* Proposed CBOE Rule 6.8(d)(vi).

[9] *See* Amendment No. 2, *supra* note 5. Pursuant to proposed CBOE Rule 6.43(b), a member's manual quote will lose priority when matched by the Autoquote. The Commission notes that the Exchange filed a proposed rule change, File No. SR–CBOE–2002–05, proposing a new rule, CBOE Rule 6.8B, that would require that a member that places an order in EBook that is the Exchange's disseminated quote retain priority to the extent of the size of his quote, even if such member's bid or offer is subsequently matched by Autoquote. CBOE staff represents that, in connection with its proposed rule change filed in SR–CBOE–2002–05,

order that could be manually entered by a crowd member would be five contracts. Accordingly, any member in the crowd would have the ability to cause a manual quote that improves the disseminated quote to become the new disseminated quote, provided that quote is for at least five contracts.[10]

When orders route to PAR or Live Ammo as a result of a manual quote, DPMs would use their ''best efforts'' to attempt to ensure that the member that put up the quote will receive the incoming order(s) for up to his/her disseminated size.[11] The term ''best efforts'' entails several safeguards designed to help facilitate the manual assignment of RAES orders to the member that put up the quote. First, the Exchange notes that given the open outcry environment of the trading floor, DPMs would more than likely hear the member verbalizing the order. Second, other market participants would likely hear the order being verbalized and would be able to inform the DPM of the identity of the market maker whose quote was disseminated. Third, the member who put the quote up would have a strong interest in stepping forward and claiming the contracts for which he just bid/offered. Fourth, because a manual quote is a member's quote, it may not be representative of the DPM's market. As such, the DPM would have a strong interest in determining against whose quote incoming RAES orders executed, or else the entire crowd would be obligated. Finally, the Exchange notes that quote reporters are present in the crowd and should know which member submitted a manual quote for dissemination.

The Exchange believes that this proposal represents a substantial step toward enhancing incentives to members to quote competitively by providing them with an opportunity to receive allocations of trades that execute against quotes they caused to be disseminated. Upon approval of the filing, the Exchange commits to provide notification to its members apprising them of the substance of the filing (*i.e.*, that RAES orders would not automatically execute against manual quotes). This notification process would include distribution of a circular to members as well as reference on the CBOE Web site.

2. Statutory Basis

For the reasons discussed above, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–07 and should be submitted by April 26, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[14] and, in particular, section 6(b)(5) of the Act[15] in that the proposed rule change has been designed to remove impediments to and to perfect the mechanism of a free and open market and a national market system, while also protecting investors and the public interest. Specifically, the Commission believes that the proposed rule change, which allocates incoming orders to the floor broker or market maker that established the Exchange's disseminated quote, should encourage competition among trading crowd participants by providing a greater incentive for floor brokers and market makers to improve the Exchange's disseminated quote. In this regard, the Commission notes that the Exchange's rules would provide that a member who enters a manual quote that improves the Exchange's disseminated quote should receive the benefit of trading with incoming orders at such member's disseminated price and size.

The Commission notes that any member of the trading crowd who submits a manual quote that improves the Exchange's disseminated quote would be considered to be the responsible broker or dealer pursuant to Rule 11Ac1–1(c) under the Act.[16] Consequently, the Exchange has an obligation pursuant to Rule 11Ac1–1(b) under the Act to disseminate the member's quote and the member has an obligation pursuant to Rule 11Ac1–1(c) under the Act to be firm at that price for up to its disseminated size. In addition, the Commission believes that investors should benefit from the opportunity to receive executions of their orders at improved prices.

The Commission finds good cause, consistent with section 19(b)(2) of the Act,[17] to grant the Exchange's request for approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change and amendments thereto should allow the CBOE to quickly

it will amend proposed CBOE Rule 6.43 to clarify that at such time as the CBOE Rule 6.8B applies to a given option series, the provisions of CBOE Rule 6.8B governing priority of orders in EBook shall supersede the provision of proposed CBOE Rule 6.43(b) under which a member would lose priority when Autoquote matches his manual quote. Telephone conversation between Steve Youhn, CBOE, and Elizabeth King, Division, Commission, on March 28, 2002.

[10] *See* Proposed CBOE Rule 6.8(d)(vi).

[11] *See* Amendment No. 2, *supra* note 5.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 240.11Ac1–1.

[17] 15 U.S.C. 78s(b)(2).

implement its proposed improvement to its market to encourage greater competition among trading crowd participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the Exchange's proposed rule change, as amended, (File No. SR–CBOE–2002–07) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8209 Filed 4–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45676; File No. SR–CBOE–2001–70]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Dissemination of Options Quotations With Size

March 29, 2002.

I. Introduction

On December 28, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend CBOE Rules 6.8 and 8.51 to accommodate the introduction of an options quotation with size (''quotes with size'' or ''QWS'') system with an automatic decrementation feature (''AutoDec''). On January 14, February 27, and March 1, 2002, respectively, the Exchange submitted Amendment Nos. 1, 2, and 3 to the proposal.[3] Notice of the proposed rule change, as amended, appeared in the **Federal Register** on March 8, 2002.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

The CBOE proposes to implement a QWS system with an AutoDec feature that would enable the Exchange to disseminate options quotations with a size that reflects previous executions. The Exchange proposes to implement the QWS system gradually on a series-by-series basis.[5]

AutoDec

For those series in which the exchange disseminates options quotations with size, the QWS system would automatically decrement all executions for each individual series calculated by Autoquote[6] that execute automatically. For example, if the Exchange disseminates a size of 100 contracts, the trading crowd would be firm for 100 non-broker-dealer contracts executed automatically or via open outcry[7] at the disseminated price, until that size was exhausted or until the quote was refreshed. Under the proposal, the appropriate Floor Procedure Committee (''FPC'') would retain its authority to establish the eligible order size permitted to be sent to RAES for a particular series at a number less than the disseminated size. Therefore, for classes in which the Exchange does not disseminate options quotations with size, CBOE Rule 6.8(c)(v) would remain in effect.[8]

While the disseminated size would reflect the number of contracts that may be executed automatically or via open outcry at a particular price, trades executed in open outcry would *not* cause the disseminated size to decrement automatically. Under these circumstances, the Exchange would be firm for executions that in the aggregate sum up to more than its disseminated size. The number of contracts in a particular series that may receive automatic execution at the disseminated price, however, may not exceed the disseminated size.[9]

Consistent with the current provisions of CBOE Rule 6.8, orders eligible for automatic execution would not be executed automatically at prices inferior to the national best bid or offer. If an incoming electronic order exceeds the disseminated size, that order would receive a partial automatic execution for up to the disseminated size at the disseminated price. The balance of the order would be automatically routed away from RAES to the Exchange's Public Automated Routing System (''PAR''), the Exchange's Booth Automated Routing Terminal (''BART''), or Live Ammo[10] and thus may receive a dual-price execution.[11]

30-Second Reroute Period

When the disseminated size is decremented to zero by automatic executions, for a period not to exceed 30-seconds (''reroute period''), all subsequent orders in that series that are otherwise eligible for RAES would be automatically routed away from RAES to either PAR, BART, or Live Ammo.[12] During the reroute period, the Exchange would disseminate a size of ''1'' with the same price. Upon expiration of the reroute period timer, new electronic orders would be eligible for automatic execution up to the refreshed disseminated size. The duration of the reroute period would be configurable by the DPM on a class basis and may not exceed 30-seconds. The appropriate FPC may, however, establish a ceiling on that duration not to exceed thirty seconds. The DPM may manually override the reroute period timer by submitting a new quote prior to the expiration of the reroute period. For example, if the reroute period timer is established at 15-seconds, the DPM may manually send a new quote at any time prior to the expiration of the 15-second reroute period, thereby allowing orders to be eligible for automatic execution at the refreshed price.

Upon expiration of the reroute period, subsequent incoming orders that are eligible for automatic execution would

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Deborah Flynn, Division of Market Regulation (''Division''), SEC, dated January 11, 2002 (''Amendment No. 1''); Steve Youhn, CBOE, to Deborah Flynn, Division, SEC, dated February 13, 2002 (''Amendment No. 2''); and Steve Youhn, CBOE, to Deborah Flynn, Division, SEC, dated February 28, 2002 (''Amendment No. 3'').

[4] *See* Securities Exchange Act Release No. 45490 (March 1, 2002), 64 FR 25091.

[5] For those series in which the Exchange does not implement the QWS system, the Exchange would continue to publish firm quote sizes on its website. *See* CBOE Rule 8.51(c)(2).

[6] For purposes of this rule filing, Autoquote shall refer to any automated quotation updating system, whether Exchange-owned or proprietary.

[7] The Commission's Quote Rule obligates the responsible broker or dealer to also be firm for the disseminated size for orders executed in open outcry. Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[8] CBOE Rule 6.8(c)(v) provides that the appropriate FPC shall determine the size of orders eligible for entry into RAES. The eligible order size for non-QWS series must be 100 contracts or less.

[9] *See* proposed CBOE Rule 6.8.09(a)(1). Notwithstanding this provision, all orders rerouted from Live Ammo back to RAES would receive an automatic execution at the disseminated price even if the cumulative size of such rerouted orders exceeds the disseminated size. *See* proposed CBOE Rule 6.8.09(a)(2). *See also infra* note 13 .

[10] The Live Ammo electronic screen displays market orders or limit orders that improve the market. See CBOE Rule 7.4(g).

[11] Orders would route to BART only if a firm so chooses.

[12] Orders received during the reroute period would not be held for the duration of the reroute period. Rather, as incoming electronic orders are received during the reroute period they would be sent upon receipt either to PAR, BART, or Live Ammo. The appropriate FPC shall determine by class the location to which to route those RAES orders that are submitted during the reroute period.

be eligible to receive automatic execution at the refreshed price.[13]

RAES Operation

To facilitate the introduction of QWS, the Exchange proposes to make a corresponding change to CBOE Rule 6.8(c)(v) regarding the maximum eligible order size for RAES orders. Currently, the maximum allowable RAES size is 100 contracts. The Exchange proposes to retain this upper limit, however, it would only apply to those series in which the Exchange does not disseminate options quotations with size (as defined in Proposed CBOE Rule 6.8(b)(iv)). For those series in which the Exchange disseminates options quotations with size, the eligible order size would be established by the appropriate FPC.

Determination of Disseminated Size

The CBOE proposes that the entity that has responsibility under Exchange Rules to determine a formula for generating automatically updated market quotations would also be responsible for determining the size of the undecremented disseminated quote. According to the CBOE, this entity, in most instances, would either be the DPM, Lead Market-Maker (''LMM''), or Supplemental Market-Maker (''SMM'') or Appointed Market-Maker (''Appointed Market-Maker'') for the class.[14]

While DPMs, LMMs, SMMs, and Appointed Market-Makers have the responsibility to determine the size of the undecremented disseminated quote, the proposed amendment to Interpretation and Policy .09(c) of CBOE Rule 6.8 expressly provides that the DPM, LMM, SMM, or Appointed Market-Maker may, but is not required to, consult with and/or agree with other market makers in the trading crowd in determining the size of the undecremented disseminated quote. The CBOE further proposes that the members of the trading crowd, however, may, but are not required to, provide the DPM, LMM, SMM, or Appointed Market-Maker with any input regarding the size of the undecremented disseminated quote. In those classes in which a DPM, LMM, SMM, or Appointed Market-Maker does not have responsibility to determine the Autoquote variables, the trading crowd as a whole shall determine the size of the undecremented disseminated quote.

Replenishment Timer

According to the Exchange, because of the preponderance of series for which each DPM is responsible for maintaining quotes, the CBOE proposes to introduce a replenishment timer to automatically update the dissemination of size values. The replenishment timer, which would be configurable by class by the DPM, would be a feature that automatically increases the disseminated size for a particular series back to the original Autoquote volume parameter after a set time-period when no further decrementation has occurred.[15]

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission believes that the proposal to allow automatic decrementation of disseminated size to reflect automatic executions at the disseminated price is consistent with Section 6(b)(5),[17] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange's ability to automatically decrement its disseminated size based on automatic executions through RAES should enable CBOE members to more accurately reflect their liquidity and provide all market participants, including investors, with a more accurate measure of the liquidity available in CBOE's market at the disseminated price.

While DPMs, LMMs, SMMs, and Appointed Market-Makers have the responsibility to determine the size of the undecremented disseminated quote, the proposal would permit the DPM, LMM, SMM, or Appointed Market-Maker to consult with and/or agree with other market makers in the trading crowd in determining the size of the undecremented disseminated quote. The proposal would further allow that the members of the trading crowd may, but are not required to, provide the DPM, LMM, SMM, or Appointed Market-Maker with any input regarding the size of the undecremented disseminated quote. At this time, the Commission believes it is reasonable for the Exchange's rules to permit the members of the crowd to be given a voice in setting the size associated with the Autoquote price because, pursuant to the Exchange's rules, they will be obligated to execute orders at that size.

The Commission notes that to the extent the CBOE no longer establishes by rule and periodically publishes quotation sizes pursuant to Rule 11Ac1–1(d)(1) under the Act, its members that are responsible broker or dealers, likewise, may no longer rely on the exception to the Quote Rule that currently relieves them of their obligation pursuant to paragraph (c)(1) to Rule 11Ac1–1 to communicate to the Exchange the sizes associated with their quotations. In addition, such responsible brokers or dealers may no longer comply with its obligations under paragraph (c)(2) to Rule 11Ac1–1 by executing orders up to the size established by Exchange rule and must, instead, execute any order in any amount up to its published quotation size.

Pursuant to Section 19(b)(2),[18] the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change was published for comment and that no comment letters were received. The Commission believes that granting accelerated approval to the proposed rule change should allow the CBOE begin to implement, without delay, its QWS system with AutoDec, which should enhance the transparency of the CBOE market.

[13] The Live Ammo terminals feature a ''Live Ammo to RAES'' switch that enables the DPM to automatically reroute orders back to RAES for automatic execution. If the DPM uses this function, all orders on Live Ammo would then immediately reroute for automatic execution, even if the cumulative size of these orders exceeds the disseminated size. Orders rerouted from Live Ammo to RAES would retain priority over subsequently received RAES orders. *See* proposed CBOE Rule 6.8.09(a)(2).

[14] For those classes in which a DPM, LMM, SMM, or Appointed Market-Maker does not have responsibility to determine a formula for generating automatically updated market quotations, the obligation to update quotes is imposed upon the trading crowd as a whole.

[15] For example, assume the replenishment timer is set for 240-seconds in a class with a disseminated size of 200 and that this particular series has been decremented to 40 contracts due to executions. In order to prevent the continued dissemination of 40 contracts for an extended period, the replenishment timer would, after 240-seconds from the last execution, increase the disseminated size back to 200 contracts. The firm quote size would once again be 200 contracts. The replenishment timer is incorporated in proposed CBOE Rule 8.51(c)(2)(b).

[16] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2001–70) is approved, as amended, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8210 Filed 4–4–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45675; File No. SR–CBOE–2002–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Rebate of Fees Assessed on Certain Trades Submitted for Matching and Clearing Solely To Correct Trades That Clear Incorrectly Due to Manual Data Entry Errors

March 29, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2002, the Chicago Board of Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes authorize a rebate of fees that are assessed on trades submitted for matching and clearing solely to correct trades that clear incorrectly due to manual data entry or ''key punch'' errors. The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

FEE SCHEDULE

MARCH 01, 2002

MEMBER TRANSACTION FEE POLICIES AND REBATE PROGRAMS

MEMBER TRANSACTION FEES—INDEX OPTIONS (Unchanged)

* * * * *

MEMBER TRANSACTION FEES—EQUITY & INDEX OPTIONS (Unchanged)

* * * * *

ERROR ACCOUNT TRANSATIONS (Unchanged)

* * * * *

MISCLEARED TRANSACTIONS

On occasion, options transactions are matched and cleared as a result of certain keypunch errors and members are forced to execute subsequent transactions to achieve the originally intended results. A qualifying keypunch error is any error that is inadvertent and creates a duplicate fee or fees to be charged in the matching and clearing of corrective options trades. The CBOE shall have the discretion to rebate any duplicate transaction and trade match fees incurred in the course of correcting such errors. Only those transactions that require a minimum of 500 contracts to correct the error or errors shall be eligible for this rebate.

A written request with all supporting documentation (trade date, options class, executing firm and broker, opposite firm and broker, premium, and quantity) and a summary of the reasons for the error must be submitted to the CBOE Accounting Department within 60 days after the last day of the month in which the error occurred. This rebate program shall apply to all applicable fees collected under Section 1 (Options Transaction Fees), Section 2 (Trade Match Fee), and Section 3 (Floor Brokerage Fee) of the Chicago Board Options Exchange, Inc. Fee Schedule, as amended from time to time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange collects transaction fees and trade match fees for the many different types of equity and index option orders that are executed on the Exchange. [3] In the course of collecting these fees, the Exchange has discovered that, in certain situations, these fees should be rebated to members. On rare occasions, the Exchange finds that an options trade will be matched and cleared inappropriately as a result of a manual data entry or ''key punch'' error. In order to put the parties in the originally desired position, another transaction (or transactions) must be submitted through the trade match and clearing process to accurately reflect the intended transactions on the Exchange in accordance with Exchange rules. The Exchange states that these corrective transactions, like any other transaction submitted for matching and clearing, are subject to and will be assessed the appropriate fees in accordance with the Exchange's fee schedule. Depending on the size of the trades involved, the Exchange further states that the cost to the affected parties can be considerable. As such, the Exchange believes that it is appropriate to refund, with limitations, to the affected parties the fees generated by the transactions required to correct this type of error.

To qualify for this rebate, the error in question must be of a narrow scope. Specifically, the trade must be directly related to the entering of pertinent trade information for clearing purposes. For instance, the Exchange states that the typical situation would involve a member's clerk, or other similar personnel, inputting the wrong clearing firm code into the appropriate form or program. As a result, the trade is cleared through the wrong clearing firm and, in order to correct the situation, corrective transactions are entered to reverse the error trades and then new trades are submitted to reflect the original intentions of the parties. Because the fee assessment process is automated, transaction fees are unavoidably incurred through the subsequent execution of the corrective transactions. As a matter of economy, the Exchange has established a *de minimis* standard for qualifying members for a rebate. Only those transactions that require a minimum of 500 contracts to correct the error, or errors, would be eligible for

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* ''Chicago Board Options Exchange, Inc. Fee Schedule'' as amended from time to time.

this rebate. The Exchange further notes that the member will only be refunded the amount of fees above what is necessary to execute the originally intended transactions.

Additionally, the party seeking the rebate must provide in writing, at a minimum, a summary of the reasons for the error and all supporting information (trade date, options class, executing firm and broker, opposite firm and broker, premium, and quantity) and the written request must be submitted to the CBOE Accounting Department within 60 days after the last day of the month in which the error occurred. The Exchange will retain the discretion to determine, on a case-by-case situation, whether the transactions in question qualify for the rebate. This rebate program will be reflected on the Chicago Board Options Exchange, Inc. Fee Schedule and, upon Commission approval, members will be notified of the rebate program through an informational circular.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) hereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–13 and should be submitted by April 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8211 Filed 4–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45661; File No. SR–CHX–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Amending the Specialist Fee Schedule for Certain Nasdaq National Market Securities

March 27, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2002, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (''Schedule'') to provide for a specialist's exemption for otherwise applicable fees in the case of certain modestly-traded Nasdaq National Market (''NNM'') securities. The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Schedule to provide for a specialist's exemption from otherwise applicable fees in the case of certain modestly-traded NNM securities. Specifically, the proposed changes to the Schedule would exempt ''Exemption Eligible Securities'' [3] from otherwise applicable

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Exemption Eligible Security'' means any NNM security that averages fewer than 400 trades per day in the Nasdaq marketplace on an average daily basis during the applicable three-month measuring period. In the case of a NNM security assigned to a CHX specialist, the CHX shall make a semi-annual determination based on the most recent available data for the three-month period preceding the determination date. In the case of a NNM security that is not currently assigned to a CHX specialist, the CHX shall make its determination based on the most recent available data for the three-month period preceding the date on which a specialist submits an application for assignment of the security. Any NNM security that has been traded in the Nasdaq marketplace for less than three months (or for which three months' data is unavailable) is expressly excluded from this definition.

CHX fixed fees, assignment fees and application fees.

The Exchange believes that the proposed change to the Schedule constitutes an appropriate means of ensuring that the Exchange continues to trade an appropriate number of NNM securities. For a variety of reasons, some specialists have deregistered from certain NNM securities formerly assigned to such specialists for trading on the CHX pursuant to unlisted trading privileges. At the same time, CHX floor brokers continue to receive orders for many of these ''dropped'' issues; such floor brokers view continued CHX trading of a wide variety of NNM securities to be critical to their customers and an important part of the Exchange's overall strategic plan. Accordingly, the CHX has devised the proposed fee exemption, which the CHX believes will provide sufficient economic incentive for specialists to continue trading a wide array of NNM securities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] generally, and Section 6(b)(4) of the Act[5] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] as establishing or changing a due, fee, or other charge paid solely by members of the CHX. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–07 and should be submitted by April 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8208 Filed 4–4–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0285]

Delta Venture Partners I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Delta Venture Partners I, L.P., 8000 Centerview Parkway, Suite 100, Cordova, TN 38018, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2000)). Delta Venture Partners I, L.P., owned greater than 10 percent of Forum Technologies, Inc., and therefore, Forum Technologies, Inc. is considered an Associate of Delta Venture Partners I, L.P. proposes to provide equity/debt security financing to Forum Technologies, Inc. (d.b.a. Appraisal Forum), 6800 Poplar Avenue, Suite 121, Memphis, TN 38138. The financing is contemplated for national sales force expansion and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because John A. Bobango, an Associate of Delta Venture Partners I, L.P., owned greater than 10 percent of Forum Technologies Inc., and therefore, Forum Technologies, Inc., is considered an Associate of Delta Venture Partners I, L.P. as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested persons may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: January 22, 2002.

Harry Haskins,

Acting Associate Administrator for Investment

[FR Doc. 02–8213 Filed 4–4–02; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0220]

Meridian Venture Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Acts, Conflicts of Interest

Notice is hereby given that Meridian Venture Partners II, L.P., 259 Radnor Chester Road, Suite 140, Radnor, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). Meridian Venture Partners II, L.P. proposes to provide equity/debt security financing to D.C. Retail I, Inc., 55 Carter Drive, Edison, NJ 08817. The financing is contemplated for working capital and expansion of the business.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Meridian Venture Partners and MVP Distribution Partners, Associates of Meridian Venture Partners

II, L.P., currently owns greater than 10 percent of D.C. Retail I, Inc. and therefore D.C. Retail I, Inc., is considered an Associate of Meridian Venture Partners II, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: March 8, 2002.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 02–8214 Filed 4–4–02; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3399]

State of Ohio; Disaster Loan Areas

Lawrence County and the contiguous Counties of Gallia, Jackson and Scioto in the State of Ohio; Boyd and Greenup Counties in the Commonwealth of Kentucky; and Cabell and Wayne Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms and flooding that began on March 15, 2002 and continued through March 20, 2002. Applications for loans for physical damage may be filed until the close of business on May 28, 2002, and for economic injury until the close of business on December 30, 2002, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The numbers assigned to this disaster for physical damage are 339906 for Ohio; 340006 for Kentucky; and 340106 for West Virginia. The numbers assigned to this disaster for economic injury are 9O9900 for Ohio; 9P0100 for Kentucky; and 9P0200 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 29, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–8220 Filed 4–4–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wisconsin District Advisory Board; Public Meeting

The U.S. Small Business Administration advisory board will hold a public meeting on Wednesday, April 17, 2002. The Wisconsin Advisory Council meeting will take place at the Metro Milwaukee Association of Commerce building located at 756 North Milwaukee Street 4th floor, Milwaukee, Wisconsin. The time set forth is 12 noon to 1 pm. The purpose for this meeting will be to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present. For further information, please write or call Yolanda Staples-Lassiter, U.S. Small Business Administration, 310 West Wisconsin Ave., Suite 400, Milwaukee, Wisconsin 53202; telephone number (414) 297–1090.

The public is invited.

Steve Tupper,

Committee Management Officer.

[FR Doc. 02–8219 Filed 4–4–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3970]

Bureau of Consular Affairs; Designation of Certain Posts for Special Fee Payment Procedures

This public notice adds additional posts, located in Asia, the Near East, and South America to those already designated by the Deputy Assistant Secretary for Visa Services for two purposes related to the payment of immigrant visa fees. The first purpose relates to the revised procedure for payment of the fee for the processing of the application for an immigrant visa set forth in the **Federal Register** on September 8, 2000, (65 FR 54598). The effective date of that notice was stayed until January 1, 2001 by a public notice in the **Federal Register** of December 14, 2000, (65 FR 78243).

The second purpose is to identify the posts for which a fee pursuant to Item 61 of the Schedule of Fees for Consular Services (22 CFR 22.1) will be assessed for advance review of and assistance with the Affidavit of Support that is required in certain immigrant visa cases. Notice of this fee requirement was added to the visa regulation pertaining to the Affidavit of Support requirement in 22 CFR 40.41(b), and was effective January 1, 2001.

The Department will publish further public notices as additional designations are made.

The Deputy Assistant Secretary for Visa Services has designated the Foreign Service posts in the following cities for participation in the new immigrant visa application processing fee payment system and the fee for review of and assistance with the Affidavit of Support required under section 213A of the Immigration and Nationality Act.

The effective date of this notice is May 1, 2002.

Abidjan, Cote D'Ivoire	Abu Dhabi, United Arab Emirates.
Accra, Ghana	Addis Ababa, Ethiopia.
Algiers, Algeria	Amman, Jordan.
Ankara, Turkey	Antananarivo, Madagascar.
Asmara, Eritrea	Auckland, New Zealand.
Bogota, Colombia	Cairo, Egypt.
Caracas, Venezuela	Casablanca, Morocco.
Chennai, India	Ciudad Juarez, Mexico.
Colombo, Sri Lanka	Cotonou, Benin.
Dakar, Senegal	Damascus, Syria.
Dar-es-Salaam, Tanzania	Dhaka, Bangladesh.

Djibouti, Djibouti	Doha, Qatar.
Freetown, Sierra Leone	Georgetown, Guyana.
Guangzhou, China	Harare, Zimbabwe.
Ho Chi Minh City, Vietnam	Hong Kong.
Islamabad, Pakistan	Jakarta, Indonesia.
Jerusalem	Johannesburg, South Africa.
Kathmandu, Nepal	Kinshasa, Democratic Republic of the Congo.
Kuala Lumpur, Malaysia	Kuwait, Kuwait.
Lagos, Nigeria	Libreville, Gabon.
Lilongwe, Malawi	Lome, Togo.
Lusaka, Zambia	Manama, Bahrain.
Manila, Philippines	Monrovia, Liberia.
Montevideo, Uruguay	Montreal, Canada.
Mumbai, India	Muscat, Oman.
Naha, Japan	Nairobi, Kenya.
New Delhi, India	Niamey, Niger.
Nicosia, Cyprus	Ouagadougou, Burkina Faso.
Perth, Australia	Port-au-Prince, Haiti.
Port Moresby, Papua New Guinea	Praia, Cape Verde Islands.
Rangoon, Burma	Riyadh, Saudi Arabia.
Sanaa, Yemen	Santo Domingo, Dominican Republic.
Seoul, Korea	Singapore, Singapore.
Suva, Fiji	Sydney, Australia.
Taipei, Taiwan	Tel Aviv, Israel.
Tirana, Albania	Tokyo, Japan.
Tunis, Tunisia	Valletta, Malta.
Vientiane, Laos	Yaounde, Cameroon.

Dated: March 26, 2002.

Wayne G. Griffith,

Deputy Assistant Secretary for Visa Services, Department of State.

[FR Doc. 02–8337 Filed 4–4–02; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on April 22, 2002, from 9 a.m. to 3:45 p.m. The meeting will be opened to the public from 9 a.m. to 10:15 a.m. and from 12:30 p.m. to 3:45 p.m. The meeting will be closed to the public from 10:15 a.m. to 12:30 p.m.

DATES: The meeting is scheduled for April 22, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held in Training Room A of the Ronald Reagan Federal Building located at 14th Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sylvia Prosak, (principal contact), or Pam Wilbur/Kelly Parsons (alternate) at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 or myself on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be discussed:

- Election of ISAC–14 Chair and Vice Chairs;
- Security and Ethics Briefings for ISAC–14 members;
- Briefing on congressionally led SME Trade Working Group;
- Update from U.S. Customs Service on current topics of interest to Small Business;
- Update on recent activities of the APEC Small Business Working Group;
- Update on the Free Trade Agreement of the Americas (FTAA); and,
- Update on the African Growth and Opportunity Act (AGOA).

Elizabeth A. Gianini,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 02–8331 Filed 4–4–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Exclusion of Particular Products From Actions Under Section 203 of the Trade Act of 1974 With Regard to Certain Steel Products; and Conforming Changes to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority granted to the United States Trade Representative (USTR) in Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553), the USTR has found that particular products should be excluded from actions under section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (Trade Act) with regard to certain steel products, and is modifying subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice to implement these exclusions.

EFFECTIVE DATE: March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On October 22, 2001, the ITC issued affirmative determinations under section 202(b) of the Trade Act (22 U.S.C. 2252(b)) that (1) carbon and alloy steel slabs, plate (including cut-to-length plate and clad plate), hot-rolled sheet and strip (including plate in coils), cold-rolled sheet and strip (other than grain-oriented electrical steel), and corrosion-resistant and other coated sheet and strip; (2) carbon and alloy hot-rolled bar and light shapes; (3) carbon and alloy cold-finished bar; (4) rebar; (5) carbon and alloy welded tubular products (other than oil country tubular goods); (6) carbon and alloy flanges, fittings, and tool joints; (7) stainless steel bar and light shapes; and (8)

stainless steel rod are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products. The Commissioners voting were equally divided with respect to the determination under section 202(b) of the Trade Act as to whether increased imports of (9) carbon and alloy tin mill products; (10) tool steel, all forms; (11) stainless steel wire; and (12) stainless steel flanges and fittings are being imported in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing those products.

On March 5, 2002, the President issued Proclamation 7529, which established increases in duty and a tariff-rate quota (safeguard measures) pursuant to section 203 of the Trade Act on imports of ten steel products described in paragraph 7 of that proclamation. *See* 67 FR 10553 (March 7, 2002). Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modifies the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusions of particular products submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the Annex to that proclamation to exclude such particular product from the pertinent safeguard measure.

I have further considered exclusion requests for certain products designated as X–036, X–045, X–082, X–142, X–171.1, X–171.2, X–184, and X–192. I find that the exclusion of the steel products described in subdivisions (b)(l) through (b)(liv) of U.S. note 11 to subchapter III of chapter 99 of the HTS, as amended in the Annex to this notice, from the safeguard measures established in Proclamation 7529 would not undermine the goals of those safeguard measures. Therefore, I find that these products should be excluded from those safeguard measures. Accordingly, under authority vested in the USTR by Proclamation 7529, I modify the HTS provisions created by the Annex to Proclamation 7529 as set forth in the annex to this notice, which shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

Robert B. Zoellick,

United States Trade Representative.

Annex

The HTS is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the Harmonized Tariff Schedule of the United States (HTS). The new subheading and superior text thereto being inserted by this notice are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and Rates of Duty 2'', respectively.

Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, the HTS is modified as follows:

(1) U.S. note 11 to subchapter III of chapter 99 of the HTS is modified:

(a) In subdivision (b)(xxvii), by redesignating subdivision (B) as subdivision (C), and inserting the following new subdivision (B) in alphabetical sequence:

''(B) certain batch annealed and temper-rolled cold-rolled continuously cast steel products (including tin mill black plate), meeting the following characteristics: chemical composition (in percent by weight) of carbon not over 0.08, silicon not over 0.04, manganese not over 0.40, phosphorus not over 0.03, sulfur not over 0.03 and aluminum from 0.010–0.07l; thickness tolerance of +/−5 percent (aim +/−4 percent), guaranteed inside of 15 mm from mill edges; width tolerance of −0/+7 mm; hardness of Hv 85–110; tensile strength 275N/mm2 or more; elongation 36 percent or more; grain equaixed; grain size minimum 8.5; Lankford value greater than 1.2; and delta r value less than +/−0.2; or''

(b) in subdivision (b)(xxxii), by redesignating subdivision (B) and (C) as (C) and (D), respectively, and inserting the following new subdivision (B) in alphabetical sequence:

''(B) non-oriented, high silicon, magnetic steel flat-rolled steel products with the following characteristics: silicon density gradient of between 4 percent by weight (center) and 6.5 percent by weight (surface); thickness from 0.05–0.30 mm; width 20–600 mm; chemical composition (in percent by weight): carbon 0.010 maximum, manganese 0.15 maximum, phosphorus 0.015 maximum, sulfur 0.005 maximum, silicon 4.0 or more but not over 7.0 and aluminum 0.004 maximum; mechanical properties: hardness of 380–420 HV (micro vickers); magnetic properties: strikethrough: saturation induction over 1.85 Tesla; and core loss: strikethrough W1/10k less than 20.4W/kg or W.5/20k less than 24.0 W/kg;''

(c) by inserting the following new subdivisions in numerical sequence at the end of subdivision (b):

''(l) hot-rolled flat-rolled steel, designated as X–082, in coils, either in widths not over 1,168.4 mm then having coil weights of 21.43 kg per mm of width and greater and entered in an aggregate annual quantity not to exceed 200,000 metric tons, or in widths over 1,168.4 mm but not over 1,244.6 mm then having coil weights of 19.64 kg per mm of width or more and entered in an aggregate annual quantity not to exceed 50,000 metric tons, all the foregoing widths having a width tolerance of not more than 12.00 mm; having a camber tolerance of not more than 15 mm per 1000 cm, in thicknesses ranging from 1.80 mm to 3.00 mm with thickness tolerances of ±0.05 mm, and with a maximum flatness deviation measured as not to exceed 2.5 percent steepness ratio (defined as height over the wave length); the foregoing goods having the following chemical compositions and widths:

(A) Of a width from 733 to 1,244.6 mm, inclusive, and containing by weight 0.010–0.08 percent of carbon, 0.16–0.30 percent of manganese, 0.025 percent maximum of silicon, 0.020 percent maximum of phosphorus, 0.020 percent maximum of sulfur, 0.008 percent maximum of nitrogen and 0.02–0.08 percent of aluminum;

(B) of a width from 915 to 1,244.6 mm, inclusive, and containing by weight 0.08–0.13 percent of carbon, 0.30–0.60 percent of manganese, 0.035 percent maximum of silicon, 0.025 percent maximum of phosphorus, 0.025 percent maximum of sulfur, 0.008 percent maximum of nitrogen and 0.02–0.07 percent of aluminum;

(C) of a width from 762 to 1,244.6 mm, inclusive and containing by weight 0.13–0.17 percent of carbon, 0.30–0.60 percent of manganese, 0.035 percent maximum of silicon, 0.025 percent maximum of phosphorus, 0.025 percent maximum of sulfur, 0.010 percent maximum of nitrogen and 0.02–0.07 percent of aluminum; or

(D) of a width from 733 to 1,244.6 mm, inclusive, and containing by weight 0.010 percent maximum of carbon, 0.10–0.20 percent of manganese, 0.030 percent maximum of silicon, 0.020 percent maximum of phosphorus, 0.020 percent maximum of sulfur, 0.007 percent maximum of nitrogen, 0.02–0.075 percent of aluminum and 0.15 percent maximum of titanium;

all the foregoing certified by the importer of record to be used for rerolling in a reversing cold reduction mill, with a reduction in thickness during the cold rolling process of at least 40 percent;

(li) hot-rolled flat-rolled steel products, in coils, measuring 5.0 mm × 533.5 mm per coil; having the chemical composition (in percent by weight) carbon 0.11 percent–0.17 percent, silicon not over 0.10 percent, manganese 0.30–0.60 percent, phosphorus not over 0.025 percent, sulfur not over 0.025 percent, molybdenum 0.20–0.50 percent, vanadium 0.04–0.11 percent and aluminum 0.02–0.08 percent; yield strength 400N/mm2 or greater; tensile strength 490–610 N/mm2 and

elongation equal to or exceeding 22 percent, the foregoing designated as X–142;

(lii) products designated as X–171, as described below:

(A) electrolytically chromium coated steel, single reduced, temper T–5 CA, from 0.279 mm to 0.300 mm in thickness, in widths equal to 1065.213 mm (ordered) or widths equal to 1071.563 mm (actual); or

(B) ultra-wide electrolytically tin-plated drawn and ironed (''D&I'') steel, single reduced, T–4 CA, from 0.270 mm to 0.285 mm in thickness, in widths equal to 1146.175 mm (ordered) or in widths equal to 1152.525 mm (actual);

(liii) ball-bearing steel (as defined in additional U.S. note 1(h) to chapter 72 of the tariff schedule) hot-rolled bars and rods, in coils, having a diameter less than 47.625 mm; the foregoing designated as X–184;

(liv) special flat-rolled nonalloy carbon steel products, not further worked than hot-rolled, of a width of 160 mm or more and a thickness of 8 mm to 50 mm, inclusive, with rounded edges and corners and certified and die-stamped with the mark of a national shipbuilding classification society, the foregoing designated as X–045 or X–192.''

(2) The subheadings set forth below are inserted in subchapter III of chapter 99 in numerical sequence:

	[Flat-rolled...:]			
	[Goods...:]			
''9903.72.54	Enumerated in U.S. note 11(b)(liv) to this subchapter and designated as X–045 or X–192.	No change	No change	No change
	[Flat-rolled...:]			
	[Goods...:]			
9903.72.75	Enumerated in U.S. note 11(b)(l) to this subchapter, having a width not over 1,168.4 mm, if entered in an aggregate annual quantity not to exceed 200,000 metric tons, and designated as X–082.	No change	No change	No change
9903.72.76	Enumerated in U.S. note 11(b)(l) to this subchapter, having a width over 1,168.4 mm, if entered in an aggregate annual quantity not to exceed 50,000 metric tons, and designated as X–082.	No change	No change	No change
	[Flat-rolled...:]			
	[Goods...:]			
9903.73.31	Enumerated in U.S. note 11(b)(lii) to this subchapter and designated as X–171.	No change	No change	No change
	[Bars...:]			
	[Goods...:]			
9903.73.45	Enumerated in U.S. note 11(b)(liii) to this subchapter and designated as X–184.	No change	No change	No change''

(3) The expression ''or (li)'' is inserted in the article description of subheading 9903.72.73 immediately after ''11(b)(xxiii).''

[FR Doc. 02–8332 Filed 4–4–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10998]

Environmental Assessment and Finding of No Significant Impact for Establishment of National Coast Guard Museum

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of the Final Environmental Assessment and Finding of No Significant Impact regarding its proposal to accept a gift of land for purposes of relocating the Coast Guard Museum to a site near the U.S. Coast Guard Academy in New London, Connecticut. This final environmental assessment evaluates the environmental and socioeconomic impacts of establishing the Coast Guard Museum along with the associated acquisition of property and construction of the building. The Finding of No Significant Impact records the Coast Guard's determination that the proposed acceptance of a gift of property would have no significant impact on the environment.

ADDRESSES: The material referenced in this notice is available for inspection and copying at Docket Management Facility, (USCG–2001–10998), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, and on the internet at *http://dms.dot.gov.* Written requests for copies of the Final Environmental Assessment and Finding of No Significant Impact, or requests for information, should be directed to: Commandant (G–LEL) U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated documents, call Frank Esposito, Coast Guard Headquarters, at 202–267–0053. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION: On November 21, 2001, the Coast Guard published a notice in the **Federal Register** (66 FR 58547) requesting comments on a Draft Environmental Assessment (DEA). We subsequently extended the comment period to February 8, 2002 (67 FR 1261, January 9, 2002). The DEA reviewed the proposal to accept a gift of land for purposes of relocating the Coast Guard Museum to a site near the U.S. Coast Guard Academy in New London, Connecticut.

The Final Environmental Assessment (FEA) has been completed. This FEA evaluates the environmental and socioeconomic impacts of establishing the Coast Guard Museum along with the associated acquisition of property and construction of the building. It also includes comments received from the public as well as regulatory and other government agencies during development of the environmental assessment. The Finding of No Significant Impact (FONSI) records the Coast Guard's determination that the proposed acceptance of a gift of property would have no significant impact on the environment.

The FEA, FONSI, and comments received during development of the environmental assessment are available for public inspection or copying at the Document Management Facility listed in **ADDRESSES.** The Docket Management Facility is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.* (Once you enter the web site, click on ''Search,'' enter the last five digits of the docket number (''10998'') in the search box, and press the Enter key.)

You may also inspect or copy the FEA and FONSI at U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC. To request a copy of the FEA and/or FONSI, write to the Coast Guard Headquarters' address listed in **ADDRESSES.**

Dated: March 28, 2002.

K.J. Eldridge,

Assistant Commandant for Governmental and Public Affairs.

[FR Doc. 02–8342 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–11733]

Notice of Request for Renewal of a Currently-Approved Information Collection: Federal Motor Carrier Safety Regulations, Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FMCSA is requesting public comment on its intent to request the Office of Management and Budget (OMB) to renew a currently-approved information collection (IC) for commercial motor vehicle crash (accident) data collected and maintained by motor carriers. The request to renew the IC is necessary since OMB's current approval to collect this information will soon expire on August 31, 2002.

DATES: Comments must be submitted on or before June 4, 2002.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, Department of Transportation, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Availability

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments electronically at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears after you submit comments electronically.

Title: Accident Recordkeeping Requirements.

OMB Control Number: 2126–0009 (formerly 2125–0526).

Background: The Federal Motor Carrier Safety Regulations (FMCSRs), at section 390.15 of title 49 of the Code of Federal Regulations (CFR), require motor carriers to make all records and information pertaining to crashes (accidents) available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration (FMCSA) upon request or as part of an inquiry. For the purposes of § 390.15, the word ''accident'' is defined as an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: (1) A fatality; (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (3) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle (49 CFR 390.5). Occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo are not included in the definition.

Motor carriers are required to maintain an accident register for one year after the date of the accident. The register must include a list of each accident. The information for each accident must include, at a minimum, the following elements: Date of accident; city or town in which or most near where the accident occurred and the State in which the accident occurred; driver name; number of injuries; number of fatalities; and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers.

There are no prescribed forms. The records are used by the FMCSA and its representatives as a source of information for investigations or special studies, and to assess the effectiveness of motor carriers' safety management controls.

Respondents: Motor carriers.

Estimated Total Annual Burden per Record: The FMCSA estimates approximately 155,000 accidents involving trucks and 17,000 accidents involving buses as defined in section 390.5 of the FMCSRs occur annually (source: National Highway Traffic Safety Administration General Estimates System). Of these, approximately 80 percent involve trucks and buses operated by interstate motor carriers. About 85 percent of the buses involved in crashes are school or transit buses and are not subject to this recordkeeping requirement. The number of accidents is therefore estimated to be 126,040 [124,000 (0.80 × 155,000) + 2,040 (0.80 × 0.15 × 17,000) = 126,040].

The agency estimates it takes approximately 18 minutes for interstate motor carriers to collect and record the seven elements of information on the accident register. Based on these assumptions, the agency estimates a time burden of 37,812 hours (126,040 × 18 minutes divided by 60 minutes) per year for accident report register information.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FMCSA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 U.S.C. 31132, 31133, 31136, 31502 and 31504; and 49 CFR 1.73.

Issued on: April 1, 2002.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 02–8341 Filed 4–4–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: March 29, 2002.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 02–8203 Filed 4–4–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Extension of Public Comment Period for Study on Information Sharing Practices Among Financial Institutions and Their Affiliates

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Extension of public comment period.

SUMMARY: The Department of the Treasury announces the extension of the public comment period to May 1, 2002, for the Study of Information Sharing Practices Among Financial Institutions and Their Affiliates.

DATES: The extended deadline for submitting comments is May 1, 2002.

ADDRESSES: All submissions must be in writing or in electronic form. Please send e-mail comments to *study.comments@ots.treas.gov,* or facsimile transmissions to FAX Number (202) 906–6518 re: GLBA Information Sharing Study. Comments sent by mail should be sent to: Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, ATTN: Study on GLBA Information Sharing. (Senders should be aware that there have been some unpredictable and lengthy delays in postal deliveries to the Washington, DC area in recent weeks and may prefer to make electronic submissions.) Please see the Department of the Treasury's February 15, 2002 notice requesting public comments for further information concerning the submission of comments and their availability for inspection.

FOR FURTHER INFORMATION CONTACT: Susan Hart, Financial Economist, Office of Consumer Affairs and Community Policy, Department of the Treasury, (202) 622–0129; or Brian Tishuk, Acting Director, Office of Consumer Affairs and Community Policy, Department of the Treasury, (202) 622–2740.

SUPPLEMENTARY INFORMATION: On February 15, 2002, the Department of the Treasury issued a Notice and request for public comment (67 FR 7213) for this study, which began a 45-day public comment period. The original Notice set forth various questions regarding areas in which the Department of the Treasury seeks public comment. The original comment period expires on April 1, 2002. In response to public comments and to ensure that the public has ample opportunity to provide comments, the Department of the Treasury is extending the public comment period until May 1, 2002.

Dated: April 1, 2002.

Sheila C. Bair,

Assistant Secretary of the Treasury.

[FR Doc. 02–8204 Filed 4–4–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3975

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3975, Tax Professionals Annual Mailing List Application and Order Blank.

DATES: Written comments should be received on or before June 4, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax Professionals Annual Mailing List Application and Order Blank.

OMB Number: 1545–0351.

Form Number: Form 3975.

Abstract: Form 3975 allows a tax professional a systematic way to remain on the Tax Professional Mailing File and to order copies of tax materials.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 320,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 16,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–8338 Filed 4–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 2001

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 2001 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29).The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the sale of fuel from nonconventional sources under section 29 during calendar year 2001.

DATES: The 2001 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 2001.

SUPPLEMENTARY INFORMATION:

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2001 is 2.0917.

Credit: The nonconventional source fuel credit for calendar year 2001 is $6.28 per barrel-of-oil equivalent of qualified fuels.

Reference Price: The reference price for calendar year 2001 is $21.86. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuels sold during calendar year 2001.

FOR FURTHER INFORMATION CONTACT: For questions about how the inflation adjustment factor is calculated—

Thomas A. Thompson, N:ADC:R:R:SMB, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For all other questions about the credit or the reference price—

Jaime Park, CC:PSI:7, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–3120 (not a toll-free number).

Dated: March 29, 2002.

Paul F. Kugler,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. 02–8339 Filed 4–4–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 66

Friday, April 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MARITIME COMMISSION

[Docket No. 02–03]

Canaveral Port Authority– Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate; Notice of Show Cause Proceeding

Correction

In notice document 02–6078 appearing on page 13336 in the issue of Wednesday, March 13, 2002, make the following correction:

On page 13336, in the third column, in the fourth full paragraph, in the third line from the bottom, ''thnsp;502.72'' should read § 502.72.

[FR Doc. C2–6078 Filed 4–4–02; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

Yucca Mountain Review Plan, NUREG–1804, Revision 2,; Draft Report for Comment

Correction

In notice document 02–7606 beginning on page 16257, in the issue of Friday, March 29, 2002, make the following correction:

On page 16257, in the third column, under the **DATES:** heading, in the third line, ''March 29, 2002'' should read ''June 27, 2002''.

[FR Doc. C2–7606 Filed 4–4–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
April 5, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Island of Molokai, Hawaii; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH08

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Island of Molokai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for 46 of the 51 listed plant species known historically from the island of Molokai that are listed under the Endangered Species Act of 1973, as amended. Critical habitat is not proposed for 4 species as they no longer occur on the island of Molokai, and we are unable to identify any habitat essential to their conservation on the island of Molokai. Critical habitat is not proposed for one species of loulu palm, *Pritchardia munroi,* for which we determined, in a previous proposal, that critical habitat designation is not prudent because it would likely increase the threats from vandalism or collection of this species on Molokai.

We propose critical habitat designations for 46 species within 10 critical habitat units totaling approximately 17,614 hectares (ha) (43,532 acres (ac)) on the island of Molokai.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designations. We may revise or further refine this rule, including critical habitat boundaries, prior to final designation based on habitat and plant surveys, public comment on the revised proposed critical habitat rule, and new scientific and commercial information.

DATES: We will accept comments until June 4, 2002. Public hearing requests must be received by May 20, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (see **ADDRESSES** section) (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are 51 plant species that, at the time of listing, were reported from the island of Molokai (Table 1). Sixteen of these species are endemic to the island of Molokai, while 35 species are reported from one or more other islands, as well as Molokai.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 51 SPECIES FROM MOLOKAI

Species (Common Name)	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Adenophorus periens (pendant kihi fern)	C	H	C	R	R	C	
Alectryon macrococcus (mahoe)	C	C	C		C		
Bidens wiebkei (ko oko olau)			C				
Bonamia menziesii (No common name)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Canavalia molokaiensis (awikiwiki)			C				
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia oblongifolia ssp. *brevipes* (oha wai)			C				
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea dunbarii (haha)			C				
Cyanea grimesiana ssp. *grimesiana* (haha)		C	C	C	C		
Cyanea mannii (haha)			C				
Cyanea procera (haha)			C				
Cyperus trachysanthos (pu uka a)	C	C	H	H			Ni (C)
Diellia erecta (Asplenium-leaved Diellia)	C	C	C	H	C	C	
Diplazium molokaiense (No common name)	H	H	H	H	C		
Eugenia koolauensis (nioi)		C	H				
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Hedyotis mannii (pilo)			C	C	C		
Hesperomannia arborescens (No common name)		C	C	H	C		
Hibiscus arnottianus ssp. *immaculatus* (kokio ke okeo)			C				
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 51 SPECIES FROM MOLOKAI—Continued

Species (Common Name)	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	N.W. Isles, Kahoolawe Niihau
Ischaemum byrone (Hilo ischaemum)	R		C		C	C	
Isodendrion pyrifolium (wahine noho kula)	H	H	H	H	H	C	Ni (H)
Labordia triflora (kamakahala)			C				
Lysimachia maxima (No common name)			C				
Mariscus fauriei (No common name)			C	H		C	
Marsilea villosa (ihi ihi)		C	C				Ni (H)
Melicope mucronulata (alani)			C		C		
Melicope munroi (alani)			H	C			
Melicope reflexa (alani)			C				
Neraudia sericea (No common name)			C	H	C		Ka (H)
Peucedanum sandwicense (makou)	C	C	C		C		
Phyllostegia mannii (No common name)			C		H		
Phyllostegia mollis (No common name) ..		C	H		C		
Plantago princeps (laukahi kuahiwi)	C	C	C		C	H	
Platanthera holochila (No common name)	C	H	C		C		
Pritchardia munroi (loulu)			C				
Pteris lidgatei (No common name)		C	H		C		
Schiedea lydgatei (No common name) ...			C				
Schiedea nuttallii (No common name)	C	C	C		R		
Schiedea sarmentosa (No common name)			C				
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Silene alexandri (No common name)			H				
Silene lanceolata (No common name)	H	C	C	H		C	
Solanum incompletum (popolo ku mai) ...	H		H	H	H	C	
Spermolepis hawaiiensis (No common name)	C	C	C	C	C	C	
Stenogyne bifida (No common name)			C				
Tetramolopium rockii (No common name)			C				
Vigna o-wahuensis (No common name)		H	C	C	C	C	Ni (H), Ka (C)
Zanthoxylum hawaiiense (a e)	C		C	H	C	C	

Key:
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.

In previously published proposals we determined that critical habitat was prudent for 47 (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia ssp. brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana ssp. grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus ssp. immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei,* Schiedea *lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense)* of the 51 species reported from Molokai. No change is made to the 47 prudency determinations in this revised proposal and they are hereby incorporated into this proposal (or reproposal) (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806). In addition, at the time we listed *Labordia triflora* and *Melicope munroi* we determined that the designation of critical habitat was prudent for these two taxa from Molokai (64 FR 48307).

In the December 29, 2000, proposal we determined that the designation of critical habitat was not prudent for *Pritchardia munroi* because it would likely increase the threats from vandalism or collection of this species on Molokai, and we did not propose critical habitat for this species. No change is made to that determination here.

In this proposal, we determine that designation of critical habitat is prudent for *Eugenia koolauensis,* a species for which a prudency determination has not been made previously.

In the December 29, 2000, proposal we proposed designation of critical habitat for 32 (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia ssp. brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana ssp. grimesiana, Cyanea mannii, Cyanea procera, Diellia*

erecta, Hesperomannia arborescens, Hibiscus arnottianus ssp. immaculatus, Ischaemum byrone, Labordia triflora, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Schiedea lydgatei, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis, and Zanthoxylum hawaiiense) of the 51 plants reported from Molokai. Critical habitat was not proposed for *Pritchardia munroi* for the reasons given above. Critical habitat was not proposed for 11 species (*Bonamia menziesii, Cyperus trachysanthos, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hibiscus brackenridgei, Isodendrion pyrifolium, Melicope munroi, Phyllostegia mollis, Pteris lidgatei,* and *Solanum incompletum*) that no longer occur on Molokai and for which we were unable to identify any habitat that is essential to their conservation on the island. Critical habitat was not proposed for seven species (*Adenophorus periens, Hedyotis manni, Lysimachia maxima, Phyllostegia mannii, Plantago princeps, Platanthera holochila,* and *Schiedea nuttallii*) found only in areas that did not require special management or protection because the areas were already protected and managed to the benefit of the seven species.

In this proposal, we propose designation of critical habitat for 46 of the 51 species reported from Molokai: *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia ssp. brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana ssp. grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus ssp. immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense,* based on new information and information received during the comment periods on the December 29, 2000, proposal. Critical habitat is not proposed for 4 (*Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum*) of the 51 species on the island of Molokai because these plants no longer occur on the island of Molokai and we are unable to identify habitat essential to their conservation on this island. However, proposed critical habitat designations, or non-designations, for these species will be included in other future Hawaiian plants proposed critical habitat rules (Table 2).

We propose critical habitat designations for 46 species within 10 critical habitat units totaling approximately 17,614 ha (43,532 ac) on the island of Molokai. Areas proposed as critical habitat are occupied by at least one species and some areas include some unoccupied habitat for one or more species.

The Island of Molokai

The island of Molokai, the fifth largest in the Hawaiian Islands chain, is approximately 61 kilometers (km) (38 miles (mi)) long, up to 17 km (10 mi) wide, and encompasses an area of about 688 square (sq) km (266 sq mi) (57 FR 46325). Three shield volcanoes make up most of the land mass of Molokai: West Molokai Mountain, East Molokai Mountain, and a volcano that formed Kalaupapa Peninsula (57 FR 46325).

TABLE 2.—LIST OF PROPOSED RULES IN WHICH CRITICAL HABITAT DESIGNATIONS WILL BE MADE FOR FOUR SPECIES FOR WHICH WE ARE UNABLE TO DETERMINE HABITAT WHICH IS ESSENTIAL FOR THEIR CONSERVATION ON THE ISLAND OF MOLOKAI

Species	Proposed rule in which prudency will be determined	Proposed rules in which critical habitat designations have been or will be proposed
Bonamia menziesii	Kauai and Niihau (65 FR 66808)	Kauai and Niihau (65 FR 66808), (67 FR 3940); Maui and Kahoolawe (65 FR 79192), (see also **Federal Register** of April 3, 2002); Lanai (65 FR 82086), (67 FR 9806); *Hawaii* (to be published in the **Federal Register** in May 2002); *Oahu* (to be published in the **Federal Register** in May 2002).
Cyperus trachysanthos	Kauai and Niihau (65 FR 66808)	Kauai and Niihau (65 FR 66808), (67 FR 3940); Lanai (65 FR 82086), (67 FR 9806); *Oahu* (to be published in the **Federal Register** in May 2002).
Melicope munroi	10 Mau Nui Plants (64 FR 48307)	Lanai (65 FR 82086), (67 FR 9806).
Solanum incompletum	Kauai and Niihau (67 FR 3940)	Kauai and Niihau (67 FR 3940); *Hawaii* (to be published in the **Federal Register** in May 2002).

The taller and larger East Molokai Mountain rises 1,813 meters (m) (4,970 feet (ft)) above sea level and comprises roughly 50 percent of the island's area (57 FR 46325). Topographically, the windward (north) side of East Molokai differs from the leeward (south) side. Precipitous cliffs line the windward coast and deep valleys dissect the coastal area. The annual rainfall on the windward side is 200 to over 375 centimeters (cm) (75 to over 150 inches (in)), distributed throughout the year. The soils are poorly drained and high in organic matter. The gulches and valleys are usually very steep, but sometimes gently sloping (57 FR 46325). Much of the native vegetation on the windward East Molokai is intact because of its relative inaccessibility to humans and animals, although destructive ungulates have begun to enter the area in recent years (57 FR 46325).

Discussion of Plant Taxa

Species Endemic to Molokai

Bidens wiebkei (kookoolau)

Bidens wiebkei, a member of the aster family (Asteraceae), is a short-lived perennial herb which is somewhat woody at the base and grows from 0.5 to 1 m (1.6 to 3.3 ft) tall with opposite,

pinnately compound leaves. This plant is distinguished from other *Bidens* species that grow on Molokai by its erect habit and the curved or twisted, winged achenes (57 FR 46325; Ganders and Nagata 1999).

This species was observed in flower during May. No additional life history information is currently available (Hawaii Natural Heritage Program (HINHP) database 2000; United States Fish and Wildlife Service (Service 1996a).

Historically, *Bidens wiebkei* was known from Pelekunu and the easternmost section of Molokai at Halawa. It is found currently in Halawaiki Gulch, Lamaloa Gulch, and below Puu Kolekole on private lands. There are a total of three populations containing more than 200 individuals (Geographic Decision Systems International (GDSI) 2000; HINHP Database 2000).

The currently known populations of *Bidens wiebkei* are scattered along slopes in *Metrosideros polymorpha* (ohia) dominated mesic shrublands or dry or mesic *Metrosideros polymorpha-Styphelia tameiameiae* (pukiawe) lowland shrubland between 8 and 1,205 m (26 and 3,952 ft) in elevation. Other associated plant species include *Antidesma platyphyllum* (hame), *Dodonaea viscosa* (aalii), *Psydrax odorata* (alahee), *Lysimachia* sp. (kolokolo kuahiwi), *Nestegis sandwicensis* (olopua), *Phyllanthus distichus* (pamakani-mahu), *Pisonia* sp. (papala kepau), or *Scaevola gaudichaudii* (naupaka kuahiwi) (Gagne and Cuddihy 1999; HINHP Database 2000; Ganders and Nagata 1999).

The major threats to *Bidens wiebkei* on Molokai, include habitat degradation and possible predation by axis deer (*Axis axis*) and feral goats (*Capra hircus*); competition with non-native plants, such as *Melinus minutiflora* (molasses grass) and *Schinus terebinthifolius* (Christmas berry); fire; and damage by humans of those plants found along trails (HINHP Database 2000; 57 FR 46325).

Canavalia molokaiensis (awikiwiki)

Canavalia molokaiensis, a member of the legume family (Fabaceae), is a short-lived perennial climbing herb with twining branches with leaves made up of three lance-shaped or sometimes oval leaflets. The only species of this genus found on Molokai, this plant can be distinguished from others in the genus by its more narrow leaflets and its larger, rose-purple flowers (57 FR 46325; Wagner and Herbst 1999).

This species has been observed in flower during May and December. Fruits and flowers were observed in March. No additional life history information is currently available (Service 1996a; HINHP Database 2000).

Historically, *Canavalia molokaiensis* was known from East Molokai at Kalaupapa, Pelekunu, and farther south in Kahuaawi Gulch, and the region of Manawai. It now has a more restricted range, from Kalaupapa to Waialeia, Kaunakakai, Pelekunu, and Kamakou. There are a total of five populations containing more than 50 plants on State lands, including lands managed by the National Park Service at Kalaupapa National Historical Park, and privately owned lands (GDSI 2000; HINHP Database 2000).

Canavalia molokaiensis typically grows in exposed sites, both dry and mesic, on steep slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland shrubland and mesic shrublands between 271 and 1,140 m (889 and 3,739 ft) in elevation. Associated plant species include *Artemisia* sp. (hinahina), *Chamaesyce* sp. (akoko), *Coprosma* sp. (pilo), *Styphelia tameiameiae*, or *Wikstroemia* sp. (akia) (HINHP Database 2000).

The threats to this species on Molokai include habitat degradation by feral ungulates, such as feral goats and pigs (*Sus scrofa*), possible predation by feral goats, and competition with non-native plants, such as *Melinis minutiflora* (Service 1996a).

Clermontia oblongifolia ssp. *brevipes (oha wai)*

Clermontia oblongifolia ssp. *brevipes*, a member of the bellflower family (Campanulaceae), is a short-lived perennial shrub or tree that reaches a height of 2 to 7 m (6.6 to 23 ft). This species is distinguished from others in the genus by the structure of its calyx and corolla as well as by the lengths of the flower, the floral lobes, and the green hypanthium (an enlargement of the floral receptacle bearing on its rim the reproductive organs and often enlarging and surrounding the fruits). This subspecies differs from others of the species by the shape and length of its leaves, leaf stalks, and flower stalks (Lammers 1988, 1999).

No life history information for this species is currently available (Service 1996a).

Clermontia oblongifolia ssp. *brevipes* is known from three populations of five individuals on the privately owned land of the Nature Conservancy of Hawaii's (TNCH) Kamakou Preserve. The historical range of this subspecies is not known (HINHP Database 2000; Service 1996a; Joel Lau, Hawaii Natural Heritage Program (HINHP), *in litt.* 2000).

Clermontia oblongifolia ssp. *brevipes* occurs in shallow soil on gulch slopes in the wet *Metrosideros polymorpha*-dominated forests between 776 and 1,508 m (2,545 and 4,946 ft) in elevation. Associated plant species include *Cheirodendron trigynum* (olapa), *Cibotium* spp. (hapuu), *Broussaisia argutus* (kanawao), *Hedyotis terminalis* (manono), or *Melicope* sp. (alani) (HINHP Database 2000; Joel Lau, HINHP, *in litt.* 2000).

The threats to this species on Molokai are habitat degradation by feral pigs; possible predation on the fruit or plant parts by rats (*Rattus rattus*), as evidence on related species suggests; and random naturally occurring events that may cause the extinction of the entire taxon due to its single population and very low number of individuals (Service 1996a; 57 FR 46325).

Cyanea dunbarii (haha)

Cyanea dunbarii, a member of the bellflower family (Campanulaceae), is a short-lived perennial, branched shrub 1.5 to 2 m (4.9 to 6.6 ft) tall with oval to broadly elliptic leaves that have irregularly lobed or cleft margins. This species is distinguished from others in this endemic Hawaiian genus by the lack of prickles on the stems and the irregularly lobed and cleft leaf margins (Lammers 1999).

Cyanea dunbarii was observed in flower, with immature fruit, in September. No additional life history information is currently available (HINHP Database 2000; Service 1998a).

Cyanea dunbarii was collected in 1918 at Waihanau and Waialae Valleys, and was not observed again until 1992, when Joel Lau of the Hawaii Natural Heritage Program found it in Mokomoko Gulch on State-owned land within Molokai Forest Reserve. Currently, it is known from a single population of approximately 30 mature plants at an elevation of 671 m (2,200 ft) (GDSI 2000; HINHP Database 2000; 61 FR 53130; Ken Wood, National Tropical Botanical Garden (NTBG), *in litt.* 2000).

Cyanea dunbarii occurs on a streambank in a mesic to wet *Dicranopteris linearis* (uluhe)-*Metrosideros polymorpha* lowland forest on moderate to steep slopes between 191 and 1,248 m (626 and 4093 ft) in elevation. Associated species include *Diplazium sandwichianum* (hoio), *Charpentiera obovata* (papala), *Perrottetia sandwicensis* (olomea), *Pipturus albidus* (mamaki), *Clermontia kakeana* (ohawai), *Cheirodendron trigynum*, and *Freycinetia arborea* (ieie) (Service 1998a; HINHP Database 2000).

The major threats to this single population of *Cyanea dunbarii* on

Molokai are competition with the non-native plants *Buddleia asiatica* (butterfly bush), *Erigeron karvinskianus* (daisy fleabane), *Rubus rosifolius* (thimbleberry), *Commelina diffusa* (honohono), *Hedychium gardnerianum* (ginger), or *Kalanchoe pinnata* (air plant); and catastrophic extinction by naturally occurring events such as landslides or flooding, and/or reduced reproductive vigor due to the small number of individuals in the only known population. In addition, predation by rats is a potential threat since rats are known to be in the area and are known to eat stems and fruits of other species of *Cyanea*; habitat degradation and predation by axis deer and pigs are other potential threats to this species, because both of these species are known to occur in areas adjacent to the only known population (Service 1998a; Cuddihy and Stone 1990).

Cyanea mannii (haha)

Cyanea mannii, a member of the bellflower family (Campanulaceae), is a branched short-lived perennial shrub 1.5 to 3 m (5 to 10 ft) tall with narrowly elliptic or lance-shaped leaves. This species is distinguished from the seven other species of the genus on Molokai by a combination of the following characters: a branched, woody habit; leaves with small, hardened, marginal teeth; and a purplish corolla (Lammers 1999; 57 FR 46325).

Cyanea mannii has been observed in flower during July. No additional life history information is currently available (Service 1996a; HINHP Database 2000).

Historically, *Cyanea mannii* was known only from Kalae on East Molokai. In 1984, a single plant was discovered by Joan Aidem on privately owned land west of Puu Kolekole on East Molokai. Since then, four additional populations have been discovered in the east and west forks of Kawela Gulch on the privately owned land of TNCH's Kamakou Preserve on East Molokai and within the State's Molokai Forest Reserve. These five populations contain approximately 200 individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000; Ken Wood, National Tropical Botanic Garden (NTBG), *in litt.* 2000; Lammers 1999; Service 1996a).

This species typically grows on the sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests between 191 and 1,248 m (626 and 4,093 ft) in elevation. Associated plant species include *Wiskstroemia* sp., *Dicranopteris linearis*, or *Vaccinium* sp. (ohelo) (Service 1996a; HINHP Database 2000; Lammers 1999).

Threats to *Cyanea mannii* on Molokai are habitat degradation by feral pigs; predation by rats, which may feed on the fruit or other parts of the plant, as suggested by evidence from related species; catastrophic extinction through naturally occurring events due to its few populations and small number of individuals (Service 1996a).

Cyanea procera (haha)

Cyanea procera, a member of the bellflower family (Campanulaceae), is a palm-like short-lived perennial tree 3 to 9 m (10 to 30 ft) tall with stalkless, lance-shaped leaves 60 to 75 cm (24 to 30 in) long and 10 to 17 cm (3.9 to 6.7 in) wide with tiny hardened teeth along the margins. This species can be distinguished from other species of the genus by its growth habit, its sessile leaves, and the single-lipped appearance of the corolla (Lammers 1999; 57 FR 46325).

No life history information is currently available for this species (Service 1996a).

Historically, *Cyanea procera* was known only from an unspecified site in the Kamalo region of East Molokai. Currently, this species is found on the privately owned lands of Kamakou Preserve and the State's Puu Alii Natural Area Reserve (NAR) in a total of two populations containing at least 10 individuals (GDSI 2000; HINHP Database 2000).

Cyanea procera is found on the walls of steep gulches in wet *Metrosideros polymorpha*-dominated lowland mixed forests between 277 and 1,248 m (909 and 4,093 ft) in elevation. Associated plant species include various species of *Asplenium* sp. (NCN), *Brousaissia arguta*, *Coprosma ochracea* (pilo), *Cyanea* spp. (haha), *Cyrtandra macrocalyx* (haiwale), *Dicranopteris linearis*, *Pipturus albidus*, *Pisonia* spp., *Scaevola procera* (naupaka kuahiwi), or *Touchardia latifolia* (olona) (Service 1996a; HINHP Database 2000).

Threats to *Cyanea procera* on Molokai are predation by rats (as suggested by evidence on related species) and feral goats; habitat degradation by feral goats and pigs; habitat destruction through erosion; and catastrophic extinction from naturally occurring events due to the vulnerability of a few populations with a small number of individuals (57 FR 46325).

Hibiscus arnottianus ssp. *immaculatus* (kokio keokeo)

Hibiscus arnottianus ssp. *immaculatus*, a member of the hibiscus family (Malvaceae), is a long-lived perennial tree up to 3m (10 ft) tall with alternate, oval, toothed leaves measuring 5 to 7 cm (2 to 2.8 in) long and 4 to 6.5 cm (1.6 to 2.6 in) wide. This subspecies is distinguished from other native Hawaiian members of the genus by its white petals and white staminal column (Bates 1999; 57 FR 46325).

This taxon was observed in flower during July. Currently, no additional life history information is available for this species (Service 1996a; HINHP Database 2000).

Hibiscus arnottianus ssp. *immaculatus* once ranged from Waihanau Valley east to Papalaua Valley on East Molokai. Currently this taxon is found west of Papalaua Valley on privately owned land and in the State's Olokui NAR above Waiehu. There are a total of two populations containing between 20 and 30 individuals (HINHP Database 2000; GDSI 2000).

Hibiscus arnottianus ssp. *immaculatus* individuals are scattered along steep sea cliffs in mesic forests between 8 and 1,014 m (26 and 3,326 ft) in elevation. Associated native plant species include *Athyrium* spp. (akolea), *Psydrax odorata*, *Cyanea grimesiana* (haha), *Antidesma platyphyllum*, *Boehmeria grandis* (akolea), *Diospyros sandwicensis* (lama), *Pipturus* spp. (mamaki), *Urera glabra* (opuhe), or *Metrosideros polymorpha* (HINHP Database 2000; Bates 1999).

The major threats to *Hibiscus arnottianus* spp. *immaculatus* on Molokai are habitat destruction by feral goats and catastrophic extinction by naturally occurring events due to the vulnerability of the two remaining populations and few individuals (Service 1996a).

Labordia triflora (kamakahala)

Labordia triflora, a short-lived perennial member of the logan family (Loganiaceae), is similar to *Labordia tinifolia* var. *lanaiensis*, except in the following characteristics: the stems of *L. triflora* are climbing; the leaf stalks are only 1 to 3 millimeters (mm) (0.04 to 0.1 in.) long; inflorescence stalks are 40 to 50 mm (1.6 to 2 in.) long; and, each flower stalk is 10 to 25 mm (0.4 to 1 in.) long (Motley 1995).

The flowers of this species are functionally unisexual. No additional life history information is available at this time (Motley 1995; HINHP Database 2000).

Until 1990, *Labordia triflora* was known only from the type collection at Mapulehu on the island of Molokai and was believed to be extinct. In 1990, Joel Lau rediscovered the species in Kua Gulch on Molokai. Currently, only 10

individuals are known from one population on privately owned land (GDSI 2000; HINHP Database 2000; Motley 1995).

This species occurs on gulch slopes in mixed mesic *Metrosideros polymorpha* forest, between 191 and 1,143 m (626 and 3,749 ft) in elevation. Associated species include *Pouteria sandwicensis* (alaa), *Sadleria cyatheoides* (amau), *Nephrolepis exaltata* (sword fern), *Coprosma* sp., *Myrsine lessertiana* (kolea lau nui), or *Tetraplasandra hawaiensis* (ohe ohe) (Motley 1995; J. Lau, *in litt.* 2001).

The threats to *Labordia triflora* include habitat degradation and destruction by feral pigs and goats; predation by rats that eat seeds; competition with the non-native plant species *Schinus terebinthifolius;* and catastrophic extinction through environmental events and reduced reproductive vigor due to the species' few populations and small number of individuals (64 FR 48307; Motley 1995)).

Lysimachia maxima (no common name (NCN))

Lysimachia maxima, a member of the primrose family (Primulaceae), is a sprawling short-lived perennial shrub with reddish brown bark. This species is differentiated from others in this genus by the leaves borne in groups of three, the broadest portion of the leaf above the middle, and rusty hairs that disappear with maturity (Wagner *et al.* 1999).

Flowers, buds, and immature fruit of *Lysimachia maxima* have been observed in late May through July. No other life history information is available for this species (61 FR 53130; Service 1998a).

Lysimachia maxima is only known from two populations containing between 45 and 50 individuals on the rim of Pelekunu Valley near Ohialele, on the privately owned land of TNCH's Pelekunu Preserve (GDSI 2000; HINHP Database 2000).

This species occurs in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest between 446 and 1,324 m (1,463 and 4,343 ft) in elevation. Associated species include *Psychotria* sp. (kopiko), *Vaccinium* sp., *Hedyotis* sp. (NCN), *Dubautia* sp. (naenae), or *Ilex anomala* (kawau) (HINHP Database 2000).

The major threats to *Lysimachia maxima* are catastrophic extinction from random environmental events (*e.g.,* landslides); reduced reproductive vigor due to the small number of individuals in the only known population; and habitat degradation and/or predation by feral pigs and goats that are known from adjacent areas (Service 1998a).

Melicope reflexa (alani)

Melicope reflexa, a long-lived perennial of the citrus family (Rutaceae), is a sprawling shrub 1 to 3 m (3.3 to 10 ft) tall with short, yellowish-brown, short-lived hairs on new growth. Opposite leaves with leaf stalks usually over 1 cm (0.4 in) long, larger leaves and fruit, and partially fused sections of capsule separate it from other species of the genus (Stone *et al.* 1999).

Currently, no life history information is available for this species (Service 1996a).

Historically, *Melicope reflexa* occurred from a ridge between Hanalilolilo and Pepeopae in Kamakou Preserve to as far east as Halawa on East Molokai. The three remaining populations of fewer than a total of 1,000 individuals are on State and private lands in Honomuni, the Wailau-Mapulehu summit area, and Kukuinui Ridge in Wailau Valley (GDSI 2000; HINHP Database 2000).

Melicope reflexa typically grows in wet *Metrosideros polymorpha*-dominated forest with native trees, such as *Cheirodendron* sp. (olapa), at elevations between 319 and 1,508 m (1,046 and 4,946 ft). Associated native plant species include *Cibotium* spp., *Dicranopteris linearis, Syzygium sandwicensis* (ohia ha), *Antidesma platyphyllum, Alyxia oliviformis* (maile), *Cheirodendron trigynum,* or *Freycinetia arborea* (J. Lau, *in litt.* 2001; Stone *et al.* 1999).

Major threats to *Melicope reflexa* include habitat degradation and predation by ungulates (axis deer and feral pigs); competition with the non-native plant *Clidemia hirta* (Koster's curse); and catastrophic extinction from environmental events due to this species' few populations and small number of individuals (57 FR 46325; Service 1996a).

Pritchardia munroi (loulu)

Pritchardia munroi, a member of the palm family (Arecaceae), is a long-lived perennial tree about 4 to 5 m (13 to 16 ft) tall. The leaves and petioles have scattered, mostly deciduous scales and hairs, somewhat larger on the lower leaf ribs. The leaves are deeply divided into segments with long, drooping tips. Numerous bisexual or functionally male flowers are arranged in clusters on hairy, branching stalks which originate at the leaf bases. The mature fruit is shiny, black, and nearly spherical. This species is distinguished from others of the genus by its relatively smooth leaves; the grayish-brown hair on the inflorescence stalks, which are shorter than the petioles; and the small size of the fruits (Read and Hodel 1999).

Currently, no life history information is available for this species (Service 1996a).

Historically and currently, *Pritchardia munroi* is found in leeward East Molokai, above Kamalo, near Kapuaokoolau Gulch (HINHP Database 2000, Read and Hodel 1999). The only known wild individual is found on privately owned land (HINHP Database 2000).

The only known wild individual grows near the base of a small ravine in mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland at elevations between 189 and 1,205 m (619 and 3,952 ft). Associated plant species include *Sida fallax* (ilima), *Wikstroemia* sp., *Diospyros sandwicensis, Pleomele auwahiensis* (halapepe), *Bidens menziesii* (kookoolau), *Pseudognaphalium sandwicensium* (enaena), *Dubautia linearis* (naenae), or *Coprosma* sp. (Read and Hodel 1999; J. Lau *in litt.* 2001).

Threats to the only known wild individual of *Pritchardia munroi* include habitat degradation by ungulates (axis deer, goats, or pigs) around its fenced exclosure, which prevents the establishment of seedlings; predation of seeds by rats; and catastrophic extinction by random environmental events (e.g., fire) due to its extreme rarity (57 FR 46325; Service 1996a).

Schiedea lydgatei (NCN)

Schiedea lydgatei, a member of the pink family (Caryophyllaceae), is a low, hairless short-lived perennial with branched stems 10 to 40 cm (4 to 16 in) long which are woody at the base. The opposite, three-veined leaves are elliptic. Bisexual flowers are arranged in loosely spreading clusters. The capsules open when mature to reveal dark reddish-brown seeds. The opposite, thin, three-veined leaves with petioles and the smooth, open flower clusters with relatively larger, green sepals separate this species from other members of this endemic Hawaiian genus (Wagner *et al.* 1999).

This species was observed with flowers and fruit in June. Currently, no additional life history information is available (Service 1996a; HINHP Database 2000).

Historically, *Schiedea lydgatei* was found in Kalae, Poholua, Makolelau, and Ohia Gulch on East Molokai. This species is now known from four populations in a more restricted area in

Makakupaia, Kawela, and Makolelau. The four populations total fewer than 1,000 individuals on State and privately owned lands (HINHP Database 2000; GDSI 2000).

This species is found along ridges in dry to mesic grassland, shrubland, and forest with scattered native trees. It ranges in elevations between 458 and 1,047 m (1,502 and 3,434 ft). Associated plant species include *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* or *Dicranopteris linearis* (Gagne and Cuddihy 1999; HINHP Database 2000; Wagner *et al.* 1999).

The major threats to *Schiedea lydgatei* are habitat degradation by feral ungulates; competition with the non-native plant species *Melinus minutiflora;* and catastrophic extinction due to random environmental events, primarily fire, because in this species' dry, windswept habitat a single fire could potentially destroy a large part of the populations (57 FR 46325; Service 1996a).

Schiedea sarmentosa (NCN)

Schiedea sarmentosa, a short-lived perennial herb of the pink family (Caryophyllaceae), is a many-branched shrub. The opposite leaves are slender, threadlike, and covered with dense, glandular hairs. There may be as many as 40 to 60 inflorescences on one plant, often with 50 to 100 flowers in each inflorescence. The flowers are female on some plants and bisexual on others. The green sepals are egg-shaped and somewhat hairy. The staminodes (false stamens) are half as long as the sepals and two-branched at the tip. The fruits are oval capsules. This species differs from others in this endemic Hawaiian genus by its densely bushy habit, leaf width, hairiness, and staminode length (Wagner *et al.* 1999).

The population in Makolelau Gulch has a frequency of 31 percent females. Based on analyses of pollen-ovule ratios, pollen size, inflorescence structure, and comparison to other *Schiedea* species tested in a wind tunnel, *Schiedea sarmentosa* could be wind-pollinated. No other life history information for this species is available (Service 1998a).

Schiedea sarmentosa has been found in Kawela Gulch, Makolelau, and Onini Gulch. Currently, only two populations are known to be extant. One population on privately owned land at TNCH's Kamakou Preserve numbers approximately 30 individuals. The other population occurs on privately owned land in Makolelau, and consists of four subpopulations totaling approximately 300 to 400 individuals. Estimates of the total number of individuals have ranged up to 1,000. An accurate count is somewhat difficult because this species is interspersed with *Schiedea lydgatei* (Service 1998a; HINHP Database 2000; GDSI 2000).

Schiedea sarmentosa is typically found on slopes in *Metrosideros polymorpha-Dodonaea viscosa* lowland dry or mesic shrubland or dry to mesic forest dominated by *Metrosideros polymorpha* and/or *Diospyros sandwicensis* between 316 and 1,072 m (1,036 and 3,516 ft) elevation. Associated species include *Styphelia tameiameiae, Chenopodium oahuensis* (aheahea), *Alyxia oliviformis, Pleomele auwahiensis, Bidens menziesii, Carex meyenii* (NCN), *Lipochaeta rockii* (nehe), *Nestegis sandwicensis, Nothocestrum latifolium* (aiea), *Sida fallax, Sophora chrysophylla* (mamane), or *Chamaesyce* sp. (HINHP Database 2000; J. Lau, *in litt.* 2001).

Major threats to *Schiedea sarmentosa* include habitat degradation by feral goats and pigs, competition by the non-native plants *Melinis minutiflora* and *Ricinus communis* (castor bean), and fire. The species is also threatened by a risk of extinction from naturally occurring events due to the low number of populations (61 FR 53130; Service 1998a).

Silene alexandri (NCN)

Silene alexandri, a member of the pink family (Caryophyllaceae), is an erect, short-lived perennial herb, 30 to 60 cm (1 to 2 ft) tall, and woody at the base. The narrow, elliptic leaves are hairless except for a fringe along the margins. Flowers are arranged in open clusters on stalks. The hairless stems, flowering stalks, and sepals and the larger flowers with white petals separate this species from other members of the genus (Wagner *et al.* 1999).

Currently, no life history information is available for this species.

Historically, *Silene alexandri* was known from Makolelau and Kamalo on East Molokai. Recently, the one population comprised of fewer than 10 individuals was reported to be extirpated in the wild. However, individuals remain in cultivation (Perlman, pers. comm. 2001; GDSI 2000; HINHP Database 2000).

The only known population was found on moderate to steep slopes or cliffs in dry forest at an elevation between 316 and 1,073 m (1,036 and 3,519 ft). Associated plant species include *Dodonaea viscosa, Styphelia tameiameiae, Bidens menziesii, Schiedea* spp., *Carex wahuensis* (NCN), or *Diospyros sandwicensis* (J. Lau, *in litt.* 2001).

Threats to *Silene alexandri* include habitat degradation by feral goats, possible predation by goats and cattle (*Bos taurus*), and catastrophic extinction through random environmental events, of which the most serious is fire, due to the vulnerability of this single population (57 FR 46325; Service 1996a).

Stenogyne bifida (NCN)

Stenogyne bifida, a nonaromatic member of the mint family (Lamiaceae), is a climbing short-lived perennial herb, with smooth or slightly hairy, four-angled stems. The opposite, membranous, toothed leaves are oval or elliptical in shape, and are hairless except for the midribs. Flowers are usually arranged in groups of two to six in each of several whorls at the ends of the stems. The petals are fused into a nearly straight, yellow tube which flares into pale-brown lobes comprising an upper and a lower lip. The fruits are fleshy, black nutlets. The long, narrow calyx teeth and the deep lobe in the upper lip of the yellow corolla separate this species from others of the genus (Weller and Sakai 1999).

Currently, no life history information is available for this species (Service 1996a).

Historically, *Stenogyne bifida* was known from scattered populations from Waianui in central Molokai to Pukoo Ridge on East Molokai. This species is now known from only five East Molokai populations totaling fewer than 10 individuals on Manawai-Kahananui Ridge on private lands; on Kolo Ridge, at Kamoku flats; and on the eastern fork of Kawela Gulch on the privately owned land of TNCH's Pelekunu Preserve (GDSI 2000; HINHP Database 2000).

Stenogyne bifida typically grows on gulch slopes in *Metrosideros polymorpha*-dominated montane mesic to wet forest with native species such as *Cibotium* sp., *Hedyotis* sp., *Cyanea* sp., *Dicranopteris linearis, Dodonaea viscosa, Hedyotis hillebrandii* (manono), *Pipturus albidus, Psychotria* sp., *Styphelia tameiameiae, Vaccinium* sp., *Wikstroemia* sp., *Cheirodendron trigynum, Broussaisia arguta*, or *Pouteria sandwicensis* at elevations between 336 and 1,300 m (1,102 and 4,264 ft) (HINHP Database 2000; Service 1996a; J. Lau, *in litt.* 2001).

The most pervasive threat to this species is habitat degradation by ungulates (axis deer, goats, and pigs) (57 FR 46325; Service 1996a).

Tetramolopium rockii (NCN)

Tetramolopium rockii, a member of the aster family (Asteraceae), is a glandular, hairy, prostrate short-lived

perennial shrub which forms complexly branching mats. The species has been divided into two varieties in the most recent treatment of this genus in Hawaii. Leaves of variety *calcisabulorum* have slightly inrolled edges, and are whitish due to the long silky hairs on their surfaces. Variety *rockii* has smaller, less hairy, flat, yellowish-green leaves. The leaves of both varieties are spatula-shaped with glands and smooth margins. Flower heads, arranged singly at the ends of flowering stalks, are composed of approximately 60 to 100 white ray florets and surround 30 to 55 functionally male, yellow, funnel-shaped disk florets. Fruits are achenes topped with white bristles. This species differs from others of the genus by its growth habit, its hairy and glandular surfaces, its spatulate leaf shape, and its yellow disk florets (Lowrey 1999).

Currently, no life history information is available for this species (Service 1996a).

Of the two recognized varieties of *Tetramolopium rockii*, variety *rockii* was first discovered at Moomomi about 80 years ago and is still extant in that area. *Tetramolopium rockii* var. *rockii* is found in three areas, from Kalawao to Kahinaakalani, Keieho Point to Kaplalauoa, and from Moomomi to Kahinaakalani. Variety *calcisabulorum* is only reported from Keieho Point to Kaplalauoa, intergrading with variety *rockii* where their ranges overlap. The total number of individuals of both varieties in the three populations is estimated to be 174,000; they are located on State lands, including State-owned land managed by the National Park Service at Kalaupapa National Historical Park, and privately owned lands (HINHP Database 2000; GDSI 2000).

Tetramolopium rockii is restricted to hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland between sea level and 199 m (0 and 653 ft) elevation. Native plant species associated with this species include *Psydrax odorata, Diospyros sandwicensis, Metrosideros polymorpha, Osteomeles anthyllidifolia* (ulei), *Scaevola* sp. (naupaka), *Fimbristylis cymosa* (mauu akiaki), *Heliotropium anomalum* (ahinahina), *Lipochaeta integrifolia* (nehe), *Sida fallax*, or *Sporobolus virginicus* (akiaki) (Service 1996a; HINHP Database 2000; Lowrey 1999).

The major threats to *Tetramolopium rockii* are habitat degradation by ungulate (axis deer and cattle) activity and human recreation, competition with the non-native plant *Prosopis pallida* (kiawe), and catastrophic extinction due to fire (57 FR 46325).

Multi-Island Species

Adenophorus periens (pendant kihi fern)

Adenophorus periens, a short-lived perennial member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna (leaflets) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori (a group or cluster of spore cases) on the pinnae, and the degree of dissection of each pinna (Service 1999a; Linney 1989).

Little is known about the life history of *Adenophorus periens*, which seems to grow only in dense closed-canopy forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores (minute, reproductive dispersal unit of ferns and fern allies) are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat, which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not available (Service 1999a; Linney 1989).

Historically, *Adenophorus periens* was known from Kauai, Oahu, Lanai, East Maui, and Hawaii Island. Currently, it is known from several locations on Kauai, Molokai, and Hawaii. On Molokai, it is found in a single population containing seven individuals on the privately owned land within TNCH's Kamakou Preserve (GDSI 2000; HINHP Database 2000).

On Molokai, *Adenophorus periens* is an epiphyte usually growing on *Metrosideros polymorpha* trunks, is found in *Metrosideros polymorpha-Myrsine lessertiana* forest at elevations between 811 and 1,508 m (2,660 and 4,946 ft). It is found in habitats of well-developed, closed canopy providing deep shade and high humidity. Associated native species include *Broussasia arguta, Cheirodendron trigynum, Coprosma ochracea, Cyanea* sp., *Cyrtandra* sp. (haiwale), *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella* (NCN), *Machaerina angustifolia* (uki), *Psychotria hexandra* (kopiko), *Styphelia tameiameiae, Ilex anomala, Vaccinium calycinum* (ohelo), *Cibotium glaucum* (hapuu), *Melicope* sp., *Viola robusta* (pamakani), *Stenogyne kamehamehae* (NCN), *Anoectochilus sandvicensis* (jewel orchid), or *Syzygium sandwicensis* (HINHP Database 2000; Service 1999a; Linney 1989).

The threats to this species on Molokai are habitat degradation by feral pigs and goats, and competition with the non-native plant *Psidium cattleianum* (strawberry guava) (HINHP Database 2000; 59 FR 56333; Service 1999a).

Alectryon macrococcus (mahoe)

Alectryon macrococcus, a long-lived perennial member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis*, both of which are trees with reddish-brown branches and net-veined paper- or leather-like leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs only when young in *A. macrococcus* var. *macrococcus* and whether young or mature (persistent) in *A. macrococcus* var. *auwahiensis* (only found on East Maui). The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (0.9 in) or more in diameter (Kimura and Nagata 1980; Wagner *et al.* 1999).

Alectryon macrococcus is a relatively slow-growing tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of this species. Flowering cycles, pollination vectors, seed dispersal agents, and specific environmental requirements are unknown (Service 1997).

Historically and currently, *Alectryon macrococcus* var. *macrococcus* is known from Kauai, Oahu, Maui, and Molokai. On Molokai, it is found on the privately owned land of TNCH's Kamakou Preserve, along the Puu Kolekole jeep road, Kaunakakai Gulch, and Kamiloloa Gulch in a total of three populations containing nine individuals on State and privately owned lands (GDSI 2000; HINHP Database 2000).

On Molokai, *Alectryon macrococcus* var. *macrococcus* typically grows on dry or talus slopes or in gulches within dry or mesic lowland forest between elevations of 534 and 1,120 m (1,751 and 3,674 ft). Associated native plants include *Dodonaea viscosa, Nestegis sandwicensis, Nothocestrum* sp. (aiea), *Pleomele* sp. (halapepe), *Psychotria* sp., *Streblus pendulina* (aiai), *Myrsine* sp. (kolea), or *Lipochaeta* sp. (nehe) (Service 1997; HINHP Database 2000; Wagner *et al.* 1999).

The threats to *Alectryon macrococcus* var. *macrococcus* on Molokai include

habitat degradation by feral goats and pigs; competition from non-native plant species, such as *Melinus minutiflora, Pennisetum clandestinum* (kikuyu grass), *Schinus terebinthifolius,* and *Psidium cattleianum;* damage from the black twig borer (*Xylosandrus compactus*); seed predation by rats, mice (*Mus domesticus*), and insects (probably the endemic microlepidopteran (small caterpillar) *Prays* cf. *fulvocanella*); loss of pollinators; and catastrophic extinction through a single natural or human-caused environmental disturbance (*e.g.*, fire) due to the very small remaining number of individuals and their limited distribution on Molokai (Service 1997; 57 FR 20772; HINHP Database 2000).

Bonamia menziesii (NCN)

Bonamia menziesii, a member of the morning glory family (Convolvulaceae) and a short-lived perennial, is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Bonamia menziesii* was known from Kauai, the Waianae Mountains of Oahu, Molokai, Maui, and the Island of Hawaii. Currently, this species is extant on Kauai, Oahu, Lanai, Maui, and the Island of Hawaii. This species was last collected on Molokai in 1918 from Maunaloa by J. F. Rock (HINHP Database 2000).

There is currently no information about the preferred habitat of or threats to *Bonamia menziesii* on Molokai.

Brighamia rockii (pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* by Gemmill (1996) have provided the following information: the reproductive system is protandrous, meaning there is a time separation between the production of male and female gametes, in this case a separation of several days; only 5 percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation at an age of 9 months have flowers. This species was observed in flower during August (HINHP Database 2000; Service 1996a).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai from Kalaupapa to Halawa and may possibly have grown on Lanai and Maui. Currently, it is only extant on Molokai in a total of four populations with between 121 to 131 individual plants occurring on State and privately owned lands. It occurs on steep, inaccessible sea cliffs along East Molokai's northern coastline from Anapuhi Beach to Wailau Valley on private lands, and on the relatively inaccessible State-owned sea stack of Huelo, east of Anapuhi Beach (HINHP Database 2000; K. Wood, *in litt.* 2000; GDSI 2000; Lammers 1999).

On Molokai, *Brighamia rockii* is found in rock crevices on steep basalt sea cliffs, often within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* (kawelu) mixed coastal cliff communities, or shrubland, or *Pritchardia* sp. (loulu) coastal mesic forest between sea level and 671 m (0 and 2,201 ft). Associated native species include *Pritchardia hillebrandii* (loulu), *Chamaesyce celastroides* var. *amplectans* (akoko), *Wikstroemia uva-ursi* (akia), *Carex wahuensis* ssp. *wahuensis* (NCN), *Mariscus phleoides* ssp. *phleoides* (NCN), *Eragrostis variabilis, Dianella sandwicensis* (ukiuki), *Cocculus trilobus* (huehue), *Phymatosorus scolopendria* (lauae), *Crytomium falcatum* (ahina kuahiwi), *Lepidium bidentatum* var. *o-waihiense* (anaunau), *Pittosporum halophilum* (hoawa), *Artemisia* sp., *Bidens* sp. (kookoolau), *Schiedea globosa* (NCN), *Reynoldsia sandwicensis* (ohe), *Pandanus tectorius* (hala), *Peucedanum sandwicensis* (makou), *Hedyotis littoralis* (NCN), *Metrosideros polymorpha, Psydrax odorata, Diospyros sandwicensis, Osteomeles anthyllidifolia, Tetramolopium cassia* (pamakani), *Senna gaudichaudii* (kolomona), or *Scaevola sericea* (naupaka kahakai) (HINHP Database 2000; Lammers 1999; K. Wood, *in litt.* 2000).

The threats to this species on Molokai are habitat degradation (and possibly predation) by axis deer and goats; competition with the non-native plants, *Cyperus gracilis* (McCoy grass), *Digitaria ciliaris* (Henry's crabgrass), *Digitaria insularis* (sourgrass), *Ficus microcarpa* (Chinese banyan), *Kalanchoe pinnata, Lantana camara* (lantana), *Oxalis corniculata* (yellow wood sorrel), *Pluchea symphytifolia* (sourbush), *Portulaca oleracea* (pigweed), and *Solanum seaforthianum* (NCN); seed predation by rats; and lack of pollinators (Service 1996a; 57 FR 46325; HINHP Database 2000).

Centaurium sebaeoides (awiwi)

Centaurium sebaeoides, a member of the gentian family (Gentianaceae), is an annual herb with fleshy leaves and stalkless flowers. This species is distinguished from *Centaurium erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Populations are found in dry areas, and plants are more likely to be found following heavy rains. This species appears to be a determinate annual; triggered by declining photoperiod, the plant produces seeds and dies. Medeiros *et al.* (1999) noted that in the wild seedlings first appeared in March and April; flowers first appeared in April and May; mature capsules were observed beginning in May and continuing through June; and by the first week of July, most plants were dead. No additional life history information is available for this plant (Service 1995a).

Historically and currently, *Centaurium sebaeoides* is known from scattered localities on Kauai, Oahu, Molokai, Lanai, and Maui. Currently on Molokai, there are a total of five populations containing thousands of individuals, near Mokio Point on privately owned land and in Kalaupapa National Historical Park which is on State-owned land managed by the National Park Service (Chuck Chimera, formerly with Biological Resources Division (BRD), pers. comm. 2000; GDSI 2000; HINHP Database 2000; Wagner *et al.* 1999).

On Molokai, *Centaurium sebaeoides* grows in volcanic or clay soils or on cliffs in arid coastal areas at elevations between sea level and 409 m (0 and 1,341 ft). Associated species include *Chamaesyce celastroides* (akoko), *Dodonaea viscosa, Fimbristylis cymosa, Heteropogon contortus* (pili grass), *Lipochaeta heterophylla* (nehe), *Lipochaeta integrifolia, Lycium sandwicense* (ohelo kai), *Lysimachia mauritiana* (kolokolo kuahiwi), *Mariscus phleoides* (NCN), *Panicum fauriei* (NCN), *Panicum torridum* (kakonakona), *Scaevola sericea, Schiedea globosa, Sida fallax,*

Wikstroemia uva-ursi, Artemisia sp., *Bidens* sp., *Jacquemontia ovalifolia* (pauohiiaka), or *Lipochaeta succulenta* (nehe) (Medeiros *et al.* 1999; 56 FR 55770; Wagner *et al.* 1999).

The major threats to this species on Molokai are displacement by non-native, woody species, such as: *Casuarina equisetifolia* (paina), *Casuarina glauca* (saltmarsh), *Leucaena leucocephala* (koa haole), *Prosopis pallida, Schinus terebinthifolius, Syzygium cumini* (Java plum), and *Tournefortia argentea* (tree heliotrope); trampling and habitat degradation by feral goats and cattle; and damage caused by off-road vehicles (Medeiros *et al.* 1999).

Ctenitis squamigera (pauoa)

Ctenitis squamigera is a short-lived perennial and a member of the spleenwort family (Aspleniaceae). It has a rhizome (horizontal stem) 5 to 10 millimeters (mm) (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its fronds (Wagner and Wagner 1992; Degener and Degener 1957).

Reproductive cycles, longevity, specific environmental requirements and limiting factors are unknown (Service 1998b).

Historically, *Ctenitis squamigera* was recorded from Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. There is currently a single population with 20 individuals on the island of Molokai in Wawaia Gulch on privately owned land (GDSI 2000; J. Lau, *in litt.* 2000; HINHP Database 2000).

On Molokai, *Ctenitis squamigera* is found in mesic forest and gulch slopes between elevations of 757 and 1,133 m (2,483 and 3,716 ft). Associated native plant taxa include *Metrosideros polymorpha, Diospyros sandwicensis, Nestegis sandwicensis, Xylosma hawaiiense* (maua), *Pouteria sandwicensis, Nephrolepis exaltata, Carex meyenii, Dryopteris unidentata* (NCN), or *Pleomele auwahiensis* (J. Lau, *in litt.* 2000; Service 1998b; 59 FR 49025).

The primary threats to *Ctenitis squamigera* are habitat degradation by goats, and competition with the non-native plant taxa *Schinus terebinthifolius* and *Melinis minutiflora* (J. Lau, *in litt.* 2000; Service 1998b; 59 FR 49025).

Cyanea grimesiana ssp. *grimesiana* (haha)

Cyanea grimesiana ssp. *grimesiana,* a short-lived perennial member of the bellflower family (Campanulaceae), is a shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1999).

Little is known about the life history of this plant. On Molokai, flowering plants have been observed in July and August. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and Maui. On Molokai, it is found in a total of two populations containing eight individuals, in Wailau, Puu Kahea and Olokui NAR on State-owned lands (GDSI 2000; HINHP Database 2000; Service 1999a).

On Molokai, *Cyanea grimesiana* ssp. *grimesiana* is typically found in mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros polymorpha* and *Acacia koa* (koa), or on cliffs, at elevations between 93 and 1,354 m (305 and 4,441 ft). Associated plants include *Psychotria* sp., *Bobea* sp. (ahakea), *Antidesma* sp. (hame), *Syzygium sandwicensis, Xylosma* sp. (maua), *Cibotium* sp., *Doodia* sp. (okupukupulauii), *Nephrolepis* sp. (kupukupu), *Cyrtandra* sp., *Dicranopteris linearis,* or *Freycinetia arborea* (HINHP Database 2000).

The threats to this species on Molokai are habitat degradation and/or destruction caused by axis deer, feral goats, and pigs; competition with various non-native plants, such as *Clidemia hirta*; catastrophic extinction by randomly naturally occurring events (e.g., fire, landslides) due to the small number of existing individuals; trampling by hikers; seed predation by rats; and predation by various slugs (*Milax* spp.) (HINHP Database 2000; 61 FR 53108; Service 1999a).

Cyperus trachysanthos (Puukaa)

Cyperus trachysanthos, a member of the sedge family (Cyperaceae), is a short-lived perennial grass-like plant with a short rhizome (underground stem). The culms (aerial stems) are densely tufted, obtusely triangular in cross section, tall, sticky, and leafy at the base. This species is distinguished from others in the genus by the short rhizome, the leaf sheath with partitions at the nodes, the shape of the glumes, and the length of the culms (Koyama 1999).

Little is known about the life history of *Cyperus trachysanthos*. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Cyperus trachysanthos* was known from Niihau, Kauai, and scattered locations on Oahu, Molokai, and Lanai. This species is now extant on Niihau, Kauai, and Oahu. This species was last collected on Molokai in 1912 from Maunaloa by J. F. Rock (HINHP Database 2000).

There is currently no information about the preferred habitat of or threats to *Cyperus trachysanthos* on Molokai.

Diellia erecta (Asplenium-leaved Diellia)

Diellia erecta, a short-lived perennial member of the spleenwort family (Aspleniaceae), is a fern that grows in tufts of 3 to 9 lance-shaped fronds which emerge from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Robinson 1912; Wagner 1952).

Little is known about the life history of this taxon. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Diellia erecta* was known from Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii Island. Currently, it is known from Kauai, Oahu, Molokai, Maui, and Hawaii. On Molokai, it is known from a total of three populations containing at least 10 individuals in Halawa Valley, Kahuaawi Gulch, Makolelau and Onini Gulch on privately owned lands (HINHP Database 2000; K. Wood, *in litt.* 1999; Service 1999a).

On Molokai, *Diellia erecta* is found in mixed mesic forest and mesic *Diospyros sandwicensis* forest between elevations of 750 and 1,133 m (2,460 and 3,716 ft). Associated native plant species include *Alyxia oliviformis*, *Metrosideros polymorpha*, *Bobea* sp., *Coprosma foliosa* (pilo), *Dodonaea viscosa*, *Dryopteris unidentata*, *Myrsine* sp., *Ochrosia compta* (holei), *Dubautia linearis* ssp. *opposita* (naenae), *Psychotria* sp., *Pleomele auwahiensis*, *Sophora chrysophylla*, *Styphelia*

tameiameiae, *Syzygium sandwicensis*, or *Wikstroemia* sp. (HINHP Database 2000; K. Wood, *in litt.* 1999).

The major threats to *Diellia erecta* on Molokai are habitat degradation by pigs, goats, and axis deer; competition with the non-native plant species *Fraxinus uhdei* (tropical ash), *Ricinus communis*, *Melinus minutiflora*, *Psidium cattleianum*, and *Blechnum occidentale* (NCN); and catastrophic extinction due to random naturally occurring events and reduced reproductive vigor due to the small number of existing individuals (HINHP Database 2000; K. Wood, *in litt.* 1999; 59 FR 56333; Service 1999a).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome. The leaf stalks are 15 to 20 cm (6 to 8 in) long and green or straw colored. The frond is thin textured, ovate-oblong, 15 to 50 cm (6 to 20 in) long and 10 to 15 cm (4 to 6 in) wide, truncate at the base, and pinnate with a pinnatifid apex. The sori are 0.8 to 1.3 cm (0.3 to 0.5 in) long and lie alongside the side veins of the pinnae. *Diplazium molokaiense* can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characters, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Reproductive cycles, longevity, specific environmental requirements and limiting factors for *Diplazium molokaiense* are unknown (Service 1998a).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and Maui. Currently, this species is extant on Maui. This species was last collected on Molokai in 1912 from Kaluaaha Valley by C. N. Forbes (HINHP Database 2000).

On Molokai, *Diplazium molokaiense* was found on steep, rocky, wooded gulch walls in wet forests between elevations of 97 and 1,349 m (318 and 4,424 ft) elevation (HINHP Database 2000).

There is no information on threats that may effect *Diplazium molokaiense* on Molokai.

Eugenia koolauensis (nioi)

Eugenia koolauensis, a member of the myrtle family (Myrtaceae), is a long-lived perennial tree or shrub between 2 and 7 m (7 and 23 ft) tall with branch tips covered with dense brown hairs. *Eugenia koolauensis* is one of two species in the genus that are native to Hawaii, it differs from the other species in having leaves that are densely hairy on the lower surface and leaf margins that curve under the leaves (Wagner *et al.* 1999).

This species has been observed in flower from February to December in various years. No other information exists on reproductive cycles, longevity, specific environmental requirements, or limiting factors (Service 1998b).

Historically, *Eugenia koolauensis* was known from Maunaloa on western Molokai and from Oahu. Currently, this species is extant on Oahu. This species was last collected on Molokai in 1912 from the west end of the island by J. F. Rock (HINHP Database 2000).

On Molokai, *Eugenia koolauensis* was found in rocky gulches or on gentle slopes with deep soil between 475 and 989 m (1,558 and 3,244 ft) in elevation. Associated native plant species include *Nestegis sandwicensis*, *Nototrichium sandwicensis*, *Xylosma hawaiiensee*, *Diospyros sandwicensis*, *Nesoluma polynesicum*, *Reynoldsia sandwicensis*, or *Erythrina sandwicensis* (wiliwili) (J. Lau, *in litt.* 2001).

No information on threats that may affect *Eugenia koolauensis* on Molokai is available.

Flueggea neowawraea (mehamehame)

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae) and a long-lived perennial, is a large tree up to 30 m (100 ft) tall and 2 m (7 ft) in diameter with white oblong pores covering its scaly, pale brown bark. The thin, papery, oval leaves, 4 to 14 cm (1.5 to 5.5 in) long and 2 to 9 cm (0.8 to 3.5 in) wide, are green on the upper surface and pale green on the lower surface. This species is usually dioecious (having separate male and female plants) with unisexual flowers lacking petals. Male flowers, on stalks less than 4 mm (0.2 in) long, have five green sepals with brownish tips. The female flowers, on stalks 1 to 2.5 mm (0.04 to 0.1 in) long, have sepals of unequal length with irregular margins. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size; scaly bark; the shape, size, and color of the leaves; flowers clustered along the branches; and the size and shape of the fruits (Hayden 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of this species. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a; Hayden 1999).

Historically, *Flueggea neowawraea* was known from Molokai, Oahu, Kauai and the island of Hawaii. Currently, this species is found on Kauai, Oahu, Maui, and the island of Hawaii. This species was last collected on Molokai in 1931 from Waihii by G. W. Russ (HINHP Database 2000).

On Molokai, *Flueggea neowawraea* occurred in gulches in mesic forest between 450 and 840 m (1,476 and 2,755 ft) elevation (J. Lau, *in litt.* 2001).

No information on threats that may affect *Flueggea neowawraea* on Molokai is available.

Hedyotis mannii (pilo)

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or -winged. The leaves are opposite, thin in texture and elliptic to sometimes lance-shaped. Stipules (leaf-like appendages), which are attached to the slightly winged leaf stalks where they join and clasp the stem, are triangular. Flowers are arranged in loose clusters up to 30 cm (1 ft) long at the ends of the stems and are either bisexual or female. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Currently, no life history information is available for this species (Service 1996a).

Historically and currently, *Hedyotis mannii* is found on Lanai, West Maui, and Molokai. After an absence of 50 years, this species was rediscovered on Molokai in 1987 by Steve Perlman on private land in Kawela Gulch in TNCH's Kamakou Preserve. Only five plants are known to exist in this area (HINHP Database 2000; GDSI 2000).

On Molokai, *Hedyotis mannii* grows on dark, narrow, rocky gulch walls in mesic and wet forests at 593 to 1,212 m (1,945 to 3,975 ft) in elevation. Associated plant species include *Pipturus* sp., *Cibotium* sp., *Cyanea* sp., *Scaevola* sp., or *Psychotria* sp. (Wagner *et al.* 1999; HINHP Database 2000; Service 1996a).

The threats to *Hedyotis mannii* on Molokai are habitat degradation by feral pigs; competition with the non-native plant *Melinis minutiflora*; and catastrophic extinction through random environmental events to which the limited number of individuals are extremely vulnerable (HINHP Database 2000; 57 FR 46325; Service 1996a).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characters: erect to ascending flower heads, thick flower head stalks, and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species was observed in flower from April through June and fruit during March and June. No other information is available on reproductive cycles, longevity, specific environmental requirements, and limiting factors (Service 1998c).

Hesperomannia arborescens was formerly known from Lanai, Molokai, and Oahu. This species is now known from Oahu, Molokai, and Maui. On Molokai, one population of five individuals is known from private land (GDSI 2000; HINHP Database 2000).

On Molokai, *Hesperomannia arborescens* is found on slopes or ridges in wet *Metrosideros polymorpha-Dicranopteris linearis* lowland forest or mesic *Diospyros sandwicensis-Metrosideros polymorpha* lowland forest transition zones between 175 and 959 m (574 and 3,145 ft) in elevation. Associated native species include *Broussaisia arguta*, *Freycinetia arborea*, *Antidesma* sp., *Cibotium glaucum*, *Psychotria mauiensis* (kopiko), *Elaphoglossum* sp. (ekaha), *Coprosma* sp., *Hedyotis* sp., *Cheirodendron* sp., *Smilax melastomifolia* (hoi kuahiwi), *Clermontia pallida* (oha wai), *Thelypteris* sp. (palapalaia), *Diplopterygium pinnatum* (uluhe lau nui), *Ilex anomala*, *Myrsine* sp., *Urera glabra*, *Cyrtandra* sp., *Pipturus* sp., *Boehmeria grandis*, *Nestegis sandwicensis*, *Nephrolepis exaltata*, or *Wikstroemia* sp. (HINHP Database 2000).

The major threats to *Hesperomannia arborescens* on Molokai are habitat degradation by feral pigs, goats, and humans; competition with non-native plant taxa, such as *Clidemia hirta*, *Kalanchoe pinnata*, and *Rubus rosifolius*; and catastrophic extinction due to random environmental events or reduced reproductive vigor due to this species' limited numbers (59 FR 14482; HINHP Database 2000).

Hibiscus brackenridgei (mao hau hele)

Hibiscus brackenridgei, a short-lived perennial member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics'yellow petals, a calyx consisting of triangular lobes with raised veins and a single midrib, bracts attached below the calyx, and thin stipules that fall off, leaving an elliptic scar. Three subspecies of *Hibiscus brackenridgei* are now recognized, *brackenridgei*, *molokaiana*, and *mokuleianus*. Subspecies *molokaiana* was found on the island of Molokai. When we listed this species in 1994 only two subspecies, *brackenridgei* and *mokuleianus*, were recognized. Subsequent to the final rule listing this species in 1994 we became aware of Wilson's (1993) taxonomic treatment of this group in which *Hibiscus brackenridgei* ssp. *molokaiana* was changed to subspecies status and recognized as distinct from *Hibiscus brackenridgei* ssp. *brackenridgei*. Wilson's (1993) treatment is cited in the supplement in the revised edition of the ''Manual of the Flowering Plants of Hawaii'' as the basis for recognizing *Hibiscus brackenridgei* ssp. *molokaiana*. We will address this name change in a future **Federal Register** notice (HINHP Database 2000; Bates 1999; Wilson 1993; Wagner *et al*. 1999).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of this plant. Pollination biology, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Hibiscus brackenridgei* ssp. *molokaiana* was known from Molokai and is currently found on Oahu. This species was last collected on Molokai in1920 from Laau Point by J. F. Rock (HINHP Database 2000).

On Molokai, *Hibiscus brackenridgei* ssp. *molokaiana* occurred on slopes in lowland dry forest and shrubland from 11 to 467 m (36 to 1,531 ft) in elevation (J. Lau, *in litt.* 2001; HINHP Database 2000).

No information on threats that may affect *Hibiscus brackenridgei* ssp. *molokaiana* on Molokai is available.

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a member of the grass family (Poaceae), is a short-lived perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts, dissimilar basic flower units, which are awned and two-flowered, and a di- or trichotomously-(two or three part) branching inflorescence (O'Connor 1999).

No life history information is currently available for this species (Service 1996b).

Ischaemum byrone was historically distributed on Kauai, Molokai, Maui, and Hawaii Island. Currently, this species is found on Molokai, Maui, and Hawaii Island. On Molokai, there are a total of two populations containing between 100 to 1,000 individuals located in Wailau Valley and the eastern edge of Kikipua on privately owned lands (GDSI 2000; HINHP Database 2000; 59 FR 10305).

On Molokai, *Ischaemum byrone* is found in coastal dry shrubland or *Artemisia* sp. cliff communities, near the ocean, among rocks or on basalt cliffs or talus slopes, and elevations between sea level and 238 m (0 and 781 ft). Associated taxa include *Bidens molokaiensis* (NCN), *Hedyotis littoralis*, *Lysimachia mauritiana*, *Fimbristylis cymosa*, or *Pandanus tectorius* (hala) (HINHP Database 2000; Gagne and Cuddihy 1999; O'Connor 1999).

The threats to *Ischaemum byrone* on Molokai are competition by non-native grasses, particularly *Digitaria ciliaris*; predation by goats and axis deer; and elimination and degradation of habitat through fire and residential development (Service 1996b).

Isodendrion pyrifolium (wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial member of the violet family (Violaceae), is a small, branched shrub. The species is distinguished from other taxa in the genus by its smaller, green-yellow flowers, and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. No further information is available on reproductive cycles, specific environmental requirements, or limiting factors (Service 1996c).

Isodendrion pyrifolium was known historically from Kauai, Oahu, Maui, Hawaii, Niihau, Molokai, and Lanai. Currently, this species is only extant on the island of Hawaii. This species was last collected on Molokai in the 1800s (HINHP Database 2000).

On Molokai, *Isodendrion pyrifolium* was found in dry shrublands between 69 and 422 m (226 and 1,384 ft) elevation. Associated native plant species included *Dodonaea viscosa, Heteropogon contortus, Styphelia tameiameiae,* or *Bidens menziesii* (J.

Lau, *in litt.* 2001; Wagner *et al.* 1999; HINHP Database 2000).

No information on threats that may have affected *Isodendrion pyrifolium* on Molokai is available.

Mariscus fauriei (NCN)

Mariscus fauriei, a member of the sedge family (Cyperaceae), is a short-lived perennial plant with somewhat enlarged underground stems and three-angled, single or grouped aerial stems 10 to 50 cm (4 to 20 in) tall. It has leaves shorter than or the same length as the stems 1 to 3.5 mm (0.04 to 0.1 in) wide. This species differs from others in the genus in Hawaii by its smaller size and its narrower, flattened, and more spreading spikelets (Koyama 1999; 59 FR 56333).

Currently, the reproductive cycle, specific environmental requirements, and limiting factors are unknown for this species (Service 1996b).

Historically, *Mariscus fauriei* was found on east Molokai, Lanai, and the island of Hawaii. This species is no longer extant on Lanai. Currently on Molokai, one population with 20 to 30 plants occurs above Kamiloloa on State-owned land (HINHP Database 2000; GDSI 2000).

On Molokai, *Mariscus fauriei* typically grows in *Diospyros sandwicensis*-dominated lowland dry forests, often on a lava substrate, at elevations between 436 and 1,120 m (1,430 and 3,673 ft). Associated species include *Psydrax odorata, Peperomia* sp. (ala ala wai nui), or *Rauvolfia sandwicensis* (hao) (HINHP Database 2000; Koyama 1999).

The threats to *Mariscus fauriei* on Molokai are predation and habitat degradation by feral goats and axis deer. Because there is only one known population on Molokai, the species is threatened by the risk of extinction through random environmental events and through reduced reproductive vigor (Service 1996b; 59 FR 56333).

Marsilea villosa (ihiihi)

Marsilea villosa, a member of the marsilea family (Marsileaceae), is a short-lived perennial aquatic to semiaquatic fern similar in appearance to a four-leaved clover. The leaves are borne in pairs along a thin rhizome. The leaves and rhizomes vary in pubescence, depending on the aridity of the habitat at the time of development. A hard sporocarp (hard-walled case containing male and female spores) is borne at the base of a leaf pair. The young sporocarp, like the rhizome, is covered with rust-colored hairs, which are lost as the sporocarp matures. The plant occurs either in scattered clumps or as a dense interwoven mat, depending on the competition with other species for limited habitat resources. The species is the only member of the genus native to Hawaii and is closely related to *Marsilea vestita* (NCN) of the western coast of the United States (Service 1996c).

Marsilea villosa requires periodic flooding for spore release and fertilization, then a decrease in water levels for the young plants to establish, and finally dry soil for sporocarps to mature. Shading reduces vigor of *Marsilea villosa.* No other life history information is currently available for this species (Service 1996c).

Marsilea villosa was known historically from Oahu, Molokai and Niihau. Currently, it is found only on Oahu and Molokai. On Molokai there are four populations with an unspecified number of individuals located at Kamaka ipo, Ilio Point, Kaiehu Point, and from Kaeo to Mokio on State- and privately owned lands (HINHP Database 2000; GDSI 2000).

On Molokai, *Marsilea villosa* typically occurs in shallow depressions in clay soil, or lithified sand dunes overlaid with alluvial clay. All reported populations occur at elevations between 125 and 172 m (410 and 564 ft) elevation. While *Marsilea villosa* can withstand minimal shading, it appears most vigorous growing in open areas. The associated native vegetation of *Marsilea villosa* on Molokai includes *Heteropogon contortus, Sida fallax, Waltheria indica* (uhaloa), *Centaurium sebaeoides, Tetramolopium sylvae* (pamakani), or *Schiedea globosa* (Service 1996c).

The threats to *Marsilea villosa* on Molokai are the destruction of natural hydrology; encroachment and competition from naturalized, non-native plants such as *Cenchrus ciliaris* (buffelgrass), *Prosopis pallida, Lantana camara, Digitaria insularis,* and *Chamaecrista nictitans* (partridge pea); damage by off-road vehicles or by grazing cattle and axis deer; habitat destruction, degradation, and fragmentation through development, fire, trampling by humans and introduced mammals; and catastrophic extinction from random environmental events and reduced reproductive vigor due to few populations and small population sizes (Service 1996c; 57 FR 27863).

Melicope mucronulata (alani)

Melicope mucronulata, a long-lived perennial of the citrus family (Rutaceae), is a small tree up to 13 ft (4 m) tall with oval to elliptic-oval leaves. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Currently, no life history information is available for this species (Service 1997).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983. On Molokai, one population of two individuals was then found two years later in Kupaia on the privately owned Kamakou Preserve (GDSI 2000; HINHP Database 2000; Stone *et al.* 1999).

On Molokai, *Melicope mucronulata* occurs on steep, west- or north-facing slopes in mesic *Diospyros sandwicensis-Metrosideros polymorpha* forest, *Metrosideros polymorpha-Dodonaea viscosa* shrubland, or *Metrosideros polymorpha-Styphelia tameiameiae* shrubland between elevations of 199 and 1,143 m (653 and 3,749 ft). Associated native species include *Alyxia oliviformis, Nestegis sandwicensis, Coprosma foliosa, Psychotria mariniana* (kopiko), *Pleomele auwahiensis, Osteomeles anthyllidifolia, Ochrosia compta, Myrsine lanaiensis* (kolea), *Alphitonia ponderosa* (kauila), *Pittosporum* sp., *Hedyotis terminalis, Melicope hawaiensis* (alani), or *Phyllanthus* sp. (NCN) (HINHP Database 2000; J. Lau, *in litt.* 2001).

On Molokai, the major threat to the continued existence of this species is catastrophic extinction from random environmental events due to the few extant populations and small number of individuals. Habitat degradation by goats and pigs; predation by goats; and competition with non-native plants, particularly *Melinis minutiflora,* also pose immediate threats to this species (Service 1997; 57 FR 20772).

Melicope munroi (alani)

Melicope munroi, a long lived perennial of the citrus family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species is minutely hairy. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence (a flower cluster) stalk (Stone *et al.* 1999).

Little is known about the life history of *Melicope munroi.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001).

Historically, this species was known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai.

Currently, *Melicope munroi* is only known from the Lanaihale summit ridge on Lanai. This species was last collected on Molokai in 1910 from Kamalo by J. F. Rock (HINHP Database 2000).

There is currently no information about the preferred habitat of or threats to *Melicope munroi* on Molokai.

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial and a member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either toothed, collar-like, or divided into narrow unequal segments. The fruits are achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *Neraudia sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1999a).

Neraudia sericea was known historically from Molokai, Lanai, Maui, and Kahoolawe. Currently, this species is found only on Maui and Molokai. On Molokai, one population of 50 to 100 individuals is known from Makolelau on privately owned land (GDSI 2000; HINHP Database 2000).

On Molokai, *Neraudia sericea* generally occurs on gulch slopes and gulch bottoms in lowland dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Styphelia tameiameiae* shrubland or forest between 691 and 1,043 m (2,266 and 3,421 ft) in elevation. Other associated plant species include *Pleomele auwahiensis, Alyxia oliviformis, Coprosma* sp., or *Hedyotis* sp. (HINHP Database 2000; J. Lau, *in litt.* 2001; Wagner *et al.* 1999).

The primary threats to *Neraudia sericea* on Molokai are habitat degradation by feral pigs and goats; competition with the non-native plant, *Melinus minutiflora;* and catastrophic extinction through random environmental events due to the vulnerability of a single population (Service 1999a; 59 FR 56333).

Peucedanum sandwicense (makou)

Peucedanum sandwicense, a short lived perennial and a member of the parsley family (Apiaceae), is a parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands (Constance and Affolter 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1995b).

Historically and currently, *Peucedanum sandwicense* was known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the island of Oahu. On Molokai, four populations are known from private and State-owned lands in Pelekunu Valley, on Huelo Islet and Mokapu Islet, and State-owned lands managed by the National Park Service at Kalaupapa National Historical Park, totaling approximately 50 individuals (GDSI 2000; HINHP Database 2000; K. Wood, *in litt.* 2000; Service 1995b).

On Molokai, *Peucedanum sandwicense* grows in cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest from sea level to above 840 m (2,755 ft) and is associated with native species, such as *Eragrostis* sp. (kawelu), *Santalum ellipticum* (iliahialoe), *Pritchardia hillebrandii, Reynoldsia sandwicensis, Osteomeles anthyllidifolia, Scaevola sericea, Senna gaudichaudii, Pittosporum halophilum, Sida fallax, Plumbago zeylanica* (iliee), *Artemisia australis* (ahinahina), *Portulaca lutea* (ihi), *Lepidium bidentatum* var. *o-waihiense, Schiedea globosa, Lipochaeta integrifolia, Peperomia remyi* (NCN), *Plectranthus parviflorus* (ala ala wai nui), *Dianella sandwicensis,* or *Metrosideros polymorpha* (Constance and Affolter 1999; Service 1995b; HINHP Database 2000; K. Wood, *in litt.* 2000).

Threats to *Peucedanum sandwicense* on Molokai are seed predation by rats and competition with the non-native plant species *Ageratum conyzoides* (maile hohono), *Coronopus didymus* (swinecress), *Kalanchoe pinnata, Lantana camara, Malvastrum coromandelianum* ssp. *coromandelianum* (false mallow), *Morinda citrifolia* (noni), *Plantago lanceolata* (English plantain), *Pluchea carolinensis* (sourbush), *Portulaca oleracea*, *Elaphantopus spicatus* (NCN), *Schinus terebinthifolius*, and *Sonchus oleraceus* (pualele) (Service 1995b; 59 FR 9304; K. Wood, *in litt.* 2000).

Phyllostegia mannii (NCN)

Phyllostegia mannii, a short-lived perennial and nonaromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. The opposite, hairy leaves, which are shaped like narrow triangles or narrow triangular ovals, have coarsely toothed margins. Clusters of four to six white flowers are arranged in each of several false whorls along an unbranched flowering stem. The fruits are fleshy, dark-green to black nutlets (dry seeds with a hard outer covering). This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves, which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1999).

This species was observed with fruit in July. Currently, no additional life history information is available for this species (Service 1996a).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui. It has not been seen on Maui for over 70 years and is apparently extirpated on that island. On Molokai, this species is now known from only one individual on Puu Alii on privately owned land (GDSI 2000; HINHP Database 2000; Service 1996a).

On Molokai, *Phyllostegia mannii* grows in shaded sites in sometimes foggy and windswept, wet, open, *Metrosideros polymorpha*-dominated montane forest with a native shrub and *Cibotium* sp. understory between 590 and 1508 m (1,935 and 4,946 ft) elevation. Associated plant species include *Asplenium* sp., *Broussaisia arguta, Cheirodendron trigynum, Coprosma ochracea, Cyanea* sp., *Dicranopteris linearis, Hedyotis hillebrandii, Pipturus albidus, Pouteria sandwicensis, Psychotria* sp., *Touchardia latifolia, Vaccinium* sp., or *Wikstroemia* sp. (HINHP Database 2000; Service 1996a).

The only known population of *Phyllostegia mannii* is threatened by habitat destruction and degradation by feral pigs. Because there is only one individual currently extant, a natural or human-caused environmental event could extirpate the species (Service 1996a; 57 FR 46325).

Phyllostegia mollis (NCN)

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Leaves are oval in outline with rounded teeth. Flowers, usually in groups of six, are spaced along a stem; there are two shorter flowering stems directly below the main stem. The flowers have fused sepals and white petals fused into a tube and flaring into a smaller upper and a larger lower lip. Fruits are fleshy, dark green to black nutlets. A suite of technical characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of the various plant parts separate this species from other members of the genus (Wagner *et al.* 1999).

Individual *Phyllostegia mollis* plants live for approximately five years. The species is known to flower in late winter and spring. Additional information on the life history of this plant, reproductive cycles, specific environmental requirements, and limiting factors is generally unknown (Service 1998b).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui. Currently, this species is only known from Oahu and Maui. This species was last collected on Molokai in 1912 from Kamakou Preserve by J. F. Rock (HINHP Database 2000).

On Molokai, *Phyllostegia mollis* typically grew in mesic *Metrosideros polymorpha* forests between 551 and 1,216 m (1,807 and 3,988 ft) elevation (J. Lau, *in litt.* 2001).

No information on threats that may have affected *Phyllostegia mollis* on Molokai is available.

Plantago princeps (laukahi kuahiwi)

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, *anomala, laxiflora, longibracteata,* and *princeps,* are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown. However, individuals have been observed in fruit from April through September (Service 1999a).

Plantago princeps is historically and currently known from Kauai, Oahu, Molokai, Hawaii, and Maui. It is no longer extant on the island of Hawaii. *Plantago princeps* var. *anomala* is currently known from Kauai and Oahu; var. *longibracteata* is known from Kauai and Oahu; var. *princeps* is known from Oahu; and var. *laxiflora* is known from Molokai and Maui. On Molokai, there is currently one remaining population of *Plantago princeps* var. *laxiflora* with five individuals in Kawela Gulch on privately owned lands (GDSI 2000; HINHP Database 2000; Service 1999a).

On Molokai, *Plantago princeps* var. *laxiflora* is typically found on streambanks in *Metrosideros polymorpha* lowland mesic forest between 592 and 1,213 m (1,942 and 3,979 ft) elevation. Associated plant species include *Coprosma* sp., *Wikstroemia oahuensis* (akia), *Pipturus albidus, Dodonaea viscosa, Dryopteris unidentata,* or *Cyanea* sp. (J. Lau, *in litt.* 2001; Wagner *et al.* 1999).

The primary threats to *Plantago princeps* var. *laxiflora* on Molokai are predation and habitat degradation by feral pigs and goats and competition with various non-native plant species (59 FR 56333; Service 1999a).

Platanthera holochila (NCN)

Platanthera holochila, a short-lived perennial and a member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs in the Hawaiian Islands (Wagner *et al.* 1999).

Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, *Platanthera holochila* is extant on Kauai, Molokai, and Maui. On Molokai, one population with less than 10 individuals is reported from Hanalilolilo on the privately owned land of Kamakou Preserve (HINHP Database 2000; GDSI 2000).

On Molokai, *Platanthera holochila* is found on slightly sloping ridgetops in *Metrosideros polymorpha-Cheirodendron trigynum* wet forest or *Metrosideros polymorpha* mixed montane bog between 551 and 1,382 m (1,807 and 4,532 ft) elevation. Associated native plants include *Cibotium* sp., *Oreobolus furcatus* (NCN), or *Styphelia tameiameiae* (J. Lau, *in litt.* 2001).

The primary threats to *Platanthera holochila* on Molokai are habitat degradation and/or destruction by feral pigs; competition with non-native plants; and a risk of extinction from naturally occurring events and/or reduced reproductive vigor, due to the small number of remaining populations and individuals. Predation by slugs may also be a potential threat to this species (61 FR 53108; Service 1999a).

Pteris lidgatei (NCN)

Pteris lidgatei, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in.) thick and at least 10 cm (3.9 in) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in) long and 20 to 45 cm (8 to 18 in) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions being common. *Pteris lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner and Wagner 1992).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors is generally unknown (Service 1998a).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and West Maui. Currently, this species is known from Oahu and Maui. This species was last collected on Molokai in 1912 from the slopes of Olokui by C. N. Forbes (HINHP Database 2000).

On Molokai, *Pteris lidgatei* grew on steep stream banks between 78 and 1,266 m (256 and 4,152 ft) elevation in wet forest (HINHP Database 2000).

No information on threats that may have affected *Pteris lidgatei* on Molokai is available.

Schiedea nuttallii (NCN)

Schiedea nuttallii, a long-lived perennial member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of

the inflorescence, number of flowers per inflorescence, smaller leaves, smaller flowers, and smaller seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic (flowers contain both sexes). Plants located close to the Makua rim on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless pollinated, suggesting that this species requires insects for pollination. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails. These have been observed feeding on *S. membranacea*, another mesic forest species occurring on Kauai. In contrast to mesic forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because there are fewer alien consumers in drier sites. Fruits and flowers are abundant in the wet season but can be found throughout the year. Little is known about the life history of this plant. Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Weller *et al.* 1990; Service 1999a; Kapua Kawelo, U.S. Dept. of Defense, Army Environmental, *in litt.* 1999).

Historically, *Schiedea nuttallii* was known from scattered locations on southeastern Kauai, Oahu, Molokai, and Maui. Currently, known populations occur on Kauai, Oahu, and Molokai. On Molokai one population with 22 individuals of *Schiedea nuttallii* occurs on the privately owned lands of TNCH's Kamakou Preserve (HINHP Database 2000; GDSI 2000; Service 1999a).

On Molokai, *Schiedea nuttallii* typically grows in streamside grottos in wet *Metrosideros polymorpha-Cheirodendron trigynum* forest at elevations between 677 and 1,423 m (2,220 and 4,667 ft). Associated plants include *Asplenium lobulatum* (NCN), *Asplenium macraei* (NCN), *Thelypteris sandwicensis* (NCN), *Vandenboschia davallioides* (NCN), *Cyrtandra hawaiiensis* (haiwale), or *Asplenium unilaterale* (NCN) (J. Lau, *in litt.* 2001).

Schiedea nuttallii on Molokai is seriously threatened by competition with several non-native plants; predation by the black twig borer, slugs, and snails; and a risk of extinction from naturally occurring events (*e.g.*, landslides) and/or reduced reproductive vigor due to the small number of individuals (Service 1999a; 61 FR 53108).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a short-lived perennial and a member of the pea family (Fabaceae), is typically a sprawling shrub but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets, which are usually sparsely to densely covered with silky hairs. The flowers are salmon tinged with yellow, orange-red, scarlet or rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* (Egyptian rattlepod) by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that, although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999a).

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). It is no longer extant on Niihau and Lanai. On Molokai, *Sesbania tomentosa* is known from six populations with an estimated total of 100 to 150 individuals. One of the populations occur from Moomomi to Nenehanaupo and five from Kamiloloa to Makolekau on State- and privately owned lands (Service 1999a; 59 FR 56333; HINHP Database 2000; GDSI 2000).

On Molokai, *Sesbania tomentosa* is found in *Scaevola sericea* coastal dry shrubland on windswept slopes, sea cliffs and weathered basaltic slopes between sea level and 516 m (0 and 1,692 ft) elevation. Associated plant species include *Lipochaeta integrifolia, Jacquemontia sandwicensis, Sida fallax,* or *Dodonaea viscosa* (HINHP Database 2000; Service 1999a).

The primary threats to *Sesbania tomentosa* on Molokai are competition with various non-native plant species, such as *Lantana camara,* and grass species; habitat degradation by feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, non-native insects; and destruction by random environmental events (*e.g.*, fire) and by human activities (*e.g.*, use of off-road vehicles) (59 FR 56333; Service 1999a).

Silene lanceolata (NCN)

Silene lanceolata, a member of the pink family (Caryophyllaceae), is an upright, perennial plant with stems 15 to 50 cm (6 to 20 in) long, which are woody at the base. The narrow leaves are smooth except for a fringe of hairs near the base. Flowers are arranged in open clusters. The flowers are white with deeply-lobed, clawed petals. The capsule opens at the top to release reddish-brown seeds. This species is distinguished from *S. alexandri*, the only other member of the genus found on Molokai, by its smaller flowers and capsules and its stamens, which are shorter than the sepals (Wagner *et al.* 1999).

Currently, no life history information is available for this species (Service 1996a).

The historical range of *Silene lanceolata* includes five Hawaiian Islands: Kauai, Oahu, Molokai, Lanai, and Hawaii Island. *Silene lanceolata* is presently extant on the islands of Molokai, Oahu, and Hawaii. On Molokai, a single population of approximately 100 individuals was found in 1987 on private land near Puu Kolekole (K. Wood, *in litt.* 1999; GDSI 2000; Service 1996a).

On Molokai, *Silene lanceolata* grows on gulch slopes, ridge tops, and cliffs in dry to mesic shrubland between 581 and 1,043 m (1,905 and 3,421 ft) elevation. Associated native plant species include *Metrosideros polymorpha, Bidens menziesii, Schiedea* spp. (NCN), *Carex wahuensis, Diospyros sandwicensis, Dodonaea viscosa, Styphelia tameiameiae,* or *Dubautia linearis* (Service 1996a; K. Wood, *in litt.* 1999; J. Lau, *in litt.* 2001).

Habitat destruction by feral ungulates (goats and pigs), wildfires, and competition by invading non-native plants are immediate threats to *Silene lanceolata* on Molokai (57 FR 46325; Service 1996a).

Solanum incompletum (popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves have prominent veins on the lower surface and lobed leaf margins. Numerous flowers grow in loose

branching clusters with each flower on a stalk. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in.) long, and berries 1 to 2 cm (0.4 to 0.8 in.) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum.* Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (59 FR 56333).

Historically, *Solanum incompletum* was known from Lanai, Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *Solanum incompletum* also extended to the islands of Kauai and Molokai. Currently, *Solanum incompletum* is only known from the island of Hawaii. There are no element occurrence records for this species on Molokai so it is unclear when the last individual was collected (HINHP Database 2000).

Nothing is known of the preferred habitat of, native plant species associated with *Solanum incompletum*, or threats to *Solanum incompletum* on the island of Molokai.

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks. Flowers are arranged in a loose, compound-inflorescence arising from the stem, opposite the leaves. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999a).

Historically, *Spermolepis hawaiiensis* was known from Kauai, Oahu, Lanai and the island of Hawaii. Currently, it is extant on Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On Molokai, there is one known population with approximately 600 individuals on privately owned land in Kamalo (59 FR 56333; HINHP Database 2000; GDSI 2000; Service 1999a).

On Molokai, *Spermolepis hawaiiensis* is known from ridge crests and gulch slopes in dry to mesic shrublands between 432 and 972 m (1,416 and 3,188 ft) elevation. Associated plant species include *Dodonaea viscosa, Metrosideros polymorpha*, or *Styphelia tameiameiae* (J. Lau, *in litt.* 2001).

The primary threats to *Spermolepis hawaiiensis* on Molokai are habitat degradation by feral goats; competition with various non-native plants, such as *Melinis minutiflora*, *Lantana camara*, and grasses; and habitat destruction and extinction due to natural environmental events such as erosion, landslides, and rockslides due to natural weathering (59 FR 56333; Service 1999a).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the pea family (Fabaceae), is a slender twining short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets, which vary in shape from round to linear, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx has asymmetrical lobes. The fruits are long slender pods that may or may not be slightly inflated and contain 7 to 15 gray to black seeds. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods, which may or may not be slightly inflated (Geesink *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (Service 1999a).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, and Maui. Currently, *Vigna o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. There are no currently known populations on Niihau or Oahu. On Molokai, two populations with approximately 16 individuals occur on privately owned lands at Onini Gulch and Makolelau (GDSI 2000; Service 1999a; HINHP Database 2000).

On Molokai, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland between 516 and 1,041 m (1,692 and 3,414 ft) elevation. Associated plant species include *Chenopodium oahuense*, *Cyperus laevigatus* (makaloa), *Eragrostis variabilis*, *Heteropogon contortus*, *Ipomoea* sp. (morning glory), *Scaevola sericea*, *Sida fallax*, *Vitex rotundifolia* (pohinahina), *Dodonaea viscosa*, or *Styphelia tameiameiae* (Geesink *et al.* 1999; HINHP Database 2000; Service 1999a).

The primary threats to *Vigna o-wahuensis* on Molokai are competition with various non-native plant species; and a risk of extinction due to random environmental events (primarily fire), and/or reduced reproductive vigor due to the small number of existing populations and individuals (Service 1999a; 59 FR 56333).

Zanthoxylum hawaiiense (ae)

Zanthoxylum hawaiiense, a long-lived perennial, is a medium-size tree with pale to dark gray bark, and lemon-scented leaves in the citrus family (Rutaceae). Alternate leaves are composed of three small triangular-oval to lance-shaped, toothed leaves (leaflets) with surfaces usually without hairs. *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: three leaflets all of similar size, one joint on lateral leaf stalk, and sickle-shape fruits with a rounded tip (Stone *et al.* 1999).

Additional information on the life history of this plant, reproductive cycles, longevity, specific environmental requirements, and limiting factors are generally unknown (Service 1996b).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, southern and southwestern slopes of Haleakala on Maui, and Hawaii. Currently, *Zanthoxylum hawaiiense* is extant on Kauai, Molokai, Maui, and Hawaii. On Molokai, the two extant populations with a total of five individuals are located at Makolelau and Puu Hoi Ridge on private lands (HINHP Database 2000; GDSI 2000).

On Molokai, *Zanthoxylum hawaiiense* is found on gulch slopes in mesic *Metrosideros polymorpha* or *Diospyros sandwicensis* forest between 754 and 1,084 m (2,473 and 3,555 ft) elevation. Associated species include *Dodonaea viscosa*, *Styphelia tameiameiae*, *Pleomele auwahiensis*, *Nestegis sandwicensis*, *Alyxia oliviformis*, *Osteomeles anthyllidifolia*, *Psychotria spp.*, or *Myrsine lanaiensis* (Stone *et al.* 1999; 59 FR 10305; HINHP Database 2000; J. Lau, *in litt.* 2001).

The threats to *Zanthoxylum hawaiiense* on Molokai include browsing, grazing, and trampling by feral goats; competition with non-native plant species; habitat degradation and destruction by humans; and extinction from naturally occurring events (primarily fire) and/or from reduced reproductive vigor due to the small

number of individuals and populations (59 FR 10305; Service 1996b).

A summary of populations and landownership for the 51 plant species reported from the island of Molokai is given in Table 3.

TABLE 3.—SUMMARY OF EXISTING POPULATIONS OCCURRING ON MOLOKAI, AND LANDOWNERSHIP FOR 51 SPECIES REPORTED FROM MOLOKAI

Species	Number of current populations	Landownership		
		Federal	State	Private
Adenophorus periens	1			X
Alectryon macrococcus	3		X	X
Bidens wiebkei	3			X
Brighamia rockii	4		X	X
Bonamia menzeisii	0			
Canavalia molokaiensis	5		X*	X
Centaurium sebaeoides	5		X*	X
Clermontia oblongifolia ssp. brevipes	3			X
Ctenitis squamigera	1			X
Cyanea dunbarii	1		X	
Cyanea grimesiana ssp. grimesiana	2		X	
Cyanea mannii	5		X	X
Cyanea procera	2		X	X
Cyperus trachysanthos	0			
Diellia erecta	3			X
Diplazium molokaiense	0			
Eugenia koolauensis	0			
Flueggea neowawraea	0			
Hedyotis mannii	1			X
Hesperomannia arborescens	1			X
Hibiscus arnottianus ssp. *immaculatus*	2		X	X
Hibiscus brackenridgei	0			
Ischaemum byrone	2			X
Isodendrion pyrifolium	0			
Labordia triflora	1			X
Lysimachia maxima	2			X
Mariscus fauriei	1		X	
Marsilea villosa	4		X	X
Melicope mucronulata	1			X
Melicope munroi	0			
Melicope reflexa	3		X	X
Neraudia sericea	1			X
Peucedanum sandwicense	4		X*	X
Phyllostegia mannii	1			X
Phyllostegia mollis	0			
Plantago princeps	1			X
Platanthera holochila	1			X
Pritchardia munroi	1			X
Pteris lidgatei	0			
Schiedea lydgatei	4		X	X
Schiedea nuttallii	1			X
Schiedea sarmentosa	2			X
Sesbania tomentosa	6		X	X
Silene alexandri	0			
Silene lanceolata	1			X
Solanum incompletum	0			
Spermolepis hawaiiensis	1			X
Stenogyne bifida	5			X
Tetramolopium rockii	3		X*	X
Vigna o-wahuensis	2			X
Zanthoxylum hawaiiense	2			X

*Some populations are on State land that is managed by the National Park Service at Kalaupapa National Historical Park and/or the U.S. Coast Guard Reservation at Kalaupapa.

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens, Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Hedyotis mannii* (as *Hedyotis thyrsoidea* var. *thyrsoidea), Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hibiscus arnottianus* ssp. *immaculatus* (as *Hibiscus immaculatus*), *Ischaemum byrone, Marsilea villosa, Melicope reflexa* (as *Pelea reflexa), Neraudia sericea* (as *Neraudia kahoolawensis*), *Peucedanum*

sandwicense (as *Peucedanum kauaiense*), *Plantago princeps* (as *Plantago princeps* var. *elata,* var. *laxifolia,* var. *princeps*), *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Silene alexandri, Silene lanceolata, Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citiodora*) were considered endangered; *Diellia erecta* and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered threatened; and, *Labordia triflora, Melicope mucronulata* (as *Pelea mucronulata*), *Plantago princeps* (as *Plantago princeps* var. *acaulis,* var. *denticulata,* and var. *queleniana*), and *Tetramolopium rockii* were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Labordia triflora* and *Melicope munroi.* The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

Comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). A summary of the status categories for these 51 plant species in the 1980–1996 notices of review can be found in Table 4(a). We listed the 51 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 4(b).

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 51 PLANT SPECIES FROM MOLOKAI

Species	**Federal Register** Notice of Review				
	1980	1985	1990	1993	1996
Adenophorus periens	C1	C1	C1		
Alectryon macrococcus	C1	C1	C1		
Bidens wiebkei	C1	C1	C1		
Bonamia menziesii	C1	C1	C1		
Brighamia rockii	C1	C1	C1		
Canavalia molokaiensis	C1	C1	C1		
Centaurium sebaeoides	.....	.....	C1		
Clermontia oblongifolia ssp. *brevipes*	.....	.....	C1		
Ctenitis squamigera	C1	C1	C1		
Cyanea dunbarii					
Cyanea grimesiana ssp. *grimesiana*	C1	C1		C2	
Cyanea mannii	.....	.....	C1		
Cyanea procera	.....	.....	C1*		
Cyperus trachysanthos	.....	.....	.....	C2	
Diellia erecta	C1	C1	C1		
Diplazium molokaiense	C1*	C1*	C1		
Eugenia koolaeuensis	C1	C1	C1*	C2*	
Flueggea neowawraea	C1	C1	C1		
Hedyotis mannii	C1*	C1*	C1		
Hesperomannia arborescens	C1	C1	C1		
Hibiscus arnottianus ssp. *immaculatus*	C1	C1	C1		
Hibiscus brackenridgei	C1	C1	C1		
Ischaemum byrone	C1	C1	C1		
Isodendrion pyrifolium	C1	C1	C1	3C	
Labordia triflora	C2	C2		C	
Lysmachia maxima	.....	.....	C2	C2	
Mariscus fauriei	.....	.....	C1		
Marsilea villosa	C1	C1	C1		
Melicope mucronulata	C1	C1	C1		
Melicope munroi	C1*	C1*	C2	C2	
Melicope reflexa	C1	C1	C1		
Neraudia sericea	3A	3A	C1		
Peucedanum sandwicense	C2	C2	C2		
Phyllostegia mannii	.....	.....	C1		
Phyllostegia mollis					
Plantago princeps	C2	C2	C1		
Platanthera holochila	C1	C1	C1	C2	
Pritchardia munroi	C1	C1	C1		
Pteris lidgatei	3C	3C			
Schiedea lydgatei	.....	C1	C1		
Schiedea nuttallii	.....	.....	.....	C2	
Schiedea sarmentosa	.....	.....	C2	C2	
Sesbania tomentosa	C1*	C1*	C1		

TABLE 4(A).—SUMMARY OF CANDIDACY STATUS FOR 51 PLANT SPECIES FROM MOLOKAI—Continued

Species	Federal Register Notice of Review				
	1980	1985	1990	1993	1996
Silene alexandri	C1	C1	C1		
Silene lanceolata	C1	C1	C1		
Solanum incompletum	C1*	C1*	C1		
Spermolepis hawaiiensis	.....	.....	C1		
Stenogyne bifida	.....	.....	C1		
Tetramolopium rockii	C1	C1	C1		
Vigna o-wahuensis	C1	C1	C1		
Zanthoxylum hawaiiense	C1	C1	C1		

Key:
C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.
C2*: Taxa for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time. Taxa's continued existence in doubt, i.e. may be extinct.
3A: Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing.
3C: Taxa that have proven to be more abundant or widespread than perviously believed and/or those that are not subject to any identifiable threat.
Federal Register Notices of Review:
1980: 45 FR 82479
1985: 50 FR 39525
1990: 55 FR 6183
1993: 58 FR 51144
1996: 61 FR 7596

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 51 PLANT SPECIES FROM MOLOKAI

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Adenophorus periens	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808.
						12/27/00	65 FR 82086.
						12/29/00	65 FR 83158.
						03/04/02	67 FR 9806.
Alectryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Bidens wiebkei	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Bonamia menzeisii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Canavalia molokaiensis	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Clermontia oblongifolia ssp. brevipes	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025	12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						03/04/02	67 FR 9806.
Cyanea dunbarii	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130	12/29/00	65 FR 83158.

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 51 PLANT SPECIES FROM MOLOKAI—Continued

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Cyanea grimesiana ssp. grimesiana ..	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						12/29/00	65 FR 83158.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Cyanea mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Cyanea procera	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Cyperus trachysanthos	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00	65 FR 66808.
						01/28/02	67 FR 3940.
						03/04/02	67 FR 9806.
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Diplazium molokaiense	E	12/14/92	57 FR 39066	06/27/94	59 FR 32932	12/18/00	65 FR 79192.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Eugenia koolauensis	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089		
Flueggea neowawraea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808.
						12/18/01	65 FR 79192.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						12/29/00	65 FR 83158.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482	12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Hibiscus arnottianus ssp. immaculatus.	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Hibiscus brackenridgei	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770	12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Isodendrion pyrifolium	T	10/02/95	60 FR 51417	10/10/96	61 FR 53108	01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
Labordia triflora	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/29/00	65 FR 83158.
Lysmachia maxima	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130	12/29/00	65 FR 83158.
Mariscus fauriei	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	12/29/00	65 FR 83158.
Marsilea villosa	E	02/15/91	56 FR 6349	06/22/92	57 FR 27863	12/29/00	65 FR 83158.
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772	12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						04/03/02	[To be published].
Melicope munroi	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307	12/27/00	65 FR 82086.
						03/04/02	67 FR 9806.
Melicope reflexa	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Peucedanum sandwicense	T	10/30/91	56 FR 55862	02/25/94	59 FR 9304	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
Phyllostegia mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	04/03/02	[To be published].
Phyllostegia mollis	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089	12/18/00	65 FR 79192.
						04/03/02	[To be published].

TABLE 4(B).—SUMMARY OF LISTING ACTIONS FOR 51 PLANT SPECIES FROM MOLOKAI—Continued

Species	Federal status	Proposed rule		Final rule		Proposed critical habitat	
		Date	Federal Register	Date	Federal Register	Date	Federal Register
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
Pritchardia munroi	E	10/08/92	57 FR 46325	09/20/91	56 FR 47718		
Pteris lidgatei	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089	12/18/00	65 FR 79192.
						04/03/02	[To be published].
Schiedea lydgatei	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Schiedea nuttallii	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108	12/29/00	65 FR 83158.
Schiedea sarmentosa	E	10/02/95	60 FR 51436	10/10/96	61 FR 53130	12/29/00	65 FR 83158.
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Silene alexandri	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Silene lanceolata	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
Solanum incompletum	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	01/28/02	67 FR 3940.
Spermolepis Hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Stenogyne bifida	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Tetramolopium rockii	T	09/20/91	56 FR 47718	10/08/92	57 FR 46325	12/29/00	65 FR 83158.
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333	12/18/00	65 FR 79192.
						12/27/00	65 FR 82086.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].
						03/04/02	67 FR 9806.
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305	11/07/00	65 FR 66808.
						12/18/00	65 FR 79192.
						12/29/00	65 FR 83158.
						01/28/02	67 FR 3940.
						04/03/02	[To be published].

Key: E=Endangered T=Threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was prudent for two of these plants (*Labordia triflora* and *Melicope munroi*) and not prudent for the other 49 plants because it would not benefit the plant and/or would increase the degree of threat to the species.

The not prudent determinations for the 49 species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii, directed us to review the prudency determinations for 245 listed plant species in Hawaii, including 49 of the 51 species reported from Molokai. Among other things, the court held that, in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7

consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a ''uniform protection plan'' prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

At the time we listed *Labordia triflora* and *Melicope munroi* (64 FR 48307) we determined that designation of critical habitat was prudent and that we would develop critical habitat designations for these two taxa, along with eight others, at the same time we developed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt,* Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed, however, that it was reasonable for us to integrate these ten Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, and ordered us to publish proposed critical habitat designations for the ten Maui Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the State of Hawaii Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On February 18, 2000, we mailed letters to more than 100 landowners on the island of Molokai requesting any information considered germane to the management of any of the 51 plants on his/her property, and containing a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the plants that may be on his/her property, and a handout containing general information on critical habitat. We received 25 written responses to our landowner mailing with varying types of information on their current land management activities. These responses included information on the following: fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and/or planting of native plants. We held one open house on the island of Molokai, at the Mitchell Pauole Community Center, on March 15, 2000, to meet one-on-one with local landowners and other interested members of the public. A total of 14 people attended the open house. In addition we met with Maui County Division of Forestry and Wildlife staff and discussed their management activities on the island.

On December 29, 2000, we published the fourth of the court-ordered prudency determinations for 19 species and proposed critical habitat designations or non-designations for 32 Molokai plants (65 FR 83158). The prudency determinations and proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Maui and Kahoolawe plants on December 18, 2000 (65 FR 82086), and for Lanai plants on December 27, 2000 (65 FR 82086). All of these proposed rules had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. In those proposals we determined that critical habitat was prudent for 47 species (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia ssp. brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana ssp. grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus ssp. immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) that are reported from Molokai as well as Kauai, Niihau, Maui, Kahoolawe, and Lanai.

In the December 29, 2000, proposal we determined that it was prudent to designate approximately 6,165 ha (15,230 ac) on Molokai as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on February 27, 2001. On February 22, 2001, we published a notice (66 FR 11132) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for plants from Molokai and a notice of a public hearing. On March 21, 2001, we

held a public hearing at the Mitchell Pauole Center Hall, Molokai.

On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001. On January 28, 2002 (67 FR 3940) (Kauai revised proposal), we determined that designation of critical habitat was prudent for *Isodendrion pyrifolium* and *Solanum incompletum,* two species reported from Molokai as well as Kauai, Maui, and Lanai. The designation of critical habitat is proposed for *Isodendrion pyrifolium* on Molokai. On March 4, 2002 (67 FR 9806) and XX Maui revised proposal, we published revised proposals for plants from Lanai, and Maui and Kahoolawe, and Lanai, respectively. Publication of this revised proposal for plants from Molokai is consistent with the court-ordered stipulation.

Summary of Comments and Recommendations

In the December 29, 2000, proposed rule (65 FR 83158), we requested all interested parties to submit comments on the specifics of the proposal, including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on February 27, 2001. We reopened the comment period from February 22, 2001 to April 2, 2001 (66 FR 11132), to accept comments on the proposed designations and to hold a public hearing on March 21, 2001, in Kaunakakai Molokai.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers: the *Honolulu Advertiser, The Dispatch,* and the *Molokai Advertiser-News* on March 1, 2001. We received one request for a public hearing. We announced the date and time of the public hearing in letters mailed to all interested parties, appropriate State and Federal agencies, county governments, and elected officials, and in notices published in the *Honolulu Advertiser, The Dispatch,* and the *Molokai Advertiser-News* on March 1, 2001. A transcript of the hearing held in Kaunakakai, Molokai on March 21, 2001, is available for inspection (see **ADDRESSES** section).

We requested three botanists who have familiarity with Molokai plants to peer review the proposed critical habitat designations. One reviewer submitted comments on the proposed critical habitat designations, providing updated biological information, critical review, and editorial comments.

We received a total of three oral and five written comments during the two comment periods. These included responses from three State offices and five private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Molokai plants. Of the eight comments we received, five supported designation, two were opposed, and one provided information but declined to oppose or support the designation. Similar comments were grouped into six general issues relating specifically to the proposed critical habitat determinations. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* The designation of critical habitat in unoccupied habitat is particularly important, since this may be the only mechanism available to ensure that Federal actions do not eliminate the habitat needed for the survival and recovery of extremely endangered species.

Our Response: We agree. Our recovery plans for these species (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999, 2001) identify the need to expand existing populations and reestablish wild populations within their historical range. We have revised the December 29, 2000, proposal to designate critical habitat for 32 Molokai plant species to incorporate new information and address comments and new information received during the comment periods, including information on areas of potentially suitable unoccupied habitat for some of these species from Molokai.

(2) *Comment:* The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. For example, some of the data used by the Service was 30 years or older.

Our Response: When developing the December 29, 2000, proposal to designate critical habitat for 32 plants from Molokai, we used the best scientific and commercial data available at the time, including but not limited to, information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; the final listing rules for these species; information received at the informational open house held on Molokai at the Mitchell Pauole Center Hall on March 15, 2000; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Molokai; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999, 2001; HPPRCC 1998; HINHP Database 2000; CPC *in litt.* 1999).

We have revised the proposed designations to incorporate new information, and address comments and new information received during the comment periods. This additional information comes from the Geographic Information System (GIS) coverages (*e.g.* vegetation, soils, annual rainfall, elevation contours, land ownership); completed recovery plans, and information received during the public comment periods and public hearing (R. Hobdy, in litt. 2001; Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c, 1999, 2001).

(3a) *Comment:* The proposed critical habitat designations were not specific enough, and were over broad by including unsuitable habitat in degraded areas and therefore, failed to comply with Congressional intent to restrict critical habitat to those areas ''essential to the conservation of the species.'' (3b) The designation was not inclusive enough and failed to include areas that Molokai plants have used and are necessary for recovery of the species.

Our Response: The presence of non-native plants does not preclude designation of an area as critical habitat, if the area contains the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. We used the best scientific information available to develop the December 29, 2000, proposal to designate critical habitat for 32 Molokai plants. This information is detailed above in our response to Comment (2).

We have revised the proposed designations published in the December

29, 2000, proposal for Molokai plants to incorporate new information, and address comments and new information received during the comment periods. We used the best available information, including expert scientific opinion, to identify the physical and biological features (type of plant community, associated species, and locale information such as rocky cliffs, talus slopes, stream banks) essential to the conservation of each species, and to identify potentially suitable habitat within the known historic range of each species. Of the area identified as potentially suitable habitat for a species, only those areas within the least disturbed suitable habitat were proposed as critical habitat for the species.

We invite comments from the public that provide information on potentially suitable habitat within the known historic range of each species and whether lands within the proposed critical habitat provide for the conservation of one or more of the species.

(4) *Comment:* The Service avoided a statutory obligation to determine whether the benefits of excluding particular areas (*e.g.,* areas with conservation agreements, licenses with Department of Hawaiian Homelands, protection plans, etc.) from critical habitat designation outweigh the benefits of including each area.

Our Response: Section 4(b)(2) of the Act requires that we consider the economic and other impacts of critical habitat designation and allows us to areas when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We base our decision to exclude an area from critical habitat designation on the best scientific data available, taking into consideration the economic and other impacts of specifying any particular area as critical habitat. We will complete an economic analysis on this proposed rule, and consider the results of this analysis and comments received on the analysis and the new proposed rule. We will use that economic analysis as well as all other information about potential impacts of the designation in determining whether exclusions under section 4(b)(2) are appropriate (see 50 CFR 424.19).

We will provide technical assistance and work closely with applicants throughout the development of any future Habitat Conservation Plans (HCPs) or other conservation plans to identify lands essential for the long-term conservation of the Molokai plants and appropriate management for those lands. If an HCP or other conservation management plan is approved by us, we will reassess the critical habitat boundaries in light of the conservation plan. We will seek to undertake this review when an HCP or conservation management plan is approved, but funding constraints may influence the timing of such a review.

Issue 2: Site-Specific Biological Comments

(5) *Comment:* Critical habitat should be designated for *Pritchardia munroi* or loulu palm species if the units are of adequate ecological size and because the habitat is too inaccessible and remote for vandals.

Our Response: We have revised the December 29, 2000, proposal to designate critical habitat for 32 plants from Molokai to incorporate new information, and address comments and new information received during the comment periods. However, no additional information was provided during the comment periods that would ensure the protection of *Pritchardia munroi* from vandalism or collection if critical habitat was designated for this species on Molokai. As previously discussed in the December 29, 2000, proposal, we believe that the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection of *Pritchardia munroi.* Several nurseries advertise and sell *Pritchardia* palms, including *Pritchardia munroi* and six other Federally listed *Pritchardia* species. Given the considerations described in the November 7, 2000, and December 29, 2000, proposals regarding instances of vandalism, collection, and commercial trade of Hawaiian species of *Pritchardia* no change is made to the December 29, 2000, prudency determination for *Pritcharida munroi.*

(6) *Comment:* Department of Hawaiian Homelands should be excluded from the critical habitat designation because plant protection and management plans are under development. (6b) *Comment:* Since critical habitat threats are being addressed, and management plans are in place, the Department of Hawaiian Homelands (DHHL) requests exclusion from Units D, E, H, K, and Y

Our Response: We agree that endangered species management plans can provide special management for lands such that they no longer meet the definition of critical habitat. Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it provides: (1) A conservation benefit to the species (*i.e.,* the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) assurances that the management plan will be implemented (*i.e.,* those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and, (3) assurances the conservation plan will be effective (*i.e.,* it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan accomplishes these things, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

At this time we are not able to find that management on these lands is adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii, the Department of Hawaiian Homelands, and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the island of Molokai. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas. We agree that implementation of management actions for the conservation of these species should proceed; however, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available.

(7) *Comment:* The State of Hawaii identified specific areas that they

thought should not be designated as critical habitat.

Our Response: During the public comment periods for the December 29, 2000, proposal for plants from Molokai, we received written comments and a map showing the DOFAW's vegetation classes and recommended critical habitat units. We have revised the December 29, 2000, proposed designations to incorporate new information, and address comments and new information received during the comment periods, including information received from DOFAW.

We evaluated DOFAW's comments on a species-by-species basis and incorporated information that was consistent with our methodology. DOFAW recommended deletion of some of the proposed critical habitat units as they do not believe these areas are suitable for the recovery of some species because they (DOFAW) would not be able to manage these areas with their limited staff and funding. Because the basis for identifying areas by DOFAW was made on the manageability of the area, their mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act.

Issue 3: Legal Issues

(8) *Comment:* A premise for the proposed rule is that the Service was ordered by the court on August 10, 1998, to designate critical habitat by November 30, 2000. The proposal was published on December 29, 2000. Thus, the Service is negligent in meeting its court ordered deadline.

Our Response: The proposed rules for plants from Kauai, Niihau, Maui, Kahoolawe, Lanai, and Molokai had been sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. On October 3, 2001, we submitted a joint stipulation with Earth Justice Legal Defense Fund requesting extension of the court orders for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods on the December 29, 2000, proposal for plants from Molokai. The joint stipulation was approved and ordered by the court on October 5, 2001. Publication of this revised proposal for plants from Molokai is consistent with the joint stipulation.

(9) *Comment:* The Service should designate critical habitat for Moomomi, Pelekunu, and Kamakou Preserves since excluding them potentially violates the mandatory duty to designate critical habitat ''to the maximum extent prudent and determinable.'' 16 U.S.C. 1533(a)(3).

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

The Service found that the plants and their habitats within the Moomomi Preserve, Pelekunu Preserve, and Kamakou Preserve receive long-term protection and management and, thus, these lands are not in need of additional special management considerations or protection. In our December 29, 2000, proposal we determined that the private lands within Moomomi Preserve, Kamakou Preserve, and Pelekunu Preserve do not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. No change is made to this determination in this revised proposal and it is hereby incorporated by reference (65 FR 82086). Should the status of these preserves change, for example by nonrenewal of a partnership agreement or termination of funding, we will reconsider whether the lands within Moomomi, Kamakou, and Pelekunu preserves meet the definition of critical habitat. If so, we have the authority to proposed to amend critical habitat to include such area(s) at that time (50 CFR 424.12(g)).

Issue 4: Mapping and Primary Constituent Elements

(10a) *Comment:* The designated areas are too large. (10b) *Comment:* The units are not large enough, and don't allow for changes that occur during known environmental processes. (10c) *Comment:* The 586-meter radius is arbitrary and may not work for all species, natural communities, and habitats. (10d) *Comment:* The highly irregular and fragmented shape of proposed units make it difficult to determine if projects are within critical habitat.

Our Response: Based on a review of new biological information and public comments received, we have revised the proposed designations published in the December 29, 2000, proposal for Molokai plants to incorporate new information, and address comments received during the comment periods. The 586 m (1,924 ft) radius circle used to delineate critical habitat for each species in the December 2000 proposal may not insure enough area to provide for the proper ecological functions of the habitat supporting the plant. In this revised proposal, areas that contain habitat necessary for conservation were identified and delineated on a species by species basis. When species units overlapped, we combined units for ease of mapping (see also Methods section). We made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of these species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, radars, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of 46 plant species from Molokai.

Issue 5: Definition of Critical Habitat

(11) *Comment:* Critical habitat is being designated in otherwise protected areas, such as State conservation lands.

Our Response: In the November 7, 2000, proposal we examined all currently occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the Molokai plant species to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning

documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.,* county, State, or Federal government holdings) and private landowner on the island of Molokai with a known occurrence of one of the plant species was contacted by mail. We reviewed all information received in response to our landowner mailing and open house held at Kaunakakai on the island of Molokai on March 15, 2000. When clarification was required on the information provided to us, we followed up with a telephone contact. In addition, we reviewed new biological information and public comments received on the December 29, 2000, proposal during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it provides: (1) A conservation benefit to the species (*i.e.,* the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) assurances that the management plan will be implemented (*i.e.,* those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and (3) assurances the conservation plan will be effective (*i.e.,* it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

Upon review of the above documents, we were not able to find that management on these lands was adequate to preclude proposed designations of critical habitat. We are aware that the State of Hawaii, and other private landowners are considering the development of land management plans or agreements that may promote the conservation of endangered and threatened plant species on the island of Molokai. We support these efforts, and we view such plans as important in helping meet species recovery goals, and ultimately can result in delisting of the species. We intend to work closely with any interested landowner or land manager in the development of conservation planning efforts for these, and other, endangered and threatened plants. If new information indicates any of these areas should not be included in the critical habitat designations because they no longer meet the definition of critical habitat, we may revise the proposed critical habitat designations in this proposal to exclude these areas. We agree that implementation of management actions for the conservation of these species should proceed however, both the Act and the relevant court order requires us to proceed with designation at this time based on the best information available.

Issue 6: Effects of Designation

(12) *Comment:* Designation of critical habitat will result in restrictions on subsistence hunting and State hunting programs funded under the Federal Aid in Wildlife Restoration Program (Pittman-Robertson program).

Our Response: We believe that game bird and mammal hunting in Hawaii is an important recreational and cultural activity, and we support the continuation of this tradition. The designation of critical habitat would not impose restrictions on state hunting programs except to the extent Federal funding is involved. The designation of critical habitat requires Federal agencies to consult under section 7 of the Act with us on actions they carry out, fund, or authorize that might destroy or adversely modify critical habitat. This requirement applies to us, including our distribution of funds to the State through the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program). Under the Act, activities funded by us or other Federal agencies cannot result in jeopardy to listed species, and they cannot adversely modify or destroy critical habitat. It is well documented that game mammals affect listed plant and animal species. In such areas, we believe it is important to develop and implement sound land management programs that provide both for the conservation of listed species and for continued game hunting. We are committed to working closely with the State and other interested parties to ensure that game management programs that receive Federal funding are implemented consistent with this need.

Issue 7: Economic Issues

(13) *Comment:* We should have been directly contacted for our opinions on the public hearing and impacts of critical habitat designation.

Our Response: We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time. In addition, we will mail letters to landowners and other interested parties and publish notices in the local newspapers announcing the availability of the draft economic analysis and seeking public comment on the economic analysis and the proposed rule.

Summary of Changes From the Previous Proposal

In previously published proposals we determined that critical habitat was prudent for 47 species reported from Molokai. No change is made to these 47 prudency determinations in this revised proposal and they are hereby incorporated by reference (65 FR 48307, 65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940). In addition, at the time we listed *Labordia triflora* and *Melicope munroi*, we determined that the designation of critical habitat was prudent for these two taxa from Molokai (64 FR 48307).

In this proposal we determined that designation of critical habitat is prudent for one species, *Eugenia koolauensis,* for which a prudency determination had not been made previously, and that no longer occurs on Molokai. This species is reported from Molokai and Oahu but is currently only known on Oahu.

In this proposal, we propose designation of critical habitat for 46 species: *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia ssp. brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana ssp. grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus ssp. immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea,*

Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis, and Zanthoxylum hawaiiense on the island of Molokai, based on new information and information received during the comment periods on the December 29, 2000, proposal. Critical habitat is not proposed for four of the 51 species (*Bonamia menziesii, Cyperus trachysanthos, Melicope munroi, and Solanum incompletum*) which no longer occur on the island of Molokai, and for which we are unable to identify any habitat that is essential their conservation on the island of Molokai. Critical habitat is not proposed for one species of loulu palm, *Pritchardia munroi,* for which we determined, on December 29, 2000, that critical habitat designation is not prudent because it would likely increase the threats from vandalism or collection of this species on Molokai. No change is made to that determination here.

In this proposal, areas proposed as critical habitat are occupied by at least one species and some areas include some unoccupied habitat for one or more species.

Based on a review of new biological information and public comments received we have revised our December 29, 2000, proposal to incorporate the following changes in addition to those described above: changes in our approach to delineating proposed critical habitat (see Criteria Used to Identify Critical Habitat); adjustment and refinement of previously identified critical habitat units to more accurately follow the natural topographic features and to avoid nonessential landscape features (agricultural crops, urban or rural development) without primary constituent elements; and, inclusion of new areas within the proposed critical habitat units that are essential for the conservation of one or more of the 46 plant species.

Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas provide at least one of the physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas

may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

We originally determined that designation of critical habitat was prudent for 19 species from the island of Molokai on December 29, 2000. These species are: *Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea mannii, Cyanea procera, Hibiscus arnottianus* ssp. *immaculatus, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope reflexa, Phyllostegia mannii, Schiedea lydgatei, Schiedea sarmentosa, Silene alexandri, Silene lanceolata, Stenogyne bifida,* and *Tetramolopium rockii.* In proposals published on November 7, 2000, December 18, 2000, and December 27, 2000, we determined that designation of critical habitat was prudent for 19 plants that are reported from Molokai as well as from Kauai, Niihau, Maui, Kahoolawe, and Lanai. These 19 plants are: *Adenophorus periens, Alectryon macrococcus, Centaurium sebaeoides, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Diellia erecta, Hedyotis mannii, Hesperomannia arborescens, Ischaemum byrone, Melicope mucronulata, Neraudia sericea, Peucedanum sandwicense, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense.* No change is made to these 38 prudency determinations in this revised proposal and they are hereby incorporated by reference (64 FR 48307, 65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158). In addition, at the time we listed *Labordia triflora* and *Melicope munroi,* on September 3, 1999, we determined that the designation of critical habitat was prudent for these two taxa from Molokai (64 FR 48307).

No change is made here to the prudency determination for *Pritchardia munroi,* published in the December 29, 2000, proposal and hereby incorporated by reference (65 FR 83158). Since publication of the listing rule for *Pritchardia munroi,* we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia.* Seven of these species are federally protected, including *Pritchardia munroi.* In light of this information, we believe that designation of critical habitat would likely increase the threat from vandalism or collection to this species of *Pritchardia* on Molokai. Given the considerations described in the December 29, 2000, proposal, we determined that the benefits of designating critical habitat designation did not outweigh the potential increased threats from vandalism or collection, and, therefore, that designation of critical habitat for *Pritchardia munroi* was not prudent. During the public comment periods for the December 29, 2000, proposal one commenter suggested that critical habitat should be designated for this species of palm if the units are of adequate ecological size or because the habitat is too inaccessible and remote for vandals. However, given the considerations described in the December 29, 2000, proposal regarding instances of vandalism, collection, and commercial trade of this species no change is made here to the earlier prudency determination for *Pritchardia munroi* and it is hereby incorporated by reference (65 FR 83158).

In the December 29, 2000, proposal we did not determine prudency nor propose designation of critical habitat for 10 species that no longer occur on Molokai but are reported from one or more other islands. We determined that critical habitat was prudent for nine of these species (*Bonamia menziesii, Cyperus trachysanthos, Diplazium molokaiense, Flueggea neowawraea, Hibiscus brackenridgei, Isodencrion pyrifolium, Phyllostegia mollis, Pteris lidgatei,* and *Solanum incompletum*) in other proposed rules published on November 2, 2000 (Kauai and Niihau), December 18, 2000 (Maui and Kahoolawe), December 27, 2000 (Lanai), and January 28, 2002 (Kauai and Niihau reproposal). No change is made to these prudency determinations for these nine species in this proposal and they are hereby incorporated by reference (65 FR 66808, 65 FR 79192, 65 FR 82086, 67 FR 3940).

To determine whether critical habitat would be prudent for *Eugenia koolaeuensis,* a species for which a prudency determination has not been made previously, and that no longer occurs on Molokai but is reported from one other island (Oahu), we analyzed the potential threats and benefits for this species in accordance with the court orders. This plant was listed as endangered species under the Endangered Species Act of 1973, as amended (Act) in 1996. At that time, we determined that designation of critical habitat for *Eugenia koolauensis* was not prudent because designation would increase the degree of threat to the species and/or would not benefit the plant. We examined the evidence available for this species and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these species or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Eugenia koolauensis* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that this species is currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat. In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. In the case of *Eugenia koolauensis* there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. *Eugenia koolauensis* is reported from Federal lands or lands that are administered by a Federal agency on Oahu (the U.S. Army's Schofield Barracks Military Reservation and Kawailoa Training Area) where actions are subject to section 7 consultation, as well as on State and private lands. Although currently there may be limited Federal activities on these State and private lands, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by *Eugenia koolauensis* would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if

critical habitat were designated, such as on Molokai. There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowner(s), land managers, and the general public of the importance of protecting the habitat of this species and dissemination of information regarding its essential habitat requirements. Therefore, we propose that designation of critical habitat is prudent for *Eugenia koolauensis.*

B. Methods

As required by the Act (section 4(b)(2)) and regulations at 50 CFR 424.12, we used the best scientific data available to determine areas that are essential to conserve *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea mannii, Cyanea grimesiana* ssp. *grimesiana, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the CPC's rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide GIS coverages (*e.g.* vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 50 species; the December 29, 2000, proposal; information received during the public comment periods and the public hearing; recent biological surveys and reports; our recovery plans for these species; information received in response to outreach materials and requests for species and management information we sent to all landowners, land managers, and interested parties on the island of Molokai; discussions with botanical experts; and recommendations from the HPPRCC (see also the discussion below) (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999; HPPRCC 1998; HINHP Database 2001, CPC *in litt.* 1999; 65 FR 83158; J. Lau, *in litt.* 2001; J. Lau *et al., in litt.* 2001).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999a). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Some of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the 46 listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include not only some habitat that was identified as essential in the 1998 recommendation but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

As described in the discussions for each of the 46 species (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis, and Zanthoxylum hawaiiense*) for which we are proposing critical habitat, we are proposing to define the primary constituent elements on the basis of the habitat features of the areas in which the plant species are reported from, as described by the type of plant community, associated native plant species, locale information (*e.g.,* steep rocky cliffs, talus slopes, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicates specific microclimate conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the

physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of the Plant Taxa* section above, constitute the primary constituent elements for these species on the island of Molokai.

We are unable to identify the primary constituent elements for *Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum,* which no longer occur on the island of Molokai, because information on these features for these species on Molokai is not available at this time. Therefore, we were not able to identify the specific areas outside the geographic areas occupied by these species at the time of their listing (unoccupied habitat) that are essential for the conservation of *Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum* on the island of Molokai.

All areas proposed as critical habitat are within the historical range of one or more of the 46 species at issue and contain one or more of these physical or biological features (primary constituent elements) essential for the conservation of one or more of the species.

D. Criteria Used To Identify Critical Habitat

In the December 29, 2000, proposal we defined the primary constituent elements based on the general habitat features of the areas in which the plants currently occur such as the type of plant community the plants are growing in, their physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we proposed to designate as critical habitat provided some or all of the habitat components essential for the conservation of the 46 plant species. Specific details regarding the delineation of the proposed critical habitat units were given in the December 29, 2000, proposal (65 FR 83158). In that proposal we did not include potentially suitable unoccupied habitat that is important to the recovery of the 46 species due to our limited knowledge of the historical range (the geographical area outside the area presently occupied by the species) and our lack of more detailed information on the specific physical or biological features essential for the conservation of the species.

However, following publication of the December 29, 2000 (65 FR 83158) proposal we received new information regarding the physical and biological features that are considered essential for the conservation of many of these 46 species and information on potentially suitable habitat within the historical range for many of these species, such as locale information, elevational range, vegetation type, and associated species. Based on a review of this new biological information and public comments received following publication of the other three proposals to designate critical habitat for Hawaiian plants on Kauai and Niihau (65 FR 66808), Maui and Kahoolawe (65 FR 79192), and Lanai (65 FR 82086), we have reevaluated the manner in which we delineated proposed critical habitat. In addition, we met with members of the HPPRCC, and State, Federal, and private entities to discuss criteria and methods to delineate critical habitat units for these Hawaiian plants.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). However, at this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, we used available information, including expert scientific opinion to identify potentially suitable habitat within the known historic range of each species.

We considered several factors in the selection and proposal of specific boundaries for critical habitat for these 46 species. For each of these species, the overall recovery strategy outlined in the approved recovery plans includes the following components: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range, and (4) research on species' biology and ecology (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature individuals per population for long-lived perennials, 300 individuals per population for short-lived perennials, and 500 mature individuals per population for annuals. There are some specific exceptions to this general recovery goal of 8 to10 populations for multi-island species (see discussion below on *Marsilea villosa*) and the proposed critical habitat designations reflect this exception for this species. To be considered recovered each population of a species endemic to the island of Molokai should occur on the island to which it is endemic, and likewise the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999, 2001). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is defined as a unit containing 100, 300, or 500 individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual, in which the individuals could be regularly cross-pollinated and are influenced by the same small-scale areas (such as landslides).

Marsilea villosa, a short-lived perennial aquatic fern, was historically known from six populations on three different islands: Molokai, Oahu, and Niihau. This species is now extant only on Oahu and Molokai. Delisting objectives for this species include protection and stabilization of at least six (rather than 8 to 10) geographically distinct, self-sustaining populations (either three on Oahu and three on Molokai or three on Oahu, two on Molokai, and one on Niihau), stable or increasing population sizes, no active management needed, and self-maintenance of each population through two successive floods resulting in sexual reproduction. Delisting objectives for *Marsilea villosa* do not include a specific number of mature individuals per population because this a clonal species (it is extremely difficult to distinguish between individuals in clonal plant species) (Service 1996c).

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, that could destroy a large percentage of the species at any one time may be reduced (Menges 1990, Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected

to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Menges 1990; Murphy *et al.* 1990; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

The long-term objectives, as reviewed by Pavlik (1996), require from 50 to 2,500 individuals per population, based largely on research and theoretical modeling on endangered animals, since much less research has been done on endangered plants. Many aspects of species life history are typically considered to determine guidelines for species interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed duration, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of the afore-mentioned characteristics that can be uniformly applied to all species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature individuals per population for long-lived perennial species, 300 individuals per population for short-lived perennial species, and 500 individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. However, as explained above, the recovery goal for *Marsilea villosa* is six populations, rather than 8 to 10 populations. Delisting objectives for *Marsilea villosa* do not include specific numbers of mature individuals per population. Although absent the detailed information inherent to the types of PVA models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species—(1) creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2000; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Raup 1991; Meffe and Carroll 1996). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in the several proposed critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of non-native plants and animals. Establishing and conserving 8 to 10 viable plant populations on one or more island(s) within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as hurricanes which occurred in 1982 and 1992 on Kauai, fires, and alien plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give most species a reasonable likelihood of long-term survival and recovery, based on currently available information.

In summary, the long-term survival and recovery requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of most plant species. For *Marsilea villosa* however, the recovery goal is at least six geographically distinct, self-sustaining populations, rather than 8 to 10 populations. Some of this habitat is currently not known to be occupied by these species. To recover the species, it will be necessary to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and non-native species introductions) (Pimm *et al.* 1998; Stacey and Taper 1992; Mangel and Tier 1994).

In this proposal, we have defined the primary constituent elements based on the general habitat features of the areas in which the plants are reported from such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, streambanks), and elevation. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of the 46 plant species.

We used the following considerations in delineating proposed critical habitat units:

(1) We focused on designating units representative of the known current and historical geographic and elevational range of each species;

(2) Proposed critical habitat units would allow for expansion of existing wild populations and reestablishment of wild populations within historic range, as recommended by the recovery plans for each species; and

(3) Critical habitat boundaries were delineated in such a way that areas with overlapping occupied or suitable

unoccupied habitat could be depicted clearly (multi-species units).

We began by creating rough units for each species by screen digitizing polygons (map units) using ArcView (ESRI), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potential, suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species then were considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were then used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the critical habitat units identified as containing the appropriate primary constituent elements for each species. For multi-island species multiple populations of each taxon were identified on islands where they now occur or occurred historically. Because of the need to propose critical habitat on an island by island basis for multi-island species we evaluated the historical distribution of each multi-island species throughout Hawaii, to the best of our ability. We expect to refine proposed areas for these multi-island species once all the proposed rules for the Hawaiian Islands are published. This refinement will be based on an evaluation on what is essential to the species on these islands throughout its historical distribution. Of the areas identified as potentially suitable habitat, only those areas within the least-disturbed suitable habitat and that were determined were proposed as critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,281 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; M.H. Schierup and F.B. Christiansen 1996).

Using the above criteria, we delineated the proposed critical habitat for each species. When species units overlapped, we combined units for ease of mapping. Such critical habitat units encompass a number of plant communities. Using satellite imagery and parcel data we then eliminated areas that did not contain the appropriate vegetation, associated native plant species, or elevations such as cultivated agriculture fields, housing developments or other areas that are unlikely to contribute to the conservation of one or more of the 46 plant species. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or man-made features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries. We also used watershed delineations to dissect very large proposed critical habitat units in order to simplify the unit mapping and their descriptions.

Within the critical habitat boundaries, section 7 consultation is necessary and adverse modification generally could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In defining critical habitat boundaries, we made an effort to avoid developed areas such as towns and other similar lands, that are unlikely to contribute to the conservation of the 46 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas. In addition, existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, radars, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, for the Molokai species we utilized the approved recovery plan guidance to identify appropriately sized land units containing suitable occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the habitat necessary on Molokai to provide for the conservation of these 46 species.

E. Managed Lands

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 46 plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, each public (*i.e.*, any county, state, or Federal government office holdings) and private landowner on Molokai with a known occurrence of one of the 46 species was contacted by mail. We reviewed all biological information received during the public comment period, in response to our landowner mailing and open house held in Kaunakakai, Molokai on March 15, 2000. When clarification was required on the information provided to us, we followed up with a telephone contact. Because of the large amount of land on the island of Molokai under State of Hawaii jurisdiction, we met with staff from Molokai's DOFAW office to discuss their current management for the plants on their lands. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must also require ''special management considerations or protections.'' Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those

responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding for the management plan); and, (3) provides assurances that the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieves the plan's goals and objectives). If an area is covered by a plan that meets these objectives, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management.

In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Smith 1985; Howarth 1985, Stone 1985; Wagner *et al.* 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Vitousek 1992; Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999; Loope 1998).

Current threats to these species include non-native grass and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including goats, deer, and pigs); direct and indirect effects of non-native plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest-bird pollinators; direct competition between native and non-native insect pollinators for food; and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be stifled by fruit and flower eating pests such as non-native arthropods, mollusks, and rats; and photosynthesis and water transport that are affected by non-native insects, pathogens and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes; feral ungulates vectoring weeds and disturbing vegetation and soils thereby facilitating dispersal and establishment of non-native plants; and numerous non-native insects feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Howarth 1985; Smith 1985; Scott *et al.* 1986; Cuddihy and Stone 1990; Mack 1992; D'Antonio and Vitousek 1992; Tunison *et al.* 1992; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999; Bruegmann *et al.* 2001).

(2) The recommendations from the HPPRCC in their 1998 report to the US (''Habitat Essential to the Recovery of Hawaiian Plants''). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes.

(3) The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in our recovery plans for these 46 species (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999, 2001), in the 1998 HPPRCC report to the Service (HPPRCC 1998), and in various other documents and publications relating to plant conservation in Hawaii (Mueller-Dombois 1985; Smith 1985; Stone 1985; Cuddihy and Stone 1990; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) nonnative plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plants species; (7) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance (Service 1995a, 1995b, 1996a, 1996b, 1996c, 1997, 1998a, 1998b, 1998c; 1999, 2001). It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants: feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access.

As shown in Table 3, the proposed critical habitat designations for 46 species of plants are found on Federal, State, and private lands on the island of Molokai. Information received in response to our public notices; letters to the landowners; open house; meetings with Maui County DOFAW staff; the December 29, 2000, proposal; public comment periods; and the March 21, 2001 public hearing, and information in our files, indicated that on-going conservation management actions for these plants is variable, see below. Some landowners reported that they are not conducting conservation management actions on their lands while others provided information on various activities such as fencing, weeding, ungulate control, hunting, control of human access, scientific research, fire control, and propagation and/or planting of native plants. Without management plans and assurances that the plans will be implemented, we are unable to find that the land in question does not require special management or protection.

Federal Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the

needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

The Hawaii Army National Guard maintains an armory in Kaunakakai town. No rare or endangered plants occur on the site and no critical habitat is proposed for this site (Service 1999b).

Four species (*Canavalia molokaiensis*, *Centaurium sebaeiodes*, *Peucedanum sandwicense*, *Tetramolopium rockii*) are reported from Kalaupapa National Historical Park, Molokai (GDSI 2000; HINHP Database 2000). This national historical park, which is found on state-owned land, is managed by the National Park Service under a cooperative agreement between the State of Hawaii and the National Park Service (Gary Barbano, National Park Service, pers. comm. 2000). Although the National Park Service conducts some conservation management actions on these lands and provides access to others who are conducting such activities, there are no comprehensive management plans for the long-term conservation of endangered and threatened plants on these lands and no assurances that management actions will be implemented. Therefore, we can not at this time find that management on this land under Federal jurisdiction is adequate to preclude a proposed designation of critical habitat.

Private Lands

Twenty-three species (*Adenophorous periens*, *Alectryon macrococcus*, *Brighamia rockii*, *Canavalia molokaiensis*, *Clermontia oblongifolia* ssp. *brevipes*, *Ctenitis squamigera*, *Cyanea mannii*, *Cyanea procera*, *Diellia erecta*, *Hedyotis mannii*, *Lysimachia maxima*, *Marsilea villosa*, *Melicope mucronulata*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Plantago princeps*, *Platanthera holochila*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Stenogyne bifida*, *Tetramolopium rockii*, *Vigna o-wahuense*, *Zanthoxylum hawaiiense*) are reported from The Nature Conservancy's Moomomi, Kamakou, and Pelekunu Preserves which are located on the northwest coast (Moomomi) and in the East Molokai mountains (Kamakou and Pelekunu) (GDSI 2000; HINHP database 2000; The Nature Conservancy of Hawaii (TNCH) 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c). Two of the preserves (Moomomi and Pelekunu) are owned by TNCH while Kamakou was established by a grant of perpetual conservation easement from the private landowner to TNCH. All three preserves are included in the state's Natural Area Partnership (NAP) program which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the 6-year partnership agreement between the State and the managing entity is automatically renewed each year so that there is always six years remaining in the term, although the management plan is updated and funding amounts are reauthorized by the board at least every six years. By April 1 of any year the managing partner may notify the state that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing six year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the Department of Land and Natural Resources (DLNR) and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. §§ 195–1–195–11; Hawaii Administrative Rules § 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1993, 1994a, 1994b, 1997, 1999a, 1999b, 1999c). These management measures address factors which led to the listing of the 23 species including control of non-native species of ungulates, rodents, weeds, and fire. In addition, habitat restoration and monitoring are also included in these plans.

Kamakou Preserve

The primary management goals within Kamakou Preserve are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants; and (3) suppress wildfires.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs); staff hunting; and implementation of organized hunting through the Molokai Hunters Working Group. By monitoring ungulate activity within the preserve, the staff are able to direct hunters to problem areas, thereby increasing hunting success. If increased hunting pressure does not reduce feral ungulate activity in the preserve, the preserve staff will work with the hunting group to identify and implement alternative methods (TNCH 1994, 1999).

The nonnative plant control program within Kamakou Preserve focuses on habitat modifying nonnative plants (weeds) and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders to the Preserve and hiking participants) who enter the Preserve. This protocol includes such things as brushing footgear before entering the Preserve to remove seeds of nonnative plants. In addition, the staff are actively promoting awareness of alien plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at

schools, fairs, and displays at the airport.

Wildfire presuppression and response plans are coordinated with the Maui County Fire Department and the DOFAW Maui District Forester. The Kamakou Wildfire Management Plan is reviewed annually with the fire department and updated as necessary (TNCH 1994, 1999). In the event of fires in areas bordering the preserve staff from Kamakou assist with fire suppression in concert with DOFAW staff.

Natural resource monitoring and research address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long term ecological changes; rare plant species are monitored to assess population status; and, following fires on the boundaries or within the preserve, burned areas are assessed for ingress of weeds and recovery of native plants. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve.

In addition, TNCH, DOFAW, the Service, and other Federal agencies including the National Park Service, and neighboring landowners of East Molokai's watershed areas have formed a partnership (East Molokai Watershed Partnership) through a memorandum of understanding to ensure the protection of over 22,000 acres on the island. While the partnership is still in its infancy, the members have agreed, in principle, to participate in cooperative management activities within the East Molokai watershed because they believe that effective management is best achieved through the coordinated actions of all major landowners in the watershed.

Moomomi Preserve

The primary management goals within Moomomi Preserve are to (1) prevent degradation of natural communities by reducing feral ungulate damage; and (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants (TNCH 1999).

Specific management actions to address feral ungulate impacts include the construction of a perimeter fence to keep out livestock and an agreement with the neighboring landowner, Molokai Ranch, in which they will remove livestock within 48 hours of ingress. Analysis of the monitoring data collected within the axis deer exclosure will guide future management strategies (TNCH 1999).

As with the Kamakou Preserve, the nonnative plant control program within Moomomi Preserve focuses on habitat modifying nonnative plants (weeds) and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders to the Preserve and hiking participants) who enter the Preserve. This protocol includes such things as brushing footgear before entering the Preserve to remove seeds of nonnative plants. In addition, the staff are actively promoting awareness of alien plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport (TNCH 1999).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long term ecological changes; rare plant species are monitored to assess population status. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve (TNCH 1999).

Pelekunu Preserve

The primary management goals within Pelekunu Preserve are to (1) prevent degradation of native forest by reducing feral ungulate damage; and (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include staff hunting; implementation of organized hunting through the Molokai Hunters Working Group; and quarterly transect and aerial monitoring of ungulate activity. By monitoring ungulate activity within the preserve, the staff are able to direct hunters to problem areas, thereby increasing hunting success. If increased hunting pressure does not reduce feral ungulate activity in the preserve, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1999).

As with the other two preserves on Molokai, the nonnative plant control program within Pelekunu Preserve focuses on habitat modifying nonnative plants (weeds) and prioritizes them according to the degree of threat to native ecosystems. A weed priority list has been compiled for the preserve, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or a through a combination of both. Preventative measures (prevention protocol) are required by all (volunteers, riders to the Preserve and hiking participants) who enter the Preserve. This protocol includes such things as brushing footgear before entering the Preserve to remove seeds of nonnative plants. In addition, the staff are actively promoting awareness of alien plants in Hawaii and their impacts to native ecosystems in the local communities on Molokai through public education at schools, fairs, and displays at the airport.

Natural resource monitoring and research address the need to track the biological and physical resources of the preserve and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserve to document long term ecological changes; and rare plant species are monitored to assess population status. In addition, the preserve staff provide logistical support to scientists and others who are conducting research within the preserve.

Because these plants and their habitats within the preserves receive long-term protection and management these lands are not in need of special management considerations or protection. Therefore, we have determined that the private lands within Moomomi Preserve, Kamakou Preserve, and Pelekunu Preserve do not meet the definition of critical habitat in the Act, and we are not proposing designation of these lands as critical habitat. Should the status of any of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it meets the definition of critical habitat, and if so, we may propose to amend critical habitat to include the preserve at that time (50 CFR 424.12(g)). Critical habitat, therefore, is not proposed for *Adenophorous periens*, *Alectryon macrococcus*, *Brighamia rockii*, *Canavalia molokaiensis*, *Clermontia oblongifolia* ssp. *brevipes*, *Ctenitis squamigera*, *Cyanea mannii*, *Cyanea procera*, *Diellia erecta*, *Hedyotis mannii*, *Lysimachia maxima*, *Marsilea villosa*, *Melicope mucronulata*, *Peucedanum sandwicense*, *Phyllostegia mannii*,

Plantago princeps, *Platanthera holochila*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Stenogyne bifida*, *Tetramolopium rockii*, *Vigna o-wahuense*, *Zanthoxylum hawaiiense* on Kamakou, Moomomi, and Pelekunu preserves. However, critical habitat is proposed for these species on other areas on Molokai.

We believe that Moomomi Preserve, Kamakou Preserve, and Pelekunu Preserve are the only potential critical habitat areas on Molokai at this time that do not require special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach. If we receive information during the public comment period that any of the lands within the proposed designations are actively managed to promote the conservation and recovery of the 46 listed species at issue in this proposed designation, in accordance with long term conservation management plans or agreements, and there are assurances that the proposed management actions will be implemented and effective, we can consider this information when making a final determination of critical habitat. We are also soliciting comments on whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements) should trigger revision of designated critical habitat to exclude such lands and, if so, by what mechanism.

The proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the 46 plant species, and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision-making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

The approximate areas of proposed critical habitat by landownership or jurisdiction are shown in Table 5.

TABLE 5.—APPROXIMATE PROPOSED CRITICAL HABITAT AREAS BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII[1]

Unit name	State/local	Private	Federal	Total
Molokai A1	88 ha (217 ac)	384 ha (950 ac)		472 ha (1,167 ac)
Molokai A2	1,325 ha (3,274 ac)	199 ha (492 ac)	8 ha (20 ac)	1,532 ha (3,786 ac)
Molokai B1	1,988 ha (4,914 ac)	189 ha (468 ac)	1 ha (2 ac)	2,179 ha (5,384 ac)
Molokai B2	20 ha (50 ac)			20 ha (50 ac)
Molokai C	2,726 ha (6,737 ac)	1,781 ha (4,400 ac)		4,507 ha (11,138 ac)
Molokai D		466 ha (1,153 ac)		466 ha (1,153 ac)
Molokai E1	4 ha (11 ac)	123 ha (304 ac)		127 ha (315 ac)
Molokai E2	19 ha (47 ac)	313 ha (774 ac)		332 ha (821 ac)
Molokai F	1,795 ha (4,435 ac)	3,162 ha (7,813 ac)		4,956 ha (12,247 ac)
Molokai G	1,187 ha (2,932 ac)	1,836 ha (4,538 ac)		3,023 ha (7,471 ac)
Grand Total	9,152 ha (22,617 ac)	8,453 ha (20,892 ac)	9 ha (22 ac)	17,614 ha (43,532 ac)

[1] Area differences due to digital mapping discrepancies between TMK data (GDSI 2000) and USGS coastline, or difference due to rounding.

Proposed critical habitat includes habitat for these 46 species under private, State, and Federal jurisdiction (owned and leased lands), with Federal lands including State lands managed by the National Park Service. Lands proposed as critical habitat have been divided into 10 units (Molokai A1 through Molokai G). A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Molokai A1

The proposed unit Molokai A1 provides occupied habitat for three species: *Centaurium sebaeoides*, *Marsilea villosa*, and *Tetramolopium rockii*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Tetramolopium rockii*, or 500 mature individuals per population for *Centaurium sebaeoides*; or provides habitat to support one or more of the 6 populations for *Marsilea villosa*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Molokai A1).

The unit contains a total of 472 ha (1,167 ac) on State and privately owned lands. It lies mostly in Kaa watershed with a portion in the west in the Papohaku watershed and in the east in the Moomomi watershed. The natural features of this unit include Anapuka (cape), Kaa (summit), Kaa Gulch, Kealapupuakiha (beach), Keonehanau (cape), Mokio Point, Pueoao (cliff), and Waiakanapo (cape).

Key for Molokai A1–G

*Not all suitable habitat is proposed to be designated, only those areas essential for the conservation of the species.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.

2. Island endemic.

3. Multi-island species with current locations on other islands.

4. Multi-island species with no current locations on other islands.

5. Current locations do not necessarily represent viable populations with the required number of mature individuals.

6. Several current locations may be affected by one naturally occurring, catastrophic event.

7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.

8. Not all currently occupied habitat was determined to be essential to the recovery of the species.

9. Life history, long-lived perennial—100 mature, reproducing individuals per population.

10. Life history, short-lived perennial—300 mature, reproducing individuals per population.

11. Life history, annual—500 mature, reproducing individuals per population.

12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.

13. Species has extremely restricted, specific habitat requirements.

14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

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Molokai A1

Species	Centaurium sebaeoides	Marsilea villosa	Tetramolopium rockii
1. 8–10 pop. guidelines.	X*		X
2. Island endemic.			X X
3. Multi-island/current other islands.	X	X	
4. Multi-island/no current other islands.			
5. Non-viable populations.	X	X	X X
6. Several occ. vulnerable to destruction.	X	X	X X
7. Species with variable habitats.		X	
8. Not all occupied habitat needed.		X	
9. Long-lived perennial–100/pop.			
10. Short-lived perennial–300/pop.			X
11. Annual–500/pop.	X		
12. Narrow endemic.			
13. Restricted habitat requirements.	X**	X**	X*
14. Hybridization is possible.			
Notes	*Species is wide ranging.‡ **Volcanic or clay soils or cliffs in arid coastal areas.	*Not enough suitable habit for 8 to 10 populations at this time. **Minimally shaded or open areas in shallow depressions in clay soil, or lithified sand dunes overlaid with alluvial clay or vernal pools.	*Hardened calcareous sand dunes or ash–covered basalt in the coastal spray zone.

Molokai A2

The proposed unit Molokai A2 provides occupied habitat for three species: *Centaurium sebaeoides*, *Sesbania tomentosa*, and *Tetramolopium rockii*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations for each species and 300 mature individuals per population for *Sesbania tomentosa*, and *Tetramolopium rockii*, or 500 mature individuals per population for *Centaurium sebaeoides* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D, and in the table for Molokai A2).

This unit contains a total of 1,532 ha (3,786 ac) on Federal, State, and privately owned lands. It contains Moomomi watershed in the west, Waihanau watershed in the east and Maneopapa watershed in the center. It contains portions of Kalaupapa National Historical (National Historical Park) and Molokai Forest Reserve (State Forest Reserve). The natural features include: Anahaki Gulch, Anianikeha (cape), Hinanaulua (cape), Kahinaakalani (cape), Kakaaukuu Gulch, Kaluanui (cape), Kapale Gulch, Kapuahiapele (cape), Kauhako Crater, Kiikolu (summit), Kukuiokanaloa (cliff), Manalo Gulch, Maneopapa Gulch, Mimino Gulch, Paualaia Point (cape), Pohakunui (summit), Puu Kapele, and Puu Uao.

Molokai A2

Species	Notes
Centaurium sebaeoides	X * — *Species is wide ranging.‡ **Volcanic or clay soils or cliffs in arid coastal areas.
1. 8–10 pop. guidelines.	X *
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	
11. Annual–500/pop.	X
12. Narrow endemic.	
13. Restricted habitat requirements.	X**
14. Hybridization is possible.	
Sesbania tomentosa	X * — *Species is wide ranging.‡
1. 8–10 pop. guidelines.	X *
2. Island endemic.	X
3. Multi-island/current other islands.	
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	
Tetramolopium rockii	X * — *Hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone.
1. 8–10 pop. guidelines.	X *
2. Island endemic.	X
3. Multi-island/current other islands.	
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X*
14. Hybridization is possible.	

Molokai B1

The proposed unit Molokai B1 provides occupied habitat for 18 species: *Adenophorus periens*, *Brighamia rockii*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea procera*, *Hedyotis mannii*, *Hibiscus arnottianus* ssp. *immaculatus*, *Ischaemum byrone*, *Lysimachia maxima*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Platanthera holochila*, *Plantago princeps*, *Schiedea nuttallii*, *Stenogyne bifida*, and *Tetramolopium rockii.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia rockii* and *Hibiscus arnottianus* ssp. *immaculatus*, or 300 mature individuals per population for *Adenophorus periens*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea procera*, *Hedyotis mannii*, *Ischaemum byrone*, *Lysimachia maxima*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Platanthera holochila*, *Plantago princeps*, *Schiedea nuttallii*, *Stenogyne bifida*, and *Tetramolopium rockii*, or 500 mature individuals per population for *Centaurium sebaeoides* throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai B1).

This unit contains a total of 2,179 ha (5,384 ac) on Federal, State, and privately owned lands. It is bordered on the west by the Waialeia watershed, east by Waikolu and Waiohookalo watershed and includes portions of the Anapuhi and Wainene watersheds. This unit contains portions of Kalaupapa National Historical (National Historical Park), Molokai Forest Reserve (State Forest Reserve), and Puu Alii Natural Area Reserve (State Natural Area Reserve). The geographic features include: Lae Hoolehua (cape), Kaala (cape), Kalahuapueo (summit), Kaluahauoni (summit), Kaupikiawa (cape), Kukaiwaa Point, Leinaopapio Point, Moaula Ridge, Ohialele (summit), Papapaiki (cape), Puu Kaeo, Puu Kauwa, and Waimanu Falls.

Molokai B1

Species	Notes
Adenophorus periens	*Species is wide ranging.‡ **Epiphyte usually growing on Metrosideros polymorpha trunks, found in Metrosideros polymorpha/Cibotium glaucum lowland wet forest and cloud forests in well-developed, closed
1. 8–10 pop. guidelines.	X*
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X**
14. Hybridization is possible.	

															canopy providing deep shade and high humidity
Brighamia rockii	X			X	X	X			X				X*		*Rock crevices on steep basalt sea cliffs, often within the spray zone in coastal dry or mesic forest.
Centaurium sebaeoides	X*		X		X	X					X		X**		*Species is wide ranging.‡ **Volcanic or clay soils or cliffs in arid coastal areas.
Clermontia oblongifolia ssp. brevipes	X	X			X	X		X		X			X*		*Shallow soil on gulch slopes.
Cyanea dunbarii	X	X			X	X				X			X*		*Streambanks on moderate to steep slopes in mesic to wet.
Cyanea grimesiana ssp. grimesiana	X*		X		X	X	X			X					*Species is wide ranging.‡
Cyanea procera	X	X			X	X	X			X					
Hedyotis mannii	X		X		X	X				X			X*		*Dark, narrow, rocky gulch walls.
Hibiscus arnottianus ssp. immaculatus	X*	X			X	X	X		X						*Species is wide ranging.‡
Ischaemum byrone	X*		X		X	X	X			X					*Species is wide ranging.‡
Lysimachia maxima	X	X			X	X	X								
Peucedanum sandwicense	X*		X		X	X	X	X		X					*Species is wide ranging.‡

Phyllostegia mannii	X		X	X**				X		X*		*Shaded sites in sometimes foggy and windswept, wet, open, Metrosideros polymorpha dominated forests. **Extirpated in wild (genetic material available)
Plantago princeps	X		X	X	X			X		X*		*Steep slopes, wet rock walls, streambanks, or bases of waterfalls.
Platanthera holochila	X		X	X	X			X		X*		*Bogs.
Schiedea nuttallii	X		X	X	X	X	X					
Stenogyne bifida	X	X		X	X	X	X	X				
Tetramolopium rockii	X	X		X	X			X		X*		*Hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone.

Molokai B2

The proposed unit Molokai B2 provides occupied habitat for one species: *Peucedanum sandwicense.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Peucedanum sandwicense* throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species.

This unit also provides unoccupied habitat for three species: *Brighamia rockii*, *Ischaemum byrone*, and *Tetramolopium rockii.* Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia rockii*, or 300 mature individuals per population for *Ischaemum byrone* and *Tetramolopium rockii*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai B2).

This unit contains a total of 20 ha (50 ac) on State owned land. It contains all of the State's Mokapu Bird Sanctuary. The natural feature of this unit is Mokapu Island.

Molokai B2

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Brighamia rockii	X			X	X	X			X				X *		*Rock crevices on steep basalt sea cliffs, often within the spray zone in coastal dry or mesic forest.
Ischaemum byrone	X*		X		X	X	X			X					*Species is wide ranging.‡
Peucedanum sandwicense	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Tetramolopium rockii	X	X			X	X				X			X		*Hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone.

Molokai C

The proposed unit Molokai E provides occupied habitat for 13 species: *Adenophorus periens*, *Brighamia rockii*, *Centaurium sebaeoides*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea grimesiana* ssp. *grimesiana*, *Hesperomannia arborescens*, *Hibiscus arnottianus* ssp. *immaculatus*, *Ischaemum byrone*, *Lysimachia maxima*, *Melicope reflexa*, *Peucedanum sandwicense*, *Phyllostegia mannii*, and *Pteris lidgatei.* It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Brighamia rockii*, *Hesperomannia arborescens*, *Hibiscus arnottianus* ssp. *immaculatus*, and *Melicope reflexa*, or 300 mature individuals per population for *Adenophorus periens*, *Clermontia oblongifolia* ssp. *brevipes*, *Cyanea grimesiana* ssp. *grimesiana*, *Ischaemum byrone*, *Lysimachia maxima*, *Peucedanum sandwicense*, *Phyllostegia mannii*, and *Pteris lidgatei*, or 500 mature individuals per population for *Centaurium sebaeoides*, throughout their known historical range.

This unit also provides unoccupied habitat for one species: *Diplazium molokaiense.* Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Molokai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations and 300 mature individuals per population, throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai C).

The unit contains a total of 4,507 ha (11,138 ac) on State and privately owned lands. It contains all of Haloku, Kahiwa, Kalaemilo, Oloupena, Puukaoku, and Wailele watersheds and portions of Halawa, Honouliwai, Kainalu, Kamalo, Kawainui, Pelekunu, Waiahookalo, Waialua, Wailau, and Waipu watersheds. It contains portions of Olokui Natural Area Reserve and Molokai Forest Reserve. The natural features include: Ananoio (beach), Halekou (cape), Haloku Falls, Kahiwa Falls, Kahiwa Gulch, Kapea Stream, Kaunupahu (summit), Keahiakalio (summit), Kikipua Point, Kuapuuiki (spring), Kukuinui Ridge, Lepau Point, Malahini Cave, Milo Point, Naehu (summit), Olokui (summit), Oloupena (beach), Oloupena Falls, Pakui (summit), Papalaua Falls, Pohakuloa (summit), Pohakuulaula (summit), Puu Ohelo, Puuau, Puukaoku Falls, Puukaoku Point, Waiahookalo Gulch, Wailele Falls, Waiokala (cape), and Waipu (beach).

Molokai C

Species	Notes
Adenophorus periens	*Species is wide ranging.‡ **Epiphyte usually growing on Metrosideros polymorpha trunks, found in Metrosideros polymorpha/Cibotium glaucum lowland wet forest and cloud forests in
1. 8–10 pop. guidelines.	X*
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X**
14. Hybridization is possible.	

															well-developed, closed canopy providing deep shade and high humidity.
Brighamia rockii	X			X	X	X			X				X*		*Rock crevices on steep basalt sea cliffs, often within the spray zone in coastal dry or mesic forest.
Centaurium sebaeoides	X*		X		X	X					X		X**		*Species is wide ranging.‡ **Volcanic or clay soils or cliffs in arid coastal areas.
Clermontia oblongifolia ssp. brevipes	X	X			X	X		X		X			X*		*Shallow soil on gulch slopes.
Cyanea grimesiana ssp. grimesiana	X*		X		X	X	X			X					*Species is wide ranging.‡
Diplazium molokaiense	X*		X**		X	X	X			X					*Species is wide ranging.‡ **Historical on Molokai
Hesperomannia arborescens	X*		X		X	X	X		X						*Species is wide

															ranging.‡
Hibiscus arnottianus ssp. immaculatus	X*	X			X	X	X		X						*Species is wide ranging.‡
Ischaemum byrone	X*		X		X	X	X			X					*Species is wide ranging.‡
Lysimachia maxima	X	X			X	X	X								
Melicope reflexa	X*	X			X	X	X		X						*Species is wide ranging.‡
Peucedanum sandwicense	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Phyllostegia mannii	X			X	X**					X			X*		*Shaded sites in sometimes foggy and windswept, wet, open, Metrosideros polymorpha dominated forests. **Extirpated in wild (genetic material available)
Pteris lidgatei	X*		X**		X**					X			X***		*Species is wide ranging.‡ **Historical on Molokai ***Wet cliff faces, streambanks, and sides of waterfalls.

Molokai D

The proposed unit Molokai D provides occupied habitat for four species: *Bidens wiebkei*, *Centaurium sebaeoides*, *Ischaemum byrone*, and *Peucedanum sandwicense*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations for each species and 300 mature individuals per population for *Bidens wiebkei*, *Ischaemum byrone*, and *Peucedanum sandwicense*, or 500 mature individuals per population for *Centaurium sebaeoides*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai D).

The unit contains a total of 466 ha (1,153 ac) on privately owned land. It is bordered by Kawainui watershed in the west, Halawa watershed in the east and contains a portion of the Pipiwai watershed. The natural features in this unit include: Apuuiki Gulch, Hakaaano (summit), Halawaiki Gulch, Hinalenale Point, Kahaakea Gulch, Kaonihu (cape), Kepuna Gulch, Kuinanaho Gulch, Lamaloa Gulch, Lamaloa Head (summit), Lelemako Gulch, Pipiwai Gulch, and Waialana Gulch.

Molokai D

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Bidens wiebkei	X	X			X	X	X	X		X					
Centaurium sebaeoides	X*		X		X	X					X		X**		*Species is wide ranging.‡ **Volcanic or clay soils or cliffs in arid coastal areas.
Ischaemum byrone	X*		X		X	X	X			X					*Species is wide ranging.‡
Peucedanum sandwicense	X*		X		X	X	X	X		X					*Species is wide ranging.‡

Molokai E1

The proposed unit Molokai E1 provides occupied habitat for one species: *Bidens wiebkei.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Bidens wiebkei* throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai E1).

This unit cluster contains a total of 127 ha (315 ac) on State and privately owned lands. It is bordered in the west by Halawa watershed and in the east by Papio watershed. The natural features of this unit cluster include: Alanuipuhipaka Ridge, Koalii (summit), Papio Gulch, and Puu Hoku o.

Molokai E1

Species	Bidens wiebkei
1. 8–10 pop. guidelines.	X
2. Island endemic.	X
3. Multi-island/current other islands.	
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	X
8. Not all occupied habitat needed.	X
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	
14. Hybridization is possible.	
Notes	

Molokai E2

The proposed unit Molokai E2 provides occupied habitat for one species: *Bidens wiebkei.* It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations and 300 mature individuals per population for *Bidens wiebkei* throughout its known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai E2).

The unit contains a total of 332 ha (821 ac) on State and privately owned lands. It is bordered in the north by Honowewe watershed and in the south by Pohakupili watershed. The natural features include: Kukumamalu Gulch, Pohakupili Gulch, Puu Nananana, and Waialapai Gulch.

Molokai E2

Species	Bidens wiebkei
1. 8–10 pop. guidelines.	X
2. Island endemic.	X
3. Multi-island/current other islands.	
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	X
8. Not all occupied habitat needed.	X
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	
14. Hybridization is possible.	
Notes	

Molokai F

The proposed unit Molokai F provides occupied habitat for 30 species: *Adenophorus periens*, *Alectryon macrococcus*, *Bidens wiebkei*, *Canavalia molokaiensis*, *Clermontia oblongifolia* ssp. *brevipes*, *Ctenitis squamigera*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea mannii*, *Cyanea procera*, *Diellia erecta*, *Hedyotis mannii*, *Labordia triflora*, *Lysimachia maxima*, *Mariscus faurei*, *Melicope mucronulata*, *Melicope reflexa*, *Neraudia sericea*, *Phyllostegia mannii*, *Platanthera holochila*, *Plantago princeps*, *Schiedea lydgatei*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Sesbania tomentosa*, *Silene lanceolata*, *Spermolepis hawaiiensis*, *Stenogyne bifida*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Alectryon macrococcus*, *Labordia triflora*, *Melicope mucronulata*, *Melicope reflexa*, and *Zanthoxylum hawaiiense*, or 300 mature individuals per population for *Adenophorus periens*, *Bidens wiebkei*, *Canavalia molokaiensis*, *Clermontia oblongifolia* ssp. *brevipes*, *Ctenitis squamigera*, *Cyanea dunbarii*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea mannii*, *Cyanea procera*, *Diellia erecta*, *Hedyotis mannii*, *Lysimachia maxima*, *Mariscus faurei*, *Neraudia sericea*, *Phyllostegia mannii*, *Platanthera holochila*, *Plantago princeps*, *Schiedea lydgatei*, *Schiedea nuttallii*, *Schiedea sarmentosa*, *Sesbania tomentosa*, *Silene lanceolata*, *Stenogyne bifida*, and *Vigna o-wahuensis*, or 500 mature individuals per population for *Spermolepis hawaiiensis*, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species.

This unit also provides unoccupied habitat for four species: *Eugenia koolauensis*, *Flueggea noewawraea*, *Phyllostegia mollis*, and *Silene alexandri*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 100 mature individuals per population for *Eugenia koolauensis* and *Flueggea noewawraea*, or 300 mature individuals per population for *Silene alexandri* and *Phyllostegia mollis*, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai F).

The unit contains a total of 4,956 ha (12,247 ac) on State and privately owned lands. It bordered in the west by Manawainui watershed and in the east by Mapulehu watershed and contains portions of the Kahananui, Kalamaula, Kaluaaha, Kamalo, Kamiloloa, Kaunakakai, Kawela, Ohia, Pelekunu, Waialeia, Waihanau, Waikolu, Wailau, and Wawaia watersheds. This unit contains portions of Kalaupapa National Historical (National Historical Park) and Molokai Forest Reserve (State Forest Reserve). The natural features include: Kaholoapele (summit), Kalapa Konomanu (ridge), Kalapamoa Ridge, Kaluaolohe (summit), Kapuna Spring, Kaulahuki (summit), Kaulolo (summit), Keanakoholua Ridge, Kikiakala (summit), Kuana Ridge, Lae o Kapuna (ridge), Lapakohana (summit), Lehuula (summit), Makalihua (summit), Maunahui (summit), Maunaoluolu (summit), Na Puu Kulua (summit), Ooa (summit), Pelekunu Gulch, Pohakuloa (summit), Puu Haha, Puu Makaliilii, Puu o Wahaula, Uapa (summit), and Waihii (spring).

Molokai F

Species	Notes
Adenophorus periens	*Species is wide ranging.‡ **Epiphyte usually growing on Metrosideros polymorpha trunks, found in Metrosideros polymorpha/Cibotium glaucum lowland wet forest and cloud forests in well-developed, closed
1. 8–10 pop. guidelines.	X*
2. Island endemic.	
3. Multi-island/current other islands.	X
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to destruction.	X
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	X
11. Annual–500/pop.	
12. Narrow endemic.	
13. Restricted habitat requirements.	X**
14. Hybridization is possible.	

															canopy providing deep shade and high humidity.
Alectryon macrococcus	x*		X		X	X	X	X	X						*Species is wide ranging.‡
Bidens wiebkei	X	X			X	X	X	X		X					
Canavalia molokaiensis	X	X			X	X	X	X		X					
Clermontia oblongifolia ssp. brevipes	X	X			X	X		X		X			X*		*Shallow soil on gulch slopes.
Ctenitis squamigera			X		X	X	X			X					
Cyanea dunbarii	X	X			X	X				X			X*		*Streambanks on moderate to steep slopes in mesic to wet.
Cyanea grimesiana ssp. grimesiana	X*		X		X	X	X			X					*Species is wide ranging.‡
Cyanea mannii	X	X			X	X	X			X					
Cyanea procera	X	X			X	X	X			X					
Diellia erecta	X*		X		X		X	X		X					*Species is wide ranging.‡
Eugenia koolauensis	X*		X**		X**		X		X						*Species is wide ranging.‡ **Historical on Molokai
Flueggea neowawraea	X*		X**		X**		X		X						*Species is wide ranging.‡ **Historical on Molokai
Hedyotis mannii	X		X		X	X				X			X*		*Dark, narrow, rocky gulch walls.
Labordia triflora	X*	X			X	X	X		X						*Species is wide ranging.‡
Lysimachia maxima	X	X			X	X	X								
Mariscus fauriei	X*		X		X	X	X			X					*Species is wide ranging.‡
Melicope mucronulata	X		X		X	X			X				X*		*Steep, west- or north-facing, lowland

															slopes in dry to mesic forests.
Melicope reflexa	X*	X			X	X	X		X						*Species is wide ranging.‡
Neraudia sericea	X		X		X	X	X	X		X					
Phyllostegia mannii	X			X	X**					X			X*		*Shaded sites in sometimes foggy and windswept, wet, open, Metrosideros polymorpha dominated forests. **Extirpated in wild (genetic material available)
Phyllostegia mollis	X		X*		X*		X			X					*Historical on Molokai.
Plantago princeps	X		X		X	X				X			X*		*Steep slopes, wet rock walls, streambanks, or bases of waterfalls.
Platanthera holochila	X		X		X	X				X			X*		*Bogs.
Schiedea lydgatei	X*	X			X	X	X			X					*Not enough suitable habitat for 8 to 10 populations at this time.
Schiedea nuttallii	X		X		X	X	X		X						
Schiedea sarmentosa	X*	X			X	X	X			X					*Not enough suitable habitat for 8 to 10

															populations at this time.
Sesbania tomentosa	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Silene alexandri	X*	X			X	X	X			X					*Not enough suitable habitat for 8 to 10 populations at this time.
Silene lanceolata	X		X		X	X				X			X*		*Cliff faces and ledges of gullies in dry or mesic shrubland.
Spermolepis hawaiiensis	X*		X		X	X	X				X				*Species is wide ranging.‡
Stenogyne bifida	X	X			X	X	X	X		X					
Vigna o-wahuensis	X*		X		X	X	X	X		X					*Species is wide ranging.‡
Zanthoxylum hawaiiense	X*		X		X		X	X	X						*Species is wide ranging.‡

Molokai G

The proposed unit Molokai G provides occupied habitat for two species: *Mariscus faurei* and *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more of the 8 to 10 populations for each species and 300 mature individuals per population, throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species.

This unit also provides unoccupied habitat for two species: *Hibiscus brackenridgei* and *Isodendrion pyrifolium*. Designation of this unit is essential to the conservation of these species because it contains the physical and biological features that are considered essential for their conservation on Molokai, and provides habitat to support one or more additional populations necessary to meet the recovery objectives of 8 to 10 populations for each species and 300 mature individuals per population, throughout their known historical range (see the discussion of conservation requirements in Section D, and in the table for Molokai G).

The unit contains a total of 3,023 ha (7,471 ac) on State and privately owned lands. It is bordered on the west by Kaunakakai watershed and in the east by Wawaia watershed and includes portions of Kamalo, Kamiloloa and Kawela watersheds. This unit contains all of the Kamiloloa Plant Sanctuary. The natural features include: Ekahanui (summit), Kapuaokoolau Gulch, Kau Gulch, Kukuiokahoalii (summit), Lepelepe (summit), Makakiloia (summit), North Fork Kaunakakai Gulch, Puu Papai, and South Fork Kaunakakai Gulch.

Molokai G

Species	1. 8–10 pop. guidelines.	2. Island endemic.	3. Multi-island/current other islands.	4. Multi-island/no current other islands.	5. Non-viable populations.	6. Several occ. vulnerable to destruction.	7. Species with variable habitats.	8. Not all occupied habitat needed.	9. Long-lived perennial–100/pop.	10. Short-lived perennial–300/pop.	11. Annual–500/pop.	12. Narrow endemic.	13. Restricted habitat requirements.	14. Hybridization is possible.	Notes
Hibiscus brackenridgei	X*		X**		X**		X			X					*Species is wide ranging.‡ **Historical on Molokai
Isodendrion pyrifolium	X		X*		X*					X					*Historical on Molokai
Mariscus fauriei	X*		X		X	X	X			X					*Species is wide ranging.‡
Sesbania tomentosa	X*		X		X	X	X	X		X					*Species is wide ranging.‡

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent that the action appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect critical habitat of one or more of the 46 plant species will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from us, or some other Federal action, including funding (*e.g.* from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), permits from the Department of Housing and Urban Development, activities funded by the EPA, Department of Energy, or any other Federal agency; regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communication Commission will also continue to be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire.

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include water diversion or impoundment, excess groundwater pumping, manipulation of vegetation such as timber harvesting, residential and commercial development, and grazing of livestock or horses that degrades watershed values.

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps.

(4) Recreational activities that appreciably degrade vegetation.

(5) Mining of sand or other minerals.

(6) Introducing or encouraging the spread of non-native plant species into critical habitat units.

(7) Importation of non-native species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated effects on the primary constituent elements of designated critical habitat.

If you have questions regarding whether specific activities will likely

constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, there are no HCPs that include any of the plant species discussed in this proposal as covered species. In the event that future HCPs covering any of the discussed plant species are developed within the boundaries of designated critical habitat, we will work with applicants to encourage them to provide for protection and management of habitat areas essential to the conservation of the species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular areas by these plant species.

Economic and Other Relevant Impacts

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the impacts of designating these areas as critical habitat and in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001) prior to a final determination. The economic analysis will include detailed information on the baseline costs and benefits of the critical habitat designation regardless of whether the costs are coextensive with listing, where such estimates are available. This information on the baseline will allow a fuller appreciation of the economic impacts associated with critical habitat designation. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and re-open the comment period on the proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments and information regarding economic or other impacts submitted during the public comment period and the public hearing, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this revised proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act. In determining adequacy of management, we must find that the management effort is sufficiently certain to be implemented and effective so as to contribute to the elimination or adequate reduction of relevant threats to the species.

We are soliciting comment in this revised proposed rule on whether current land management plans or practices applied within areas proposed as critical habitat adequately address the threat to these listed species.

We are aware that the State of Hawaii and private landowners are considering the development and implementation of land management plans or agreements that may promote the conservation and recovery of endangered and threatened plant species on the island of Molokai. We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat provide for the conservation of the species by adequately addressing the threats. We are also soliciting comments on whether future development and approval of conservation measures (*e.g.*, HCPs, Conservation Agreements, Safe Harbor Agreements) should be excluded from critical habitat and if so, by what mechanism.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including those species for which prudency determinations have been published in previous proposed rules and which have been incorporated by reference;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount, distribution, and quality of habitat for the 46 species, and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families, and

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(7) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the

beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

The comment period closes on June 4, 2002. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. For additional information on public hearings see the **DATES** section.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Taxonomic Changes

At the time we listed *Cyanea grimesiana* ssp. *grimesiana*, *Hibiscus brackenridgei*, and *Phyllostegia mollis* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii*. Subsequent to the final listing we became aware of new taxonomic treatments of these species. Due to the court-ordered deadlines we are required to publish this proposal to designate critical habitat on Molokai before we can prepare and publish a notice of taxonomic changes for these three species. We propose to publish a taxonomic change notice for these three species after we have published the final critical habitat designations on Molokai. At that time we will evaluate the critical habitat designations on Molokai for these three species in light of any changes that may result from taxonomic changes in each species' current and historical range and primary constituent elements.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas identified as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect 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 or local governments or communities. Therefore, at this time, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required. We will revisit this if the economic analysis indicates greater impacts than currently anticipated.

The dates for which the 46 plant species were listed as threatened or endangered can be found in Table 4(b). Consequently, and as needed, we will conduct formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of these species. Under the Act, critical habitat may not be adversely modified by a Federal agency action. Critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 6).

TABLE 6.—IMPACTS OF CRITICAL HABITAT DESIGNATION FOR 46 PLANTS FROM THE ISLAND OF MOLOKAI

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation. [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of Engineers, Department of Transportation, Department of Defense, Department of Agriculture, Environmental Protection Agency, Federal Emergency Management Agency, Federal Aviation Administration, Federal Communications Commission, Department of Interior activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (*e.g.*, overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected [3].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for these plants by mechanical, chemical, or other means (*e.g.*, overgrazing, clearing, cutting native live trees and shrubs, water diversion, impoundment, groundwater pumping, road building, mining, herbicide application, recreational use etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat).	These same activities carried out by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based on our experience with these species and their needs, we conclude that most Federal or federally-authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species. Accordingly, we do not expect the designation of currently occupied areas as critical habitat to have any additional incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding.

The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation (that is, in areas currently unoccupied by the these listed species), may have impacts that are not attributable to the species listing on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons who do not have a Federal nexus with of their actions are not restricted by the designation of critical habitat.

(b) We do not expect this rule to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the 46 plant species since their listing between 1991 and 1999. For the reasons discussed above, the prohibition against adverse modification of critical habitat would not be expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) We do not expect this proposed rule, if made final, to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan program. We will evaluate any impact of designating areas where section 7 consultation would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal

agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities. However, should our economic analysis provide a contrary indication, we will revisit this determination at that time. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these 46 plant species were listed (between 1991 and 1999), on the island of Molokai we have conducted 19 informal consultations and no formal consultations, in addition to consultations on Federal grants to State wildlife programs, which do not affect small entities. Six informal consultations were conducted on behalf of private individuals or consulting firms, requesting species lists for different locations on Molokai. None of the 46 species were reported from these locations. Five informal consultations were conducted on behalf of NRCS requesting species lists or regarding revegetation or habitat restoration projects at different locations on Molokai. None of the 46 species were reported from these locations. Two informal consultations were conducted on behalf of the State of Hawaii and Maui Co. regarding proposed landfill projects. None of the 46 species were reported from these locations. One informal consultation was conducted on behalf of the U.S. Army Corps of Engineers regarding a stream restoration project. None of the 46 species were reported from the project area. One informal consultation was conducted on behalf of the Federal Communications Commission regarding an antenna cell site in Kaunakakai. None of the 46 species were reported from the project area. One informal consultation was conducted on behalf of a private consulting firm requesting a species list for a proposed project regarding a VHF direction finder in Mauna Loa. Three of the 46 species, *Cyperus trachysanthos, Eugenia koolauensis,* and *Sesbania tomentosa*, were reported from the project area. One informal consultation was conducted with the U.S. Department of the Navy regarding a proposed Marine Corps training area on privately-owned leased land in west Molokai. Four of the 46 species, *Centaurium sebaeoides, Marsilea villosa, Sesbania tomentosa, Tetramolopium rockii* were reported from the project area. One informal consultation was conducted on behalf of a private non-profit organization requesting a species list for Kamalo and Kapualei ahupuaa. Three of the 46 species, *Cyanea mannii, Cyanea procera,* and *Labordia triflora* were reported from this area. One informal consultation was conducted with the U.S. Army Corps of Engineers regarding unexploded ordinance removal activities at Papohaku Rangelands Bombing Range and Punakua Land Target Area. None of the 46 species were reported from the project area.

Seven of the informal consultations may have concerned small entities (the private individuals, consulting firms, or the non-profit organization). However, we do not believe this is a substantial number of small entities (see earlier discussion on substantial number). One or more of the 46 Molokai species were reported from 3 of the 7 project areas. However, none of these 3 proposed projects affected the Molokai species. We have determined that the State of Hawaii and Maui Co. are not small entities. The U.S. Army Corps of Engineers, NRCS, Federal Communications Commission, and the

U.S. Department of the Navy are not small entities. For the 12 informal consultations with the State of Hawaii, Maui Co., and Federal agencies we concurred with the State of Hawaii, Maui Co., and each Federal agency's determination that the project, as proposed, was not likely to adversely affect listed species. Although four of the NRCS projects are ongoing, they do not directly affect nor concern small entities, so the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Molokai.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. We are aware of relatively few activities in the proposed critical habitat areas for these 46 plants that have Federal involvement, and thus, would require consultation or reinitiation of already completed consultations for on-going projects. As mentioned above, only three of the 19 informal consultations completed under section 7 involved any of the species. As a result, we can not easily identify future consultations that may be due to the listing of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

On Molokai, 47 percent of the designations are on private lands, 53 percent of the designations are on State lands, and less than one percent of the designations are on Federal lands. Nearly all of the land within the critical habitat units will have limited suitability for development, land uses, and activities because of the remote locations, lack of access, and rugged terrain of these lands. Approximately 46 percent of this land is within the State Conservation District where State land-use controls severely limit development and most activities. Approximately 53 percent of this land is within the State Agricultural District where only activities such as crops, livestock, grazing, and accessory structures and farmhouses are allowed. Less than one percent is within the State Urban District. On non-Federal lands, activities that lack Federal involvement would not be affected by the critical habitat designations. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by these proposed designations consist of improvements in communications and tracking facilities; ranching; road improvements; recreational use such as hiking, camping, picnicking, game hunting, fishing; botanical gardens; and, crop farming. With the exception of communications and tracking facilities improvements by the Federal Aviation Administration or the Federal Communications Commission, these activities are unlikely to have Federal involvement. On lands that are in agricultural production, the types of activities that might trigger a consultation include irrigation ditch system projects that may require section 404 authorizations from the Corps, and watershed management and restoration projects sponsored by NRCS. However the NRCS restoration projects typically are voluntary, and the irrigation ditch system projects within lands that are in agricultural production are rare and may affect only a small percentage of the small entities within these proposed critical habitat designations.

Lands that are within the State Urban District are located within undeveloped coastal areas. The types of activities that might trigger a consultation include shoreline restoration or modification projects that may require section 404 authorizations from the Corps or FEMA, housing or resort development that may require permits from the Department of Housing and Urban Development, and activities funded or authorized by the EPA. However, we are not aware of a significant number of future activities that would require Federal permitting or authorization in these coastal areas. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities. We are not aware of any commercial activities on the Federal lands included in these proposed critical habitat designations.

Even if a substantial number of small entities were affected by the consultation requirements of the Act, which we believe would be highly unlikely, and based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. Furthermore, these measures must be economically feasible, consistent with the intended purpose of the action, and within the scope of authority of the Federal agency involved in the consultation (see 50 CFR 404.2, definition of reasonable and prudent alternative). Therefore, such measures are not likely to result in a significant economic impact to a substantial number of small entities.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. Approximately 53 percent of the lands proposed as critical habitat are on State of Hawaii lands. The State of Hawaii is not a small entity. Approximately 47 percent of the lands proposed as critical habitat are on private lands. Many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private and State parcels within the proposed designation are currently being used for recreational and agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, section 7 application, the only trigger for regulatory impact under this rule, would be limited to a subset of the area proposed. The most likely future section 7 consultations resulting from this rule would be for informal consultations on federally funded land and water conservation projects, species-specific surveys and research projects, and watershed management and restoration projects sponsored by NRCS. These consultations would likely occur on only a subset of the total number of parcels and therefore not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. Therefore, we are certifying that the proposed designation of critical habitat for the following species: *Adenophorus periens, Alectryon macrococcus, Bidens wiebkei,*

Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia ssp. brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana ssp. grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus ssp. immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis, and *Zanthoxylum hawaiiense* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) We believe this rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as previously discussed, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(b) This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the 46 species from Molokai in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by one or more of the 46 plant species imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require section 7 consultation on non Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. However, there will be little additional impact on State and local governments and their activities because all of the proposed critical habitat areas are occupied by at least one species. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 46 plant species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) E.O. 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are

no tribal lands essential for the conservation of these 46 plant species. Therefore, designation of critical habitat for these 46 species has not been proposed on Tribal lands.

References Cited

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

Authors

The primary authors of this notice are Michelle Stephens, Christa Russell, Gregory Koob and Marigold Zoll (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.12(h) revise the entries for *Alectryon macrococcus, Bidens wiebkei, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia ssp. brevipes, Cyanea dunbarii, Cyanea grimesiana ssp. grimesiana, Cyanea mannii, Cyanea procera, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus ssp. immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* under ''FLOWERING PLANTS'' and *Adenophorus periens, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Marsilea villosa,* and *Pteris lidgatei* under ''FERNS AND ALLIES'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Alectryon macrococcus	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.96(a)	NA
*	*	*	*	*	*	*	
Bidens wiebkei	Ko oko olau	U.S.A. (HI)	Asteraceae	E	480	17.96(a)	NA
*	*	*	*	*	*	*	
Brighamia rockii	Pua ala	U.S.A. (HI)	Campanulaceae	E	480	17.96(a)	NA
*	*	*	*	*	*	*	
Canavalia molokaiensis	Awikiwiki	U.S.A. (HI)	Fabaceae	E	480	17.96(a)	NA
*	*	*	*	*	*	*	
Centaurium sebaeoides	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.96(a)	NA
*	*	*	*	*	*	*	
Clermontia oblongifolia ssp. brevipes.	Oha wai	U.S.A. (HI)	Campanulaceae	E	480	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea dunbarii	Haha	U.S.A. (HI)	Campanulaceae	E	594	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea grimesiana ssp. *grimesiana*.	Haha	U.S.A. (HI)	Campanulaceae	E	592	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea mannii	Haha	U.S.A. (HI)	Campanulaceae	E	480	17.96(a)	NA
*	*	*	*	*	*	*	
Cyanea procera	Haha	U.S.A. (HI)	Campanulaceae	E	480	17.96(a)	NA
*	*	*	*	*	*	*	
Eugenia koolauensis	Nioi	U.S.A. (HI)	Myrtaceae	E	536	17.96(a)	NA
*	*	*	*	*	*	*	
Flueggea neowawraea	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.96(a)	NA
*	*	*	*	*	*	*	
Hedyotis mannii	Pilo	U.S.A. (HI)	Rubiaceae	E	480	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Hesperomannia arborescens.	None	U.S.A. (HI)	Asteraceae	E	536	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus arnottianus ssp. immaculatus.	Koki o ke oke o	U.S.A. (HI)	Malvaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Hibiscus brackenridgei	Ma o hau hele	U.S.A. (HI)	Malvaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Labordia triflora	Kamakahala	U.S.A. (HI)	Loganiaceae	E	666	17.96(a)	NA
*	*	*	*	*	*		*
Lysimachia maxima	None	U.S.A. (HI)	Primulaceae	E	594	17.96(a)	NA
*	*	*	*	*	*		*
Mariscus fauriei	None	U.S.A. (HI)	Cyperaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Melicope (=Pelea) mucronulata.	Alani	U.S.A. (HI)	Rutaceae	E	467	17.96(a)	NA
*	*	*	*	*	*		*
Melicope reflexa	Alani	U.S.A. (HI)	Rutaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Neraudia sericea	None	U.S.A. (HI)	Urticaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Peucedanum sandwicense.	Makou	U.S.A. (HI)	Apiaceae	T	530	17.96(a)	NA
*	*	*	*	*	*		*
Phyllostegia mannii	None	U.S.A. (HI)	Lamiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Phyllostegia mollis	None	U.S.A. (HI)	Lamiaceae	E	448	17.96(a)	NA
*	*	*	*	*	*		*
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.96(a)	
*	*	*	*	*	*		*
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea lydgatei	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea nuttallii	None	U.S.A. (HI)	Caryophyllaceae	E	592	17.96(a)	NA
*	*	*	*	*	*		*
Schiedea sarmentosa	None	U.S.A. (HI)	Caryophyllaceae	E	594	17.96(a)	NA
*	*	*	*	*	*		*
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Silene alexandri	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Silene lanceolata	None	U.S.A. (HI)	Caryophyllaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Spermolepis hawaiiensis.	None	U.S.A. (HI)	Apiaceae	E	559	17.96(a)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
Stenogyne bifida	None	U.S.A. (HI)	Lamiaceae	E	480	17.96(a)	NA
*	*	*	*	*	*		*
Tetramolopium rockii	None	U.S.A. (HI)	Asteraceae	T	480	17.96(a)	NA
*	*	*	*	*	*		*
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Zanthoxylum hawaiiense.	Ae	U.S.A. (HI)	Rutaceae	E	532	17.96(a)	NA
*	*	*	*	*	*		*
Ferns and Allies.							
*	*	*	*	*	*		*
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	Grammitidaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.96(a)	NA
*	*	*	*	*	*		*
Diplazium molokaiense	None	U.S.A. (HI)	Aspleniaceae	E	553	17.96(a)	NA
*	*	*	*	*	*		*
Marsilea villosa	Ihi ihi	U.S.A. (HI)	Marsileaceae	E	474	17.96(a)	NA
*	*	*	*	*	*		*
Pteris lidgatei	None	U.S.A. (HI)	Adiantaceae	E	553	17.96(a)	NA

3. Section 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), 67 FR 4072 (January 28, 2002), and 67 FR 9806 (March 4, 2002) is proposed to be further amended as follows:

a. Revise paragraph (a)(1)(i)(F); and

b. Amend paragraph (a)(1)(ii) by revising the entries set forth below.

§ 17.96. Critical habitat-plants.

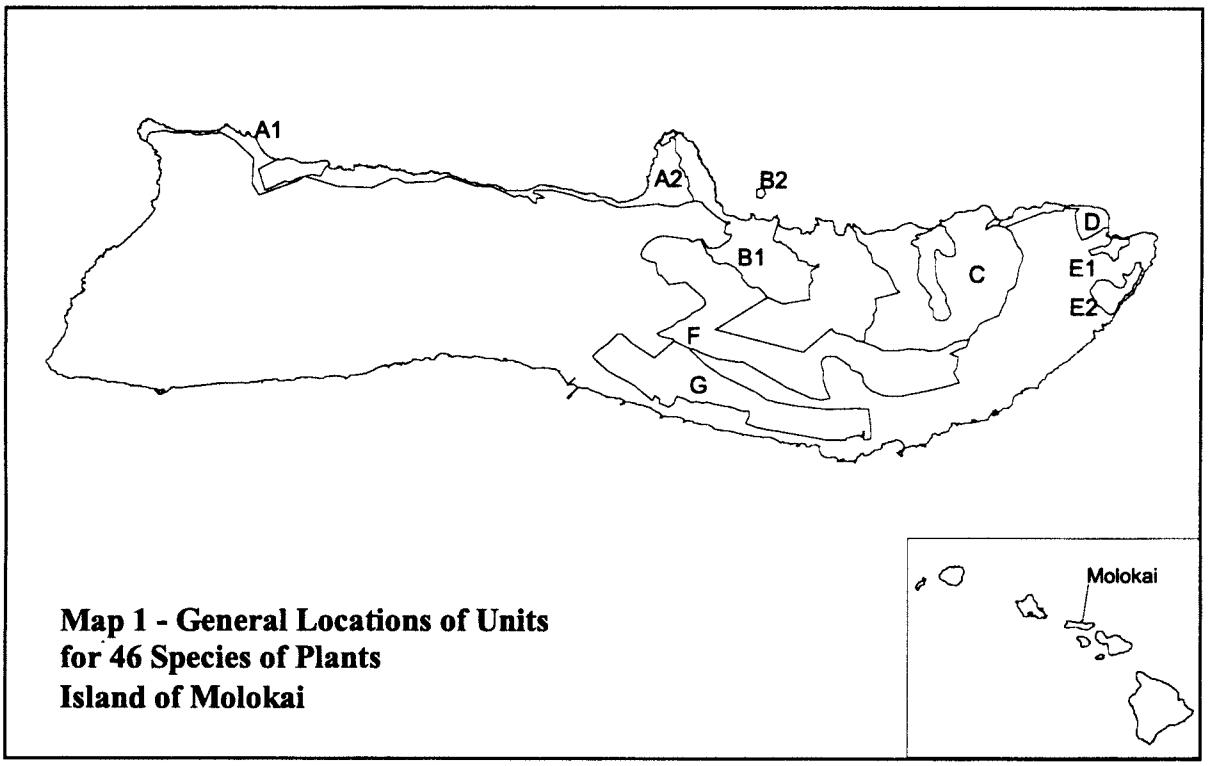
(a) * * *

(1) * * *

(i) * * *

(F) *Molokai.* Critical habitat units are described below. Coordinates are in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 13 critical habitat units designated on the island of Molokai.

(*1*) **Note:** Map 1—Index map follows:

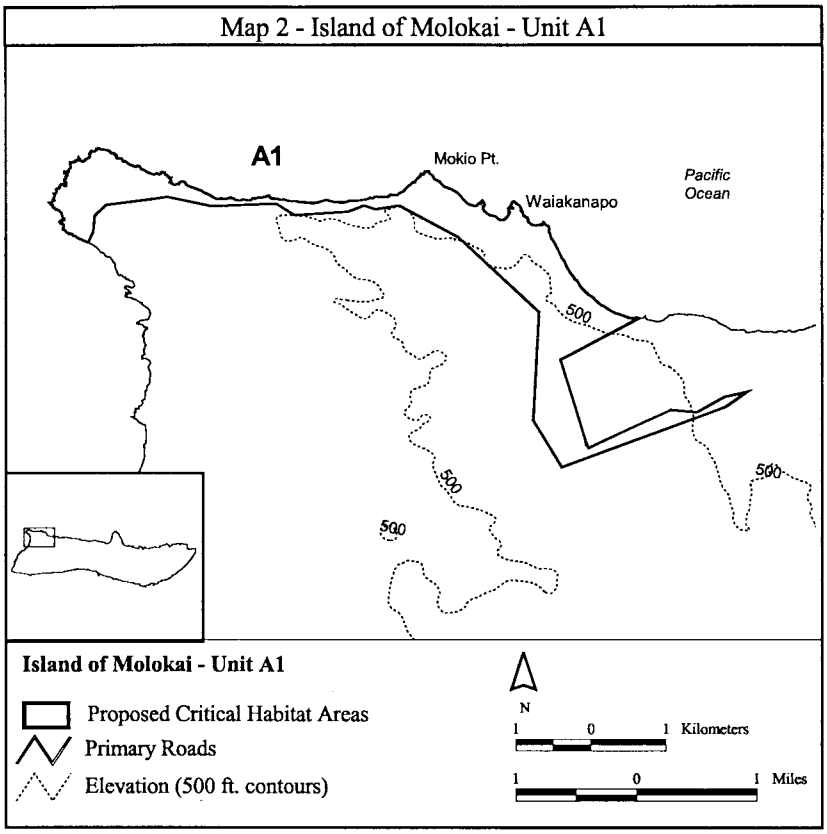


Map 1 - General Locations of Units for 46 Species of Plants Island of Molokai

(*2*) Molokai A1 (472 ha; 1,167 ac).

(*i*) Unit consists of 31 boundary points: 688438, 2345688; 688438, 2345687; 687387, 2345133; 687714, 2344094; 687727, 2344013; 687738, 2344018; 687757, 2343953; 688261, 2344188; 688417, 2344264; 688857, 2344469; 689205, 2344430; 689575, 2344638; 689625, 2344650; 689886, 2344711; 689597, 2344503; 687408, 2343701; 687025, 2344327; 687107, 2345767; 686024, 2346761; 685228, 2347181; 684916, 2347136; 684763, 2347181; 684553, 2347098; 683833, 2347057; 683585, 2347206; 682732, 2347174; 682133, 2347302; 681311, 2347200; 681158, 2347060; 681139, 2346831; 681070, 2346696. Coastline.

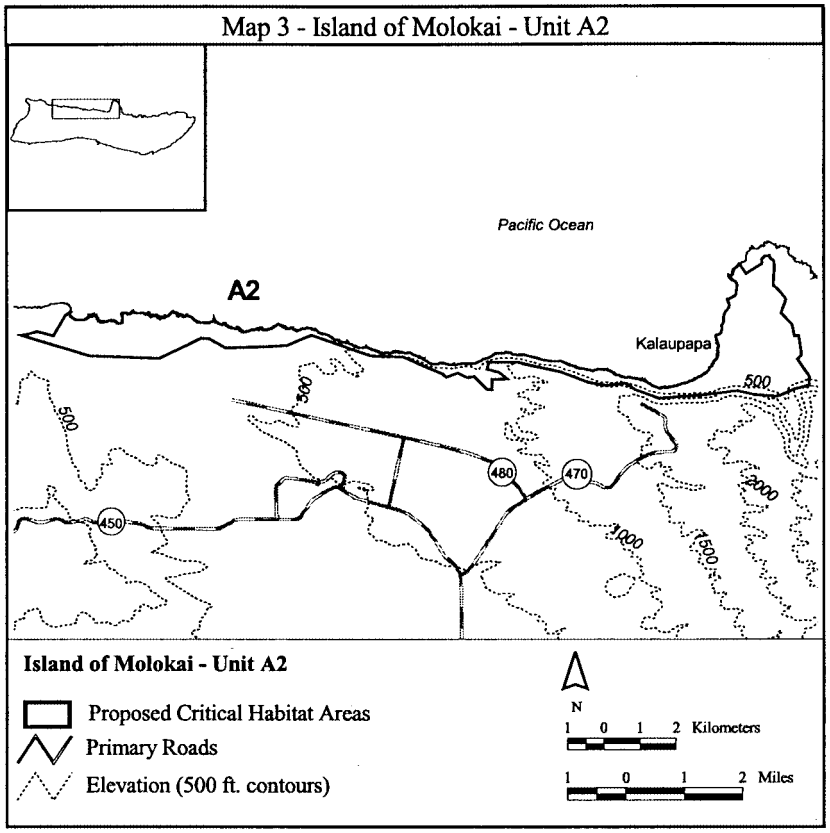
(*ii*) **Note:** Map 2 follows:



(*3*) Molokai A2 (1,532 ha; 3,786 ac).

(*i*) Unit consists of 67 boundary points: Coastline. 709818, 2346702; 709986, 2346425; 710425, 2346717; 710440, 2346732; 710410, 2346835; 710502, 2346914; 710629, 2346935; 710652, 2346855; 710743, 2346801; 710771, 2346649; 710741, 2346112; 710816, 2346035; 710901, 2345965; 711084, 2345719; 710942, 2345334; 711246, 2345024; 711320, 2344698; 711433, 2344723; 711521, 2344184; 711404, 2344064; 711579, 2343795; 711731, 2343589; 711742, 2343348; 711338, 2343250; 710861, 2343045; 710180, 2343096; 709754, 2343199; 708817, 2343079; 707590, 2342994; 706942, 2343233; 706670, 2343420; 706124, 2343352; 705647, 2343437; 704897, 2343727; 703705, 2343982; 702870, 2343982; 702801, 2343795; 703142, 2343727; 703381, 2343539; 702955, 2343522; 702955, 2343233; 702801, 2343250; 702461, 2343607; 702273, 2343573; 702005, 2343697; 701691, 2343588; 701604, 2343660; 701216, 2343818; 700521, 2344130; 699600, 2344164; 697977, 2344743; 697645, 2344608; 697645, 2344607; 697298, 2344461; 696763, 2344417; 695600, 2344389; 695149, 2344638; 694936, 2344650; 693773, 2344104; 691839, 2344164; 689970, 2344731; 690226, 2344791; 690393, 2344834; 690849, 2344723; 691180, 2345289; 691297, 2345352; 691318, 2345363. Coastline.

(*ii*) **Note:** Map 3 follows:



(*4*) Molokai B1 (2,179 ha; 5,384 ac).

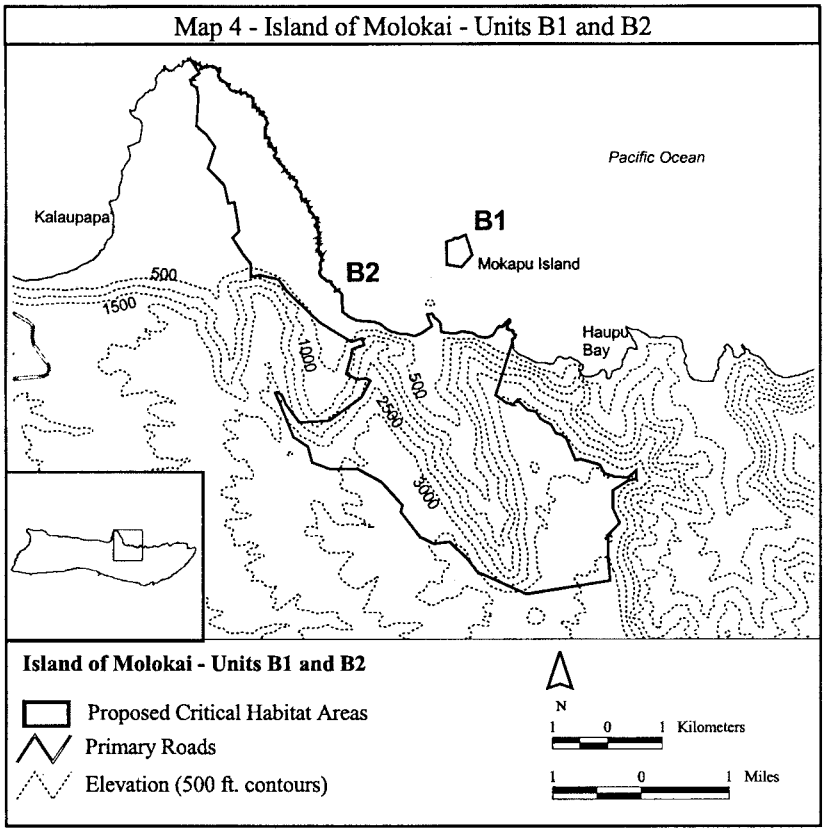
(*i*) Unit consists of 84 boundary points: Coastline.716528, 2342088; 716513, 2342093; 716226, 2341182; 716397, 2341056; 716537, 2341006; 716619, 2341102; 716803, 2340912; 716949, 2340883; 717034, 2340760; 717233, 2340650; 717327, 2340487; 717417, 2340471; 717512, 2340386; 717678, 2340008; 717794, 2340014; 718125, 2339916; 718212, 2339767; 718369, 2339712; 718630, 2339684; 718798, 2339820; 718794, 2339660; 718638, 2339632; 718369, 2339448; 718361, 2339127; 718483, 2338864; 718272, 2338643; 718273, 2338203; 718311, 2337817; 716789, 2337580; 715922, 2337961; 715899, 2337947; 715684, 2338235; 715378, 2338526; 715087, 2338495; 714833, 2338616; 714481, 2339069; 714512, 2339187; 714127, 2339612; 713679, 2339856; 713199, 2339840; 712861, 2339958; 712782, 2340249; 712515, 2340422; 712183, 2341226; 712235, 2341236; 712305, 2341201; 712382, 2341012; 712627, 2340692; 713168, 2340721; 713765, 2341147; 713925, 2341447; 713848, 2341497; 713700, 2341472; 713483, 2341578; 713558, 2341864; 713601, 2342024; 713813, 2342101; 713769, 2342222; 713587, 2342159; 712991, 2342517; 712412, 2343062; 712241, 2343301; 711901, 2343386; 711742, 2343348; 711731, 2343589; 711579, 2343795; 711404, 2344064; 711521, 2344184; 711433, 2344723; 711320, 2344698; 711246, 2345024; 710942, 2345334; 711084, 2345719; 710901, 2345965; 710816, 2346035; 710741, 2346112; 710771, 2346649; 710743, 2346801; 710652, 2346855; 710629, 2346935; 710689, 2346945; 710676, 2346982; 710797, 2347055; 710634, 2347301. Coastline.

(*ii*) **Note:** See Map 4.

(*5*) Molokai B2 (20 ha; 50 ac).

(*i*) Unit consists of eight boundary points: 715457, 2344070; 715501, 2344048; 715671, 2344107; 715793, 2343742; 715598, 2343524; 715331, 2343572; 715319, 2343985; 715442, 2344028.

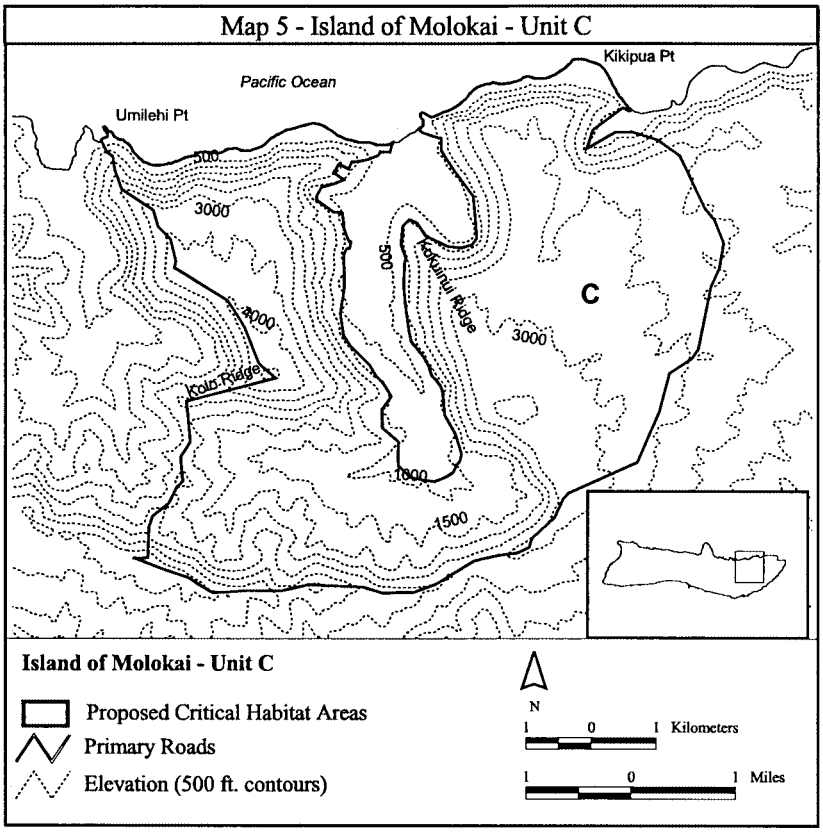
(*ii*) **Note:** Map 4 follows:



(*6*) Molokai C (4,507 ha; 11,138 ac).

(*i*) Unit consists of 157 boundary points: Coastline. 728836, 2342347; 728793, 2342324; 728701, 2342384; 728234, 2342042; 728140, 2341753; 728579, 2342005; 728821, 2342005; 728828, 2342014; 729232, 2341892; 729229, 2341891; 729581, 2341642; 729957, 2340844; 730108, 2340669; 730258, 2340309; 730192, 2339932; 730058, 2339648; 729867, 2338695; 729764, 2338541; 729427, 2338327; 729264, 2337734; 729121, 2337397; 728927, 2336948; 728099, 2336580; 727864, 2336478; 727783, 2336386; 727650, 2336110; 727313, 2335793; 727266, 2335651; 727089, 2335568; 726790, 2335537; 726421, 2335450; 725816, 2335090; 725477, 2334971; 725021, 2334963; 724706, 2335057; 723857, 2335089; 723448, 2335002; 722834, 2334995; 722386, 2334971; 721977, 2335215; 721613, 2335334; 721173, 2335498; 721206, 2335488; 721387, 2335499; 721410, 2335958; 721470, 2336127; 721713, 2336326; 721834, 2336568; 721929, 2336656; 721893, 2337028; 722037, 2337255; 721980, 2337890; 723352, 2338246; 723088, 2338481; 722865, 2339034; 722803, 2339144; 722612, 2339432; 721796, 2339934; 721815, 2340038; 721731, 2340378; 721548, 2340570; 721475, 2340813; 720996, 2341128; 720883, 2341439; 720856, 2341640; 720767, 2341699; 720682, 2341883; 720675, 2341873; 720675, 2341874; 720670, 2341873. Coastline. 725555, 2342048; 725162, 2341847; 725118, 2341694; 724963, 2341709; 724936, 2341648; 724766, 2341580; 724760, 2341583; 724671, 2341562; 724522, 2341550; 724473, 2341445; 724325, 2341519; 724244, 2341392; 724402, 2341280; 724240, 2341210; 724061, 2341168; 723989, 2341034; 723989, 2340961; 724000, 2340951; 724230, 2340796; 724234, 2340791; 724370, 2340778; 724401, 2340620; 724402, 2340548; 724436, 2340446; 724436, 2340432; 724485, 2340334; 724510, 2340333; 724495, 2340236; 724446, 2340219; 724406, 2340142; 724412, 2339620; 724349, 2339241; 724404, 2338894; 724498, 2338755; 724612, 2338641; 724801, 2338452; 724894, 2338294; 725031, 2338146; 725144, 2337958; 724994, 2337760; 725003, 2337479; 725257, 2337263; 725247, 2337009; 725252, 2336892; 725437, 2336718; 725686, 2336671; 725813, 2336660; 725935, 2336700; 726097, 2336793; 726155, 2336915; 726196, 2336961; 726225, 2337071; 726132, 2337378; 725964, 2337679; 725941, 2337986; 725950, 2337999; 725947, 2337998; 725906, 2338120; 725825, 2338218; 725767, 2338288; 725738, 2338380; 725744, 2338389; 725645, 2338566; 725448, 2338803; 725414, 2338989; 725356, 2339377; 725338, 2339603; 725338, 2339765; 725350, 2340002; 725368, 2340078; 725294, 2340274; 725320, 2340569; 725422, 2340671; 725546, 2340613; 725674, 2340421; 726007, 2340256; 726216, 2340230; 726381, 2340282; 726458, 2340381; 726442, 2340648; 726402, 2341022; 726123, 2341391; 725990, 2341595; 725911, 2341717; 725911, 2341908; 725856, 2341920; 725602, 2341999. Coastline.

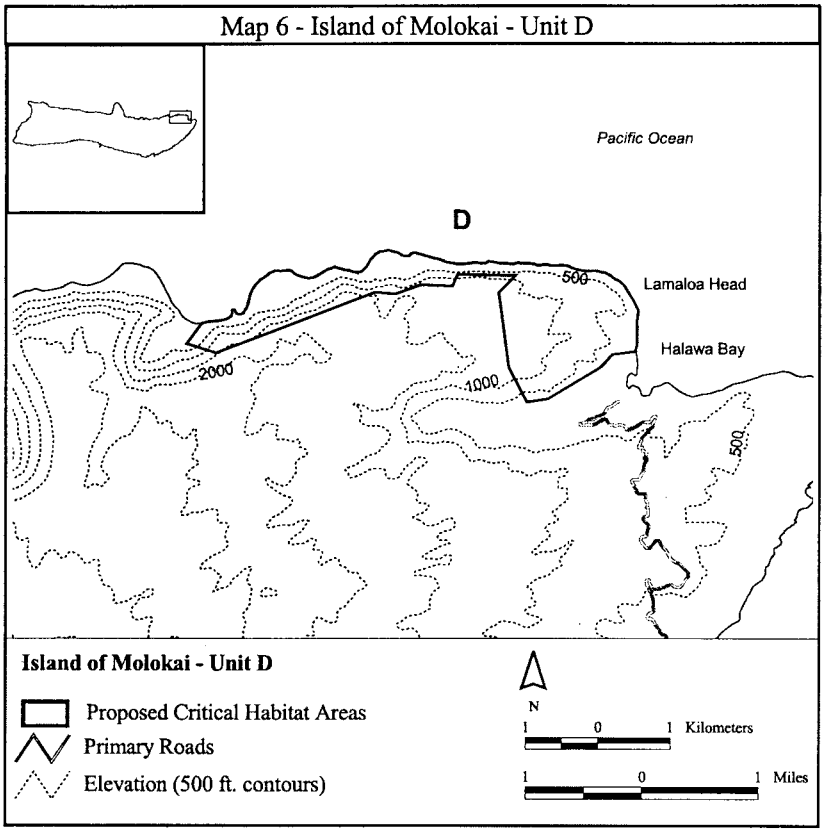
(*ii*) **Note:** Map 5 follows:



(*7*) Molokai D (466 ha; 1,153 ac).

(*i*) Unit consists of 16 boundary points: Coastline. 735073 2341908; 734741, 2341866; 734580, 2341689; 733836, 2341246; 733552, 2341204; 733301, 2341681; 733159, 2342717; 733392, 2342952; 732578, 2342966; 732511, 2342806; 732072, 2342828; 731709, 2342697; 731434, 2342730; 729232, 2341892; 728828, 2342014; 729038, 2342298. Coastline.

(*ii*) **Note:** Map 6 follows:



(*8*) Molokai E1 (127 ha; 315 ac).

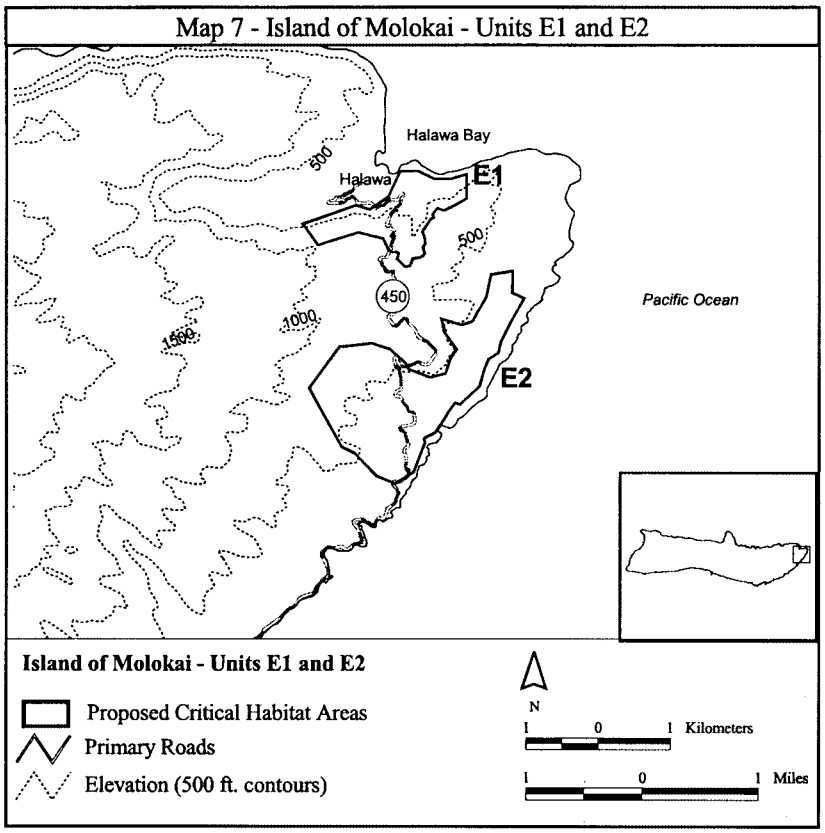
(*i*) Unit consists of 33 boundary points: 735124, 2340970; 735291, 2341321; 735533, 2341329; 735776, 2341212; 735985, 2341212; 736223, 2341276; 736217, 2340947; 736046, 2340843; 735903, 2340779; 735813, 2340810; 735746, 2340729; 735757, 2340674; 735719, 2340657; 735600, 2340485; 735633, 2340403; 735642, 2340318; 735606, 2340279; 735634, 2340180; 735595, 2340135; 735468, 2340113; 735433, 2340017; 735366, 2340000; 735249, 2340109; 735273, 2340184; 735238, 2340212; 735183, 2340197; 735123, 2340251; 735057, 2340393; 734706, 2340477; 734147, 2340302; 733937, 2340593; 734672, 2340853; 734864, 2340794.

(*ii*) **Note:** See Map 7.

(*9*) Molokai E2 (332 ha; 821 ac).

(*i*) Unit consists of 36 boundary points: 737018, 2339565; 736837, 2339239; 736704, 2338973; 736662, 2338813; 736529, 2338732; 736480, 2338614; 736406, 2338354; 736126, 2338105; 736061, 2338127; 735773, 2337713; 735626, 2337632; 735641, 2337576; 735482, 2337166; 735223, 2337008; 734973, 2337108; 734663, 2337426; 734479, 2337518; 734028, 2338329; 734446, 2338897; 734898, 2338947; 735157, 2338864; 735366, 2338680; 735416, 2338588; 735708, 2338479; 735926, 2338529; 736001, 2338747; 736086, 2338865; 735909, 2339098; 735869, 2339285; 736156, 2339195; 736303, 2339251; 736399, 2339426; 736498, 2339578; 736566, 2339891; 736863, 2339942; 736858, 2339643.

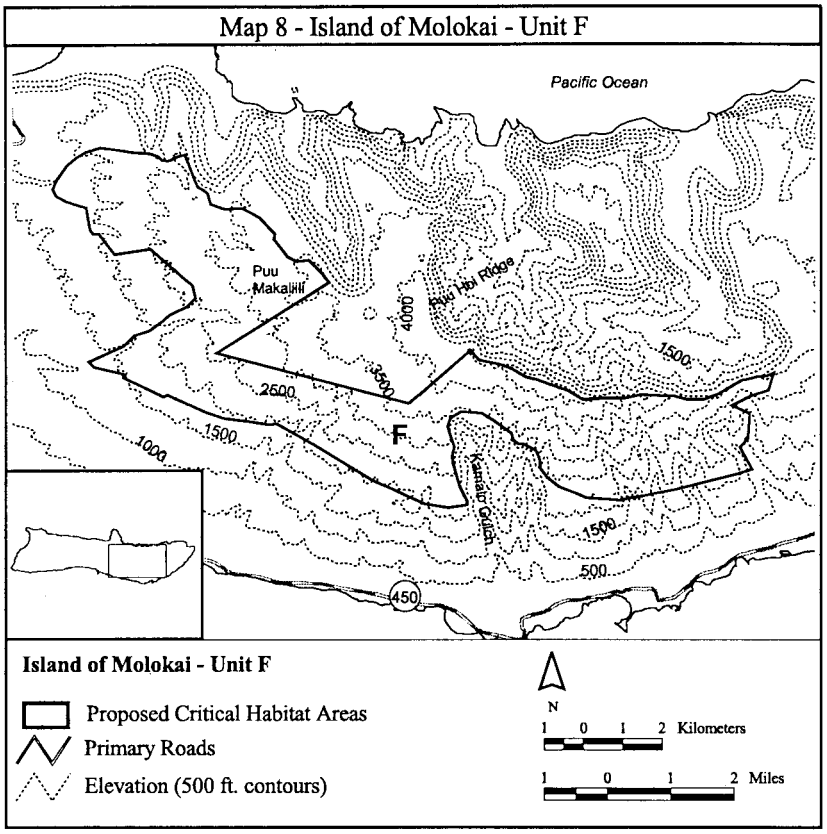
(*ii*) **Note:** Map 7 follows:



(*10*) Molokai F (4,956 ha; 12,247 ac).

(*i*) Unit consists of 119 boundary points: 719529, 2336227; 719749, 2335976; 720278, 2335860; 720611, 2335749; 720920, 2335559; 721062, 2335514; 721173, 2335498; 721613, 2335334; 721977, 2335215; 722386, 2334971; 722834, 2334995; 723448, 2335002; 723857, 2335089; 724706, 2335057; 725021, 2334963; 725477, 2334971; 725816, 2335090; 726421, 2335450; 726790, 2335537; 727089, 2335568; 727266, 2335651; 727119, 2335201; 726677, 2335067; 726193, 2334817; 726639, 2334616; 726590, 2333985; 726403, 2333749; 726710, 2333199; 726302, 2333066; 724790, 2332688; 723343, 2332405; 722490, 2332473; 721784, 2332745; 721475, 2332984; 721316, 2333218; 721301, 2333454; 721209, 2333676; 720882, 2333841; 720738, 2333846; 720618, 2333945; 720576, 2334111; 720187, 2334392; 719814, 2334623; 719289, 2334656; 719018, 2334503; 718951, 2334284; 719005, 2334080; 719118, 2333770; 719056, 2333517; 719084, 2333337; 719257, 2332763; 719461, 2332353; 719459, 2332351; 719461, 2332348; 719407, 2332277; 718953, 2332223; 718360, 2332310; 717555, 2332678; 717008, 2332914; 715529, 2333806; 714533, 2334360; 714364, 2334333; 713748, 2334435; 713234, 2334488; 712718, 2334659; 711743, 2335087; 711649, 2335040; 710674, 2335516; 710663, 2335614; 709878, 2335802; 709773, 2335899; 709777, 2335900; 709736, 2335937; 710640, 2336345; 710903, 2336608; 711297, 2336725; 711584, 2336948; 711801, 2337136; 712243, 2337338; 712475, 2337574; 712383, 2337889; 711308, 2338812; 710399, 2338678; 709997, 2339210; 709837, 2339210; 709774, 2339294; 709662, 2339882; 709442, 2339948; 709152, 2340035; 708894, 2340184; 708808, 2340350; 708897, 2340586; 709174, 2340969; 709417, 2341167; 709654, 2341312; 710027, 2341412; 710387, 2341374; 710869, 2341290; 711309, 2341265; 711520, 2341187; 711621, 2341088; 711786, 2341082; 712060, 2341201; 712183, 2341226; 712515, 2340422; 712782, 2340249; 712861, 2339958; 713199, 2339840; 713679, 2339856; 714127, 2339612; 714512, 2339187; 714481, 2339069; 714833, 2338616; 715087, 2338495; 715378, 2338526; 715684, 2338235; 715899, 2337947; 713011, 2336155; 717956, 2334877.

(*ii*) **Note:** Map 8 follows:



(*11*) Molokai G (3,023 ha; 7,471 ac).

(*i*) Unit consists of 69 boundary points: 711649, 2335040; 711611, 2335022; 712397, 2334261; 713207, 2333668; 715319, 2332627; 715872, 2332241; 716521, 2332067; 717676, 2331858; 719317, 2331700; 720853, 2331744; 721642, 2331732; 721727, 2330792; 721763, 2330136; 721733, 2330033; 721586, 2329994; 721364, 2330017; 721371, 2330503; 721317, 2330476; 721292, 2330130; 721257, 2330125; 721183, 2330223; 721149, 2330249; 720907, 2330227; 720761, 2330182; 720374, 2330071; 720374, 2329960; 719320, 2329977; 718175, 2330162; 716599, 2330458; 715341, 2330665; 715000, 2330799; 715001, 2330803; 714717, 2330899; 714919, 2331303; 714934, 2331460; 714904, 2331602; 714664, 2331565; 714343, 2331640; 714208, 2331730; 713826, 2331834; 712861, 2331999; 712585, 2332089; 712308, 2332021; 712001, 2332133; 711649, 2332066; 711328, 2332268; 710849, 2332433; 710670, 2332017; 710424, 2331821; 709872, 2332028; 709929, 2332261; 709630, 2332470; 709495, 2332193; 708686, 2332827; 708590, 2332949; 708133, 2333235; 707072, 2333778; 706205, 2334559; 706166, 2334682; 706446, 2334939; 707043, 2335392; 707518, 2335889; 707764, 2335906; 708287, 2335419; 709485, 2334639; 709485, 2334643; 709599, 2334575; 710676, 2335499; 710674, 2335516.

(*ii*) **Note:** Map 9 follows.

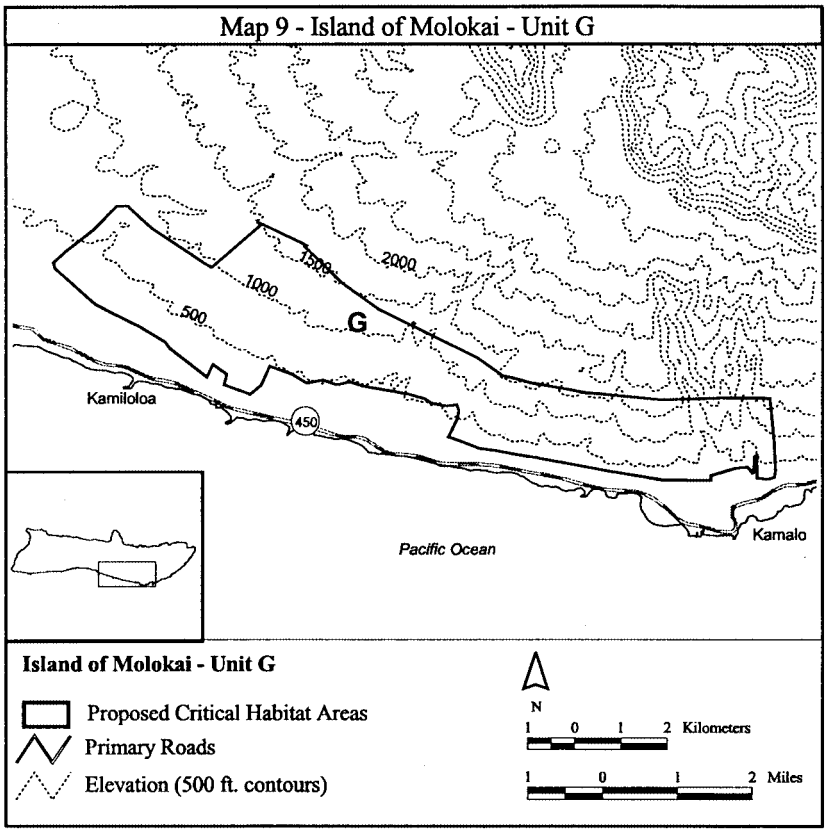


TABLE (A)(1)(I)(F).—PROTECTED SPECIES WITHIN EACH CRITICAL HABITAT UNIT FOR MOLOKAI

Unit name	Species occupied	Species unoccupied
Molokai A1	*Centaurium sebaeoides, Marsilea villosa, Tetramolopium rockii* .	
Molokai A2	*Centaurium sebaeoides, Sesbania tomentosa, Tetramolopium rockii* .	
Molokai B1	*Adenophorus periens, Brighamia rockii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea procera, Hedyotis mannii, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone, Lysimachia maxima, Peucedanum sandwicense, Phyllostegia mannii, Plantago princeps, Platanthera holochila, Schiedea nuttallii, Stenogyne bifida, Tetramolopium rockii* .	
Molokai B2	*Peucedanum sandwicense*	*Brighamia rockii, Ischaemum byrone, Tetramolopium rockii.*
Molokai C	*Adenophorus periens, Brighamia rockii, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Cyanea grimesiana* ssp. *grimesiana, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Ischaemum byrone, Lysimachia maxima, Melicope reflexa, Peucedanum sandwicense, Phyllostegia mannii, Pteris lidgatei* .	*Diplazium molokaiense.*
Molokai D	*Bidens wiebkei, Centaurium sebaeoides, Ischaemum byrone, Peucedanum sandwicense* .	
Molokai E1	*Bidens wiebkei* .	
Molokai E2	*Bidens wiebkei* .	
Molokai F	*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Canavalia molokaiensis, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Diellia erecta, Hedyotis mannii, Labordia triflora, Lysimachia maxima, Mariscus faurei, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Phyllostegia mannii, Plantago princeps, Platanthera holochila, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Vigna o-wahuensis, Zanthoxylum hawaiiense* .	*Eugenia koolauensis, Flueggea noewawraea, Phyllostegia mollis, Silene alexandri*
Molokai G	Mariscus faurei, Sesbania tomentosa	*Hibiscus brackenridgei, Isodendrion pyrifolium.*

(ii) *Hawaiian plants—constituent elements.*

(A) *Flowering plants.*

Family Apiaceae: *Peucedanum sandwicense* (makou)

Molokai B1, B2, C, and D, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Peucedanum sandwicense* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Cliff habitats in brown soil and talus in *Chamaesyce celastroides* var. *amplectans-Chenopodium oahuense* coastal dry shrubland or *Diospyros sandwicensis* forest and containing one or more of the following associated native species: *Eragrostis* sp., *Santalum ellipticum, Pritchardia hillebrandii, Reynoldsia sandwicensis, Osteomeles anthyllidifolia, Scaevola sericea, Senna gaudichaudii, Pittosporum halophilum, Sida fallax, Plumbago zeylanica, Artemisia australis, Portulaca lutea, Lepidium bidentatum* var. *o-waihiense, Schiedea globosa, Lipochaeta integrifolia, Peperomia remyi, Plectranthus parviflorus, Dianella sandwicensis* or *Metrosideros polymorpha;* and

(*2*) Elevations between sea level and above 840 m (0 and 2,755 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Spermolepis hawaiiensis* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Ridge crests and gulch slopes in dry to mesic shrubland and containing one or more of the following associated native species: *Dodonea viscosa, Metrosideros polymopha,* or *Styphelia tameiameiae;* and

(*2*) Elevations between 432 and 972 m (1,416 and 3,188 ft).

Family Asteraceae: *Bidens wiebkii* (ko oko olau)

Molokai D, E1, E2, and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Bidens wiebkii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes in *Metrosideros polymorpha* dominated mesic shrublands or dry or mesic *Metrosideros polymorpha-Styphelia tameiameiae* lowland shrubland and containing one or more of the following associated native plant species: *Antidesma platyphyllum, Dodonea viscosa, Psydrax odoratum, Lysimachia* sp., *Nestegis sandwicensis, Phyllanthus distichus, Pisonia* sp., or *Scaevola gaudichaudii;* and

(*2*) elevations between 8 and 1,205 m (26 and 3,952 ft).

Family Asteraceae: *Hesperomannia arborescens* (NCN)

Molokai C, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Hesperomannia arborescens* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes or ridges in wet *Metrosideros polymorpha-Dicranopteris linearis* lowland forest or mesic *Diospyros sandwicensis-Metrosideros polymorpha* lowland forest transition zones and containing one or more of the following associated native species: *Broussaisia arguta, Freycinetia arborea, Antidesma* sp., *Cibotium glaucum, Psychotria mauiensis, Elaphoglossum* sp., *Coprosma* sp., *Hedyotis* sp., *Cheirodendron* sp., *Smilax melastomifolia, Clermontia pallida, Thelypteris* sp., *Diplopterygium pinnatum, Ilex anomala, Myrsine* sp., *Urera glabra, Cyrtandra* sp., *Pipturus* sp., *Boehmeria grandis, Nestegis sandwicensis, Nephrolepis exaltata,* or *Wikstroemia* sp.; and

(*2*) Elevations between 175 and 959 m (574 and 3,145 ft).

Family Asteraceae: *Tetramolopium rockii* (NCN)

Molokai A1, A2 and B2, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Tetramolopium rockii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Hardened calcareous sand dunes or ash-covered basalt in the coastal spray zone or coastal dry shrubland and grassland and containing one or more of the following associated native species: *Psydrax odoratum, Diospyros sandwicensis, Metrosideros polymorpha, Osteomeles anthyllidifolia, Scaevola* sp., *Fimbristylis cymosa, Heliotropium anomalum, Lipochaeta integrifolia, Sida fallax,* or *Sporobolus virginicus;* and

(*2*) Elevations between sea level and 199 m (0 and 653 ft).

Family Campanulaceae: *Brighamia rockii* (pua ala)

Molokai B1, B2, and C, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Brighamia rockii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rock crevices on steep basalt sea cliffs, often within the spray zone, in coastal dry or mesic forest, *Eragrostis variabilis* mixed coastal cliff communities, or shrubland, or *Pritchardia* sp. coastal mesic forest and containing one or more of the following associated native species: *Pritchardia hillebrandii, Chamaesyce celastroides* var. *amplectans, Wikstroemia uva-ursi, Carex wahuensis* ssp. *wahuensis, Mariscus phleoides* ssp. *phleoides, Eragrostis variabilis, Dianella sandwicensis, Cocculus trilobus, Phymatosorus scolopendria, Crytomium falcatum, Lepidium bidentatum* var. *o-waihiense, Pittosporum halophilum, Artemisia* sp., *Bidens* sp., *Schiedea globosa, Reynoldsia sandwicensis, Pandanus tectorius, Peucedanum sandwicensis, Hedyotis littoralis, Metrosideros polymorpha, Psydrax odoratum, Diospyros sandwicensis, Osteomeles anthyllidifolia, Tetramolopium cassia, Senna gaudichaudii, or Scaevola sericea;* and

(*2*) Elevations between sea level and 671 m (0 and 2,201 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *brevipes* (oha wai)

Molokai B1, C, and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Clermontia oblongifolia* ssp. *brevipes* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Shallow soil on gulch slopes in the wet *Metrosideros polymorpha*—dominated forests and containing one or more of the following associated native species include *Cheirodendron trigynum, Cibotium* spp., *Broussaisia argutus, Hedyotis terminalis,* or *Melicope* sp.; and

(*2*) Elevations between 776 and 1,508 m (2,545 and 4,946 ft).

Family Campanulaceae: *Cyanea dunbarii* (haha)

Molokai B1 and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Cyanea dunbarii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Streambanks in mesic to wet *Dicranopteris linearis-Metrosideros polymorpha* lowland forest on moderate to steep slopes and containing one or more of the following associated native

species: *Diplazium sandwicianum, Charpentiera obovata, Perrottetia sandwicensis, Pipturus albidus, Clermontia kakeana, Cheirodendron trigynum,* or *Freycinetia arborea;* and

(*2*) Elevations between 191 and 1,248 m (626 and 4,093 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Molokai B1, F and C, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic forest often dominated by *Metrosideros polymorpha* or *Metrosideros* polymorpha and *Acacia koa,* or cliffs, and containing one or more of the following associated native species: *Psychotria* sp., *Bobea* sp., *Antidesma* sp., *Syzygium sandwicensis, Xylosma* sp., *Cibotium* sp., *Doodia* sp., *Nephrolepis* sp., *Cyrtandra* sp., *Dicranopteris linearis,* or *Freycinetia arborea;* and

(*2*) Elevations between 93 and 1,354 m (305 and 4,441 ft).

Family Campanulaceae: *Cyanea mannii* (haha)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Cyanea mannii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Sides of deep gulches in *Metrosideros polymorpha*-dominated montane mesic forests and containing one or more of the following associated native species: *Wiskstroemia* sp., *Dicranopteris linearis,* or *Vaccinium* sp.; and

(*2*) Elevations between 191 and 1,248 m (626 and 4,093 ft).

Family Campanulaceae: *Cyanea procera* (haha)

Molokai B1 and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Cyanea procera* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Walls of steep gulches in wet *Metrosideros polymorpha*-dominated lowland mixed forests and containing one or more of the following associated native species: *Asplenium* spp., *Brousaissia arguta, Coprosma ochracea, Cyanea* spp., *Cyrtandra macrocalyx, Dicranopteris linearis, Pipturus albidus, Pisonia* spp., *Scaevola procera,* or *Touchardia latifolia;* and

(*2*) Elevations between 277 and 1,248 m (909 to 4,093 ft).

Family Caryophyllaceae: *Schiedea lydgatei* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Schiedea lydgatei* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Ridges in dry to mesic grassland, shrubland, or forest with scattered native trees and containing one or more of the following associated native species: *Dodonaea viscosa, Metrosideros polymorpha, Styphelia tameiameiae,* or *Dicranopteris linearis;* and

(*2*) Elevations between 458 and 1,047 m (1,502 and 3,434 ft).

Family Caryophyllaceae: *Schiedea nuttallii* (NCN)

Molokai B1 and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Schiedea nuttallii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Streamside grottos in wet *Metrosideros polymorpha/ Cheirodendron trigynum* forest and containing one or more of the following associated native species: *Asplenium lobulatum, Asplenium macraei, Thelypteris sandwicensis, Vandenboschia davallioides, Cyrtandra hawaiiensis,* or *Asplenium unilaterale;* and

(*2*) Elevations between 677 and 1,423 m (2,220 and 4,667 ft).

Family Caryophyllaceae: *Schiedea sarmentosa* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Schiedea sarmentosa* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes in *Metrosideros polymorpha/Dodonaea viscosa* lowland dry or mesic shrubland or dry to mesic forest dominated by *Metrosideros polymorpha* and/or *Diospyros sandwicensis* and containing one or more of the following associated native species: *Styphelia tameiameiae, Chenopodium oahuensis, Alyxia oliviformis, Pleomele auwahiensis, Bidens menziesii, Carex meyenii, Lipochaeta rockii, Nestegis sandwicensis, Nothocestrum latifolium, Sida fallax, Sophora chrysophylla,* or *Chamaesyce* sp.; and

(*2*) Elevations between 316 and 1,072 m (1,036 and 3,516 ft).

Family Caryophyllaceae: *Silene alexandri* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Silene alexandri* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Moderate to steep slopes or cliffs in dry forest and containing one or more of the following associated native species: *Dodonaea viscosa*, *Styphelia tameiameiae*, *Bidens menziesii*, *Schiedea* spp., *Carex wahuensis*, or *Diospyros sandwicensis*; and

(*2*) Elevations between 316 and 1,073 m (1,036 and 3,519 ft).

Family Caryophyllaceae: *Silene lanceolata* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Silene lanceolata* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes, ridge tops, and cliffs in dry to mesic shrubland and containing one or more of the following associated native species: *Metrosideros polymorpha*, *Bidens menziesii*, *Schiedea* spp., *Carex wahuensis*, *Diospyros sandwicensis*, *Dodonea viscosa*, *Styphelia tameiameiae*, or *Dubautia linearis*; and

(*2*) Elevations between 581 and 1,043 m (1,905 and 3,421 ft).

Family Cyperaceae: *Mariscus faurei* (NCN)

Molokai F and G, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Mariscus faurei* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Diospyros sandwicensis*-dominated lowland dry forests, and containing one or more of the following associated native species: *Psydrax odoratum*, *Peperomia* sp., or *Rauvolfia sandwicensis*; and

(*2*) Elevations between 436 and 1,120 m (1,430 and 3,673 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Flueggea neowawraea* on Molokai. Within this unit the

currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulches in mesic forest; and

(*2*) Elevations between 450 and 840 m (1,476 and 2,755 ft).

Family Fabaceae: *Canavalia molokaiensis* (awikiwiki)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Canavalia molokaiensis* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Exposed sites, both dry and mesic, on steep slopes in *Metrosideros polymorpha-Dodonea viscosa* lowland shrubland or mesic shrublands and containing one or more of the following associated native species: *Artemesia* sp., *Chamaesyce* sp., *Coprosma* sp., *Styphelia tameiameiae*, or *Wikstroemia* sp.; and

(*2*) Elevations between 271 and 1,140 m (889 and 3,739 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Molokai A2, F, and G, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Sesbania tomentosa* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Scaevola sericea* coastal dry shrubland on windswept slopes, sea cliffs and weathered basaltic slopes and containing one or more of the following associated native species: *Lipochaeta integrifolia*, *Jacquemontia sandwicensis*, *Sida fallax*, or *Dodonea viscosa*; and

(*2*) Elevations between sea level and 516 m (0 and 1,692 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Vigna o-wahuensis* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry to mesic grassland and shrubland and containing one or more of the following associated native species: *Chenopodium oahuense*, *Cyperus laevigatus*, *Eragrostis variabilis*, *Heteropogon contortus*, *Ipomoea* sp., *Scaevola sericea*, *Sida fallax*, *Vitex rotundifolia*, *Dodonea viscosa*, or *Styphelia tameiameiae*; and

(*2*) Elevations between 516 and 1,041 m (1,692 and 3,414 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Molokai A1, A2, B1, C, and D, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Centaurium sebaeoides* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Volcanic or clay soils or cliffs in arid coastal areas and containing one or more of the following associated native species: *Chamaesyce celastroides*, *Dodonea viscosa*, *Fimbristylis cymosa*, *Heteropogon contortus*, *Lipochaeta heterophylla*, *Lipochaeta integrifolia*, *Lycium sandwicense*, *Lysimachia mauritiana*, *Mariscus phleoides*, *Panicum fauriei*, *Panicum torridum*, *Scaevola sericea*, *Schiedea globosa*, *Sida fallax*, *Wikstroemia uva-ursi*, *Artemisia* sp., *Bidens* sp., *Jaquemontia ovalifolia*, or *Lipochaeta succulenta*; and

(*2*) Elevations between sea level and 409 m (0 and 1,341 ft).

Family Lamiaceae: *Phyllostegia mannii* (NCN)

Molokai B1, C, and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Phyllostegia mannii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Shaded sites in foggy and windswept, wet, open, *Metrosideros polymorpha*-dominated montane forest with a native shrub and *Cibotium* sp. understory and containing one or more of the following associated native species: *Asplenium* sp., *Broussaisia arguta*, *Cheirodendron trigynum*, *Coprosma ochracea*, *Cyanea* sp., *Dicranopteris linearis*, *Hedyotis hillebrandii*, *Pipturus albidus*, *Pouteria sandwicensis*, *Psychotria* sp., *Touchardia latifolia*, *Vaccinium* sp., or *Wikstromia* sp.; and

(*2*) Elevations between 590 and 1508 m (1,935 and 4,946 ft).

Family Lamiaceae: *Phyllostegia mollis* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Phyllostegia mollis* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic *Metrosideros polymorpha* forests; and

(*2*) Elevations between 551 and 1,216 m (1,807 and 3,988 ft).

Family Lamiaceae: *Stenogyne bifida* (NCN)

Molokai B1 and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Stenogyne bifida* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes in *Metrosideros polymorpha*-dominated montane mesic to wet forest and containing one or more of the following associated native species: *Cibotium* sp., *Hedyotis* sp., *Cyanea* sp., *Dicranopteris linearis*, *Dodonaea viscosa*, *Hedyotis hillebrandii*, *Pipturus albidus*, *Psychotria* sp., *Styphelia tameiameiae*, *Vaccinium* sp., *Wikstroemia* sp., *Cheirodendron trigynum*, *Broussaisia arguta*, or *Pouteria sandwicensis*; and

(*2*) Elevations between 336 and 1,300 m (1,102 and 4,264 ft).

Family Loganiaceae: *Labordia triflora* (kamakahala)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Labordia triflora* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes in mixed mesic *Metrosideros polymorpha* forest and containing one or more of the following associated native species: *Pouteria sandwicensis*, *Sadleria cyatheoides*, *Nephrolepis exalta*, *Coprosma* sp., *Myrsine lessertiana*, or *Tetraplasandra hawaiensis*; and

(*2*) Elevations between 191 and 1,143 m (626 and 3,749 ft).

Family Malvaceae: *Hibiscus arnottianus* ssp. *immaculatus* (kokio ke okeo)

Molokai B1 and C, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Hibiscus arnottianus* ssp. *immaculatus* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep sea cliffs in mesic forests and containing one or more of the following associated native species: *Athyrium* spp., *Canthium odoratum*, *Cyanea grimesiana*, *Antidesma platyphyllum*, *Boehmeria grandis*, *Diospyros sandwicensis*, *Pipturis* spp., *Urera glabra*, or *Metrosideros polymorpha*; and

(*2*) Elevations between 8 and 1,014 m (26 and 3,326 ft).

Family Malvaceae: *Hibiscus brackenridgei* (Mau hao hele)

Molokai G, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Hibiscus brackenridgei* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slopes in lowland dry forest and shrubland; and

(*2*) Elevations between 11 and 467 m (36 and 1,531 ft).

Family Myrtaceae: *Eugenia koolauensis* (Nioi)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Eugenia koolauensis* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Rocky gulches or gentle slopes with deep soil and containing one or more of the following associated native species: *Nestegis sandwicensis*, *Nototrichium sandwicensis*, *Xylosma hawaiiense*, *Diospyros sandwicensis*, *Nesoluma polynesicum*, *Reynoldsia sandwicensis*, or *Erythrina sandwicensis*; and

(*2*) Elevations between 475 and 989 m (1,558 and 3,244 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Molokai B1 and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Platanthera holochila* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Slightly sloping ridgetops in *Metrosideros polymorpha/ Cheirodendron trigynum* wet forest or *Metrosideros polymorpha* mixed montane bog and containing one or more of the following associated native species: *Cibotium* sp., *Oreobolus furcatus*, or *Styphelia tameiameiae*; and

(*2*) Elevations between 551 and 1,382 m (1,807 and 4,532 ft).

Family Plantaginaceae: *Plantago princeps* (Laukahi kuahiwi)

Molokai B1 and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Plantago princeps* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Streambanks in *Metrosideros polymorpha* lowland mesic forest and containing one or more of the following associated native species: *Coprosma* sp., *Wikstroemia oahuensis*, *Pipturus albidus*, *Dodonaea viscosa*, *Dryopteris unidentata*, or *Cyanea* sp.; and

(*2*) Elevations between 592 and 1,213 m (1,942 and 3,979 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Molokai B1, B2, C, and D, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Ischaemum byrone* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Coastal dry shrubland or *Artemisia* cliff communities, near the ocean, among rocks or on basalt cliffs or talus slopes and containing one or more of the following associated native species: *Bidens molokaiensis*, *Hedyotis littoralis*, *Lysimachia mauritiana*, *Fimbrystylis cymosa*, or *Pandanus tectorius*; and

(*2*) Elevations between sea level and 238 m (0 and 781 ft).

Family Primulaceae: *Lysimachia maxima* (NCN)

Molokai B1, C, and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Lysimachia maxima* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) *Metrosideros polymorpha—ˆDicranopteris linearis* montane wet forest and containing one or more of the following associated native species: *Psychotria* sp., *Vaccinium* sp., *Hedyotis* sp., *Dubautia* sp., or *Ilex anomala*; and

(*2*) Elevations between 446 and 1,324 m (1,463 and 4,343 ft).

Family Rubiaceae: *Hedyotis mannii* (pilo)

Molokai B1 and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Hedyotis mannii* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dark, narrow, rocky gulch walls in mesic and wet forests and containing one or more of the following associated native species: *Pipturus* sp., *Cibotium* sp., *Cyanea* sp., *Scaevola* sp., or *Psychotria* sp.; and

(*2*) Elevations between 593 and 1,212 m (1,945 and 3,975 ft).

Family Rutaceae: *Melicope mucronulata* (alani)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Melicope mucronulata* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, west-or north-facing slopes in mesic *Diospyros sandwicensis/ Metrosideros polymorpha* forest, *Metrosideros polymorpha/Dodonea viscosa* shrubland, or *Metrosideros polymorpha/Styphelia tameiameiae* shrubland and containing one or more of the following associated native species: *Alyxia oliviformis, Nestegis sandwicensis*, *Coprosma foliosa*, *Psychotria mariniana*, *Pleomele auwahiensis*, *Osteomeles anthyllidifolia*, *Ochrosia compta*, *Myrsine lanaiensis*, *Alphitonia ponderosa*, *Pittosporum* sp., *Hedyotis terminalis*, *Melicope hawaiensis*, or *Phyllanthus* sp.; and

(*2*) Elevations between 199 and 1,143 m (653 and 3,749 ft).

Family Rutaceae: *Melicope reflexa* (alani)

Molokai C and F, identified in the legal descriptions in (a)(1)(iv)(F), constitute critical habitat for *Melicope reflexa* on Molokai. Within these units the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Wet *Metrosideros polymorpha*-dominated forest with native trees, such as *Cheirodendron* sp., and containing one or more of the following associated native species: *Cibotium* spp., *Dicranopteris linearis*, *Syzygium sandwicensis*, *Antidesma platyphyllum*, *Alyxia oliviformis*, *Cheirodendron trigynum*, or *Freycinetia arborea*; and

(*2*) Elevations between 319 and 1,508 m (1,046 and 4,946 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Zanthoxylum hawaiiense* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes in mesic *Metrosideros polymorpha* or *Diospyros sandwicensis* forest and containing one or more of the following associated native species: *Dodonaea viscosa*, *Styphelia tameiameiae*, *Pleomele auwahiensis*, *Nestegis sandwicensis*, *Alyxia oliviformis*, *Osteomeles anthyllidifolia*, *Psychotria* spp., or *Myrsine lanaiensis*; and

(*2*) Elevations between 754 and 1,084 m (2,473 and 3,555 ft).

Family Sapindaceae: *Alectryon macrococcus* var. *macrococcus* (mahoe)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes

critical habitat for *Alectryon macrococcus* var. *macrococcus* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry or talus slopes or gulches within dry or mesic lowland forest and containing one or more of the following associated native species: *Dodonaea viscosa*, *Nestegis sandwicensis*, *Nothocestrum* sp., *Pleomele* sp., *Psychotria* sp., *Streblus pendulina*, *Myrsine* sp., and *Lipochaeta* sp.; and

(*2*) Elevations between 534 and 1,120 m (1,751 and 3,674 ft).

Family Urticaceae: *Neraudia sericea* (NCN)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Neraudia sericea* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Gulch slopes and gulch bottoms in lowland dry to mesic *Metrosideros polymorpha—Dodonaea viscosa—Styphelia tameiameiae* shrubland or forest and containing one or more of the following associated native species: *Pleomele auwahiensis*, *Alyxia olivifomis*, *Coprosma* sp., or *Hedyotis* sp.; and

(*2*) Elevations between 691 and 1,043 m (2,266 and 3,421 ft).

Family Violaceae: *Isodendrion pyrifolium* (wahine noho kula)

Molokai G, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Isodendrion pyrifolium* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Dry shrublands and containing one or more of the following associated native species: *Dodonaea viscosa*, *Heteropogon contortus*, *Styphelia tameiameiae*, or *Bidens menziesii*; and

(*2*) Elevations between 69 and 422 m (226 and 1,384 ft).

(B) Ferns and Fern Allies.

Family Adiantaceae: *Pteris lidgatei* (NCN)

Molokai C, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Pteris lidgatei* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep stream banks in wet forest; and

(*2*) Elevations between 78 to 1,266 m (256 to 4,152 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Ctenitis squamigera* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mesic forest or gulch slopes and containing one or more of the following associated native species: *Metrosideros polymorpha, Diospyros sandwicensis, Nestegis sandwicensis, Xylosma hawaiiense, Pouteria sandwicensis, Nephrolepis exaltata, Carex meyenii, Dryopteris unidentata,* or *Pleomele auwahiensis;* and

(*2*) Elevations between 757 and 1,133 m (2,483 and 3,716 ft).

Family Aspleniaceae: *Diellia erecta* (Asplenium-leaved Diellia)

Molokai F, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Diellia erecta* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Mixed mesic forest or mesic *Diospyros sandwicensis* forest and containing one or more of the following associated native species: *Alyxia oliviformis, Metrosideros polymorpha, Bobea* sp., *Coprosma foliosa, Dodonea viscosa, Dryopteris unidentata, Myrsine* sp., *Ochrosia comta, Dubautia linearis* ssp. *opposita, Psychotria* sp., *Pleomele auwahiensis, Sophora chrysophylla, Styphelia tameiameiae, Syzygium sandwicensis,* or *Wikstroemia* sp.; and

(*2*) Elevations between 750 and 1,133 m (2,460 and 3,716 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Molokai C, identified in the legal description in (a)(1)(iv)(F), constitute critical habitat for *Diplazium molokaiense* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Steep, rocky, wooded gulch walls in wet forests; and

(*2*) Elevations between 97 and 1,349 m (318 and 4,424 ft).

Family Grammitidaceae: *Adenophorous periens* (pendant kihi fern)

Molokai B1, C, and F, identified in the legal description in (a)(1)(iv)(F), constitute critical habitat for *Adenophorous periens* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Epiphytic surfaces on *Metrosideros polymorpha* trunks found in well-developed, closed canopy *Metrosideros polymorpha-Myrsine lessertiana* forest providing deep shade and high humidity and containing one or more of the following associated native species: *Broussasia arguta, Cheirodendron trigynum, Coprosma ochracea, Cyanea* sp., *Cyrtandra* sp., *Dicranopteris linearis, Freycinetia arborea, Hedyotis terminalis, Labordia hirtella, Machaerina angustifolia, Psychotria hexandra, Styphelia tameiameiae, Ilex anomala, Vaccinium calycinum, Cibotium glaucum, Melicope* sp., *Viola robusta, Stenogyne kamehamehae, Anoectochilus sandvicensis,* or *Syzygium sandwicensis;* and

(*2*) Elevations between 811 and 1,508 m (2,660 and 4,946 ft).

Family Marsileaceae: *Marsilea villosa* (ihi ihi)

Molokai A1, identified in the legal description in (a)(1)(iv)(F), constitutes critical habitat for *Marsilea villosa* on Molokai. Within this unit the currently known primary constituent elements of critical habitat are the habitat components provided by:

(*1*) Shallow depressions in clay soil, or lithified sand dunes overlaid with alluvial clay, in open areas or areas with minimal shading and containing one or more of the following associated native species: *Heteropogon contortus, Sida fallax, Waltheria indica, Centaurium sebaeoides, Tetramolopium sylvae,* or *Schiedea globosa;* and

(*2*) Elevations between 125 and 172 m (410 and 564 ft).

Dated: March 20, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–7143 Filed 4–4–02; 8:45 am]

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Federal Register

Friday,
April 5, 2002

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7155–8]

RIN 2060—AF31

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On March 16, 1994, the EPA promulgated General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements that are established under section 112 of the Clean Air Act (CAA). In today's action, we are promulgating amendments to the General Provisions that revise and clarify several of the current provisions.

We are promulgating these amendments, in part, as a result of decisions reached in settlement negotiations conducted between petitioners who filed for review of the General Provisions and the EPA, as well as internal EPA discussions on issues regarding implementation of the General Provisions. The promulgated amendments also reflect our response to public comments.

In a separate action in today's **Federal Register**, we are also amending regulations on National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, in a direct final rule in order to resolve inconsistencies between that rule and these amendments to the General Provisions.

In addition, in today's action, we are promulgating amendments to the rule that establishes equivalent emission limitations by permit under section 112(j) of the CAA. The ''section 112(j)'' rule establishes requirements and procedures for owners or operators of major sources of hazardous air pollutants (HAP) and permitting authorities to comply with section 112(j). The section 112(j) rule was promulgated on May 20, 1994.

These amendments have been developed in response to settlement negotiations conducted between petitioners who filed for review of the section 112(j) rule and the EPA, as well as internal EPA discussions regarding implementation of the section 112(j) rule. The promulgated amendments to the section 112(j) rule also reflect our response to public comments.

EFFECTIVE DATE: April 5, 2002.

ADDRESSES: Docket No. A–2001–02, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments, contains supporting information used in developing these amendments. This docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and is available for public inspection and copying from 8:30 a.m. through 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local permitting agency representative or the appropriate EPA Regional Office representative. For further information concerning the development of these rule amendments, contact Mr. Rick Colyer, U.S. EPA, Office of Air Quality Planning and Standards, Minerals and Inorganic Chemicals Group, C504–05, Research Triangle Park, North Carolina, 27711, telephone (919) 541–5262, *e-mail colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of the record compiled by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the background information document and the proposal and promulgation preamble and standards for this rulemaking, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) All these materials are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

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

Regulated Entities. Categories and entities potentially regulated by this action include all section 112 source categories listed under section 112(c) of the CAA.

Industry Group: Source Category

Fuel Combustion

Combustion Turbines
Engine Test Facilities
Industrial Boilers
Institutional/Commercial Boilers
Process Heaters
Reciprocating Internal Combustion Engines
Rocket Testing Facilities

Non-Ferrous Metals Processing

Primary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Primary Magnesium Refining
Secondary Aluminum Production
Secondary Lead Smelting

Ferrous Metals Processing

Coke By-Product Plants
Coke Ovens: Charging, Top Side, and Door Leaks
Coke Ovens: Pushing, Quenching, Battery Stacks
Ferroalloys Production: Silicomanganese and Ferromanganese
Integrated Iron and Steel Manufacturing
Iron Foundries Electric Arc Furnace (EAF) Operation
Steel Foundries
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

Mineral Products Processing

Alumina Processing
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Asphalt/Coal Tar Application—Metal Pipes
Clay Products Manufacturing
Lime Manufacturing
Mineral Wool Production
Portland Cement Manufacturing
Refractories Manufacturing
Taconite Iron Ore Processing
Wool Fiberglass Manufacturing

Petroleum and Natural Gas Production and Refining

Oil and Natural Gas Production
Natural Gas Transmission and Storage
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units
Petroleum Refineries—Other Sources Not Distinctly Listed

Liquids Distribution

Gasoline Distribution (Stage 1)
Marine Vessel Loading Operations
Organic Liquids Distribution (Non-Gasoline)

Surface Coating Processes

Aerospace Industries
Auto and Light Duty Truck
Large Appliance
Magnetic Tapes
Manufacture of Paints, Coatings, and Adhesives
Metal Can
Metal Coil
Metal Furniture
Miscellaneous Metal Parts and Products
Paper and Other Webs
Plastic Parts and Products
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing
Shipbuilding and Ship Repair
Wood Building Products
Wood Furniture

Waste Treatment and Disposal

Hazardous Waste Incineration
Municipal Landfills
Off-Site Waste and Recovery Operations
Publicly Owned Treatment Works (POTW) Emissions
Sewage Sludge Incineration
Site Remediation
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)

Agricultural Chemicals Production

Pesticide Active Ingredient Production

Fibers Production Processes

Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

Food and Agriculture Processes

Manufacturing of Nutritional Yeast
Cellulose Food Casing Manufacturing
Vegetable Oil Production

Pharmaceutical Production Processes

Pharmaceuticals Production

Polymers and Resins Production

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

Production of Inorganic Chemicals

Ammonium Sulfate Production—Caprolactam By-Product Plants
Carbon Black Production
Chlorine Production
Cyanide Chemicals Manufacturing
Fumed Silica Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Uranium Hexafluoride Production

Production of Organic Chemicals

Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical

Miscellaneous Processes

Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carbonyl Sulfide Production
Cellulosic Sponge Manufacturing
Chelating Agents Production
Chlorinated Paraffins
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Flexible Polyurethane Foam Fabrication Operations
Friction Products Manufacturing
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Process Cooling Towers
Leather Tanning and Finishing Operations
OBPA/1,3-Diisocyanate Production
Paint Stripping Operations
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood and Composite Wood Products
Polyether Polyols Production
Pulp and Paper Production
Rubber Chemicals Manufacturing
Rubber Tire Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production

Categories of Area Sources

Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Secondary Lead Smelting

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine the section 112(d) regulation for your source category. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Only source categories for which standards have not been promulgated by May 15, 2002, are affected by the section 112(j) regulation.

Judicial Review. The amendments to the General Provisions and the section 112(j) provisions were proposed on March 23, 2001 (66 FR 16318). Today's action announces EPA's final decision on the amendments. Under section 307(b)(1) of the CAA, judicial review of these amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 4, 2002. Under section 307(d)(7)(B) of the CAA, only those objections to this rule that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged separately in civil or criminal proceedings brought by the EPA to enforce these requirements.

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

I. Background
  A. General Provisions
  B. Section 112(j) Provisions
II. What significant comments did we consider and what are the major changes to the proposed amendments to the General Provisions?
  A. Comments and Changes in Response to Our Requests for Comments
  B. Other Comments and Changes
III. What significant comments did we consider and what are the major changes to the proposed amendments to the section 112(j) provisions?
  A. Impact of Missing the Section 112(j) Deadline
  B. Comments and Changes in Response to our Requests for Comments
  C. Other Comments and Changes
IV. What is the section 112(j) process?
  A. If I am an owner or operator of a source, what must I do?

B. If I am the permitting authority for a source subject to section 112(j), what must I do?
C. What happens when a rule comes out after the hammer date for a given source category?
V. What are the environmental, energy, cost, and economic impacts of this rule?
VI. What are the administrative requirements for this rule?
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Executive Order 13132, Federalism
D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. National Technology Transfer and Advancement Act of 1995
H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
I. Congressional Review Act
J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Background

A. General Provisions

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit greater than 10 tons per year of any one HAP or 25 tons per year of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit greater than 10 tons per year of any one HAP and 25 tons per year of any combination of HAP. The General Provisions to 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112(d) of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing national standards for controlling toxic air pollutants. The General Provisions become applicable to a section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The General Provisions to part 63 were developed in a collaborative process that included input from industry and other interested parties. On August 11, 1993, we proposed the General Provisions in the **Federal Register** (58 FR 42760). We received numerous comments on that proposal from industry groups, environmental groups, and State and local agencies. Those comments addressed a wide range of issues and requirements in the proposed rulemaking. We published our final decisions regarding the General Provisions in the **Federal Register** on March 16, 1994 (59 FR 12408). In the preamble to the promulgated rule, we discussed major comments on the proposal and our responses to those comments. We addressed other comments in the Background Information Document (BID) for the promulgated rulemaking (EPA–450/3–91–019b). In responding to comments, we made some changes and some clarifications to the final package and retained other provisions where the Agency believed it was appropriate to do so.

On May 16, 1994, six petitioners filed for review of the General Provisions. They cited a variety of issues raised in comments on the proposed rule whose resolution they believed to be inappropriate. In addition, we identified other changes that would clarify the EPA's original intent. On March 23, 2001 (66 FR 16318), we proposed changes to the General Provisions based on the outcome of settlement negotiations between the EPA and the petitioners, as well as on other internal EPA deliberations. We received 27 public comment letters in response to our proposal. In section II of this preamble, we discuss our responses to these public comments and the specific changes that were made to the proposed amendments to reflect our responses. The amendments to the General Provisions being promulgated today reflect decisions which we made in connection with settlement negotiations between the EPA and the petitioners, and our responses to the public comments on the proposed amendments.

In a separate action, we are promulgating changes to the Vegetable Oil NESHAP in response to public comments on the proposed amendments to the General Provisions. These changes are discussed briefly in section II of this preamble and more extensively in the preamble to the direct final action on the Vegetable Oil NESHAP.

The amendments finalized with today's action clarify and alter certain sections of the General Provisions.

B. Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA included a new section 112(j) which is entitled ''Equivalent Emission Limitation by Permit.'' Section 112(j)(2) provides that the provisions of section 112(j) apply if the EPA misses a deadline for promulgation of a standard under section 112(d) established in the source category schedule for standards. After the effective date of a title V permit program in a State, section 112(j)(3) requires the owner or operator of a major source in a source category for which the EPA failed to promulgate a section 112(d) standard to submit a permit application 18 months after the missed promulgation deadline. Section 112(j)(5) also specifies that if the applicable criteria for voluntary early reductions established under section 112(i)(5) are met, then this alternative emission limit satisfies the requirements of section 112(j), provided that the emissions reductions are achieved by the missed promulgation date.

The rule proposing to implement section 112(j) of the CAA was published on July 13, 1993 (58 FR 37778). Public comments received on the proposed rule were considered, and changes we deemed appropriate were made in developing a final rule.

On May 20, 1994 (59 FR 26429), we issued a final rule for implementing section 112(j). That rule requires major source owners or operators to submit a permit application by the date 18 months after a missed date on the regulatory schedule. As required under section 112(j) of the CAA, the section 112(j) rule establishes requirements for the content of permit applications, contains provisions governing the establishment of the maximum achievable control technology (MACT)-equivalent emission limitations by the permitting authority, includes the criteria for the reviewing authority to determine completeness, and allows the applicant up to 6 months to revise and resubmit the application. As required in section 112(j)(5) of the CAA, the rule also establishes compliance dates:

> No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

Several petitioners filed for review of several provisions of the section 112(j) rule that they believed needed to be clarified or streamlined. On March 23, 2001 (66 FR 16318), we proposed changes to the section 112(j) rule based on the outcome of settlement negotiations between the EPA and the petitioners, as well as on other internal EPA deliberations. We received 27 public comment letters in response to our proposal. In section III of this preamble, we discuss our responses to these public comments and the specific changes that were made to the proposed section 112(j) amendments to reflect those public comments. The amendments to the section 112(j) rule being promulgated today reflect decisions which we made in connection with settlement negotiations between the EPA and the litigants, as well as our response to the public comments on the proposed amendments.

II. What Significant Comments Did We Consider and What Are the Major Changes to the Proposed Amendments to the General Provisions?

While we received many comments on the proposed amendments to the General Provisions, most commenters expressed general support for the proposed changes. For this reason, the majority of amendments were promulgated as proposed. A comprehensive summary of public comments and responses can be found in ''National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)—Background Information for Standards,'' (EPA 453/R–02–002). This preamble discusses the significant comments received and major changes made. Additional minor changes and clarifications are discussed in the Background Information Document (BID) cited above. In the proposed amendments to the General Provisions, we specifically discussed and solicited comments on certain issues. In addition, we received comments on other proposed amendments to the General Provisions.

A. Comments and Changes in Response to Our Requests for Comments

In the proposal preamble, we discussed the presumptive applicability of the General Provisions, which has been an issue of concern for industry petitioners. We believe that the presumptive applicability of the General Provisions serves an important and valid purpose by eliminating the repetition of common provisions in individual NESHAP. While we reiterated that the General Provisions do apply unless specifically overridden, we acknowledged the potential for confusion regarding the actual requirements for sources when General Provisions requirements are not tailored to specific source categories. For several years, we have included a table for most part 63 subparts that indicates the applicability of each provision of the General Provisions to a particular subpart. To codify this practice, we proposed to amend the General Provisions to require individual subparts to explicitly state which General Provisions requirements are included in the relevant standard and which are not.

In addition, we requested comment on ''any conflicts * * * that result solely from applying these proposed amendments to the General Provisions to promulgated part 63 subparts.'' One commenter identified such a conflict between the startup, shutdown, malfunction (SSM) provisions of the Vegetable Oil Production NESHAP and those provisions in the General Provisions. Specifically, the commenter noted that proposed 40 CFR 63.6(e)(3)(iv), which requires reporting of actions inconsistent with the Startup, Shutdown, and Malfunction Plan (SSMP) if the emissions exceed the relevant standard, does not comport with subpart GGGG. The Vegetable Oil NESHAP require reporting of such actions regardless of whether the standard was exceeded. The commenter also specifically noted that proposed 40 CFR 63.6(e)(3)(viii), the requirement to report modifications to the SSMP in the semiannual report, should not apply to sources subject to subpart GGGG, as subpart GGGG does not require a semiannual report.

We agree that the proposed amendments would have had a substantive impact on the Vegetable Oil NESHAP. However, the commenter has misinterpreted the intent of the changes, which was to reduce burden.

We agree with the commenter's assessment that certain SSM provisions in the proposed amendments are inconsistent with the promulgated Vegetable Oil NESHAP. We had previously reviewed the existing rules and did not identify any substantive problems. However, the Vegetable Oil NESHAP were promulgated after our review and subsequent proposal of the amendments. We have discussed the implications with the commenter and as a result, we are amending, in a separate **Federal Register** notice, several provisions in the Vegetable Oil NESHAP related to SSM requirements to eliminate unintended inconsistencies. The Vegetable Oil NESHAP include specifically tailored SSM provisions and, thus, sources covered by the Vegetable Oil NESHAP should look to that rule for their applicable SSM provisions.

Specifically, we are correcting the explanation column of Table 1 of 40 CFR 63.2870 as it applies to 40 CFR 63.6(e) to state, ''implement your plan as specified in § 63.2852.'' Table 1 also now indicates specifically that 40 CFR 63.6(e)(3)(iii), (iv), and (viii) do not apply to Vegetable Oil NESHAP affected sources; this clarifies that not all of 40 CFR 63.6(e) applies, as the rule was originally promulgated.

We are also amending the first sentence of 40 CFR 63.2861(d) to clarify that owners or operators must submit an immediate SSM report if an SSM is handled differently from the procedures in the SSM plan and the emission standards are exceeded. We are also amending the third sentence of 40 CFR 63.2852 to clarify that the SSMP does not have to be incorporated into the title V permit, consistent with the General Provisions amendments.

These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil NESHAP affected sources.

B. Other Comments and Changes

1. Substantially Equivalent State Preconstruction Review

We proposed substantive amendments to the preconstruction review program, which were designed to clarify and streamline existing requirements. Included in these amendments was a provision that allows States or local agencies to use preconstruction review procedures used for other purposes for purposes of 40 CFR 63.5, provided their procedures are ''substantially equivalent.''

While one commenter generally supported this concept, a few commenters disagreed with the specific provisions in proposed 40 CFR 63.5(f)(1)(i) and (ii), which they interpreted as requiring each owner or operator to demonstrate that the State or local agency review is substantially equivalent to the relevant requirements in 40 CFR 63.5. The commenters instead believed that EPA should determine which State or local air permit programs have substantially equivalent preconstruction review requirements. One commenter noted that if EPA has

delegated authority to a State or local agency to implement subpart A of part 63 and part 70, then EPA has already agreed that the preconstruction review and approval process is substantially equivalent to the Federal requirements.

We agree that a State or local agency that has taken delegation of part 63 standards has already demonstrated that their preconstruction review process is substantially equivalent to the Federal requirements. When a State is the delegated authority, the State implements 40 CFR 63.5; we do not require two preconstruction review processes.

The intent of the provisions of 40 CFR 63.5(f) is not to place the burden on the source to demonstrate equivalency of a State preconstruction review program. The intent of the provisions is to allow owners or operators of affected sources to notify the EPA's Regional Office of a State's finding that their preconstruction review program requirements are substantially equivalent to the General Provisions' preconstruction review requirements. We agree that the proposed language in 40 CFR 63.5(f)(1) could lead to potential confusion. Therefore, in order to eliminate any potential for confusion, we have amended 40 CFR 63.5(f)(1) to no longer require that an owner or operator demonstrate to the Administrator's satisfaction that the conditions of 40 CFR 63.5(f)(1)(i) and (ii) are met. Instead, 40 CFR 63.5(f)(1) specifies that the Administrator will approve an application for construction or reconstruction if an owner or operator meets the conditions of 40 CFR 63.5(f)(1)(i) and (ii). Additionally, 40 CFR 63.5(f)(1)(ii) has been amended to require that an owner or operator provide a statement from ''the State or other evidence (such as State regulations) that it considered the factors specified in 40 CFR 63.5(e)(1)'' rather than requiring ''the State (in it's finding) consider factors substantially equivalent to those specified in § 63.5(e)(1).''

Paragraph (f)(1) of 40 CFR 63.5 states that preconstruction review procedures that a State utilizes for other purposes may be utilized if the procedures are substantially equivalent to those specified in the General Provisions. We believe this adequately refers to 40 CFR 63.5(e)(1) where the criteria for approval of construction or reconstruction are described.

Finally, we do not agree with the suggestion that we should determine which State or local programs have substantially equivalent preconstruction review requirements. Individual States or local agencies are in a better position to make such a determination.

2. Revisions to the Startup, Shutdown, and Malfunction Plan

We received several comments regarding SSM and SSMP reporting requirements. A few commenters opposed the requirement in 40 CFR 63.6(e)(3)(viii) that revisions to the SSMP be reported to the permitting authority in the semiannual report. Another commenter considered the new requirements in 40 CFR 63.6(e)(3)(viii) to be burdensome and duplicative. The commenter believed that the requirements to submit reports of actions taken that are consistent or inconsistent with the SSMP, to revise the SSMP, and to keep copies of superseded SSMP on site were sufficient to ensure that the permitting authority is kept informed of changes to the SSMP.

One commenter stated that if the owner or operator of a source can revise the plan without prior approval, it makes no sense to require an owner or operator to send a file copy to EPA. The commenter expressed that the requirement for plan revisions to be maintained on site in 40 CFR 63.6(e)(3)(v) should suffice. The commenter suggested that if the EPA wants a revised SSMP to be submitted, they should provide more details on how it should be formatted, including how the specific procedure or methodology relates to a particular SSM event. The commenter also recommended that the date on the new SSMP be its effective date. If the EPA only wants a notice that the SSMP has been revised in the semiannual report, the commenter suggested that 40 CFR 63.6(e)(3)(viii) be revised to state that. The commenter also requested clarification on what the ''scope of activities'' in 40 CFR 63.6(e)(3)(viii) means.

We disagree with the commenters that the requirements in 40 CFR 63.6(e)(3)(viii) are burdensome. This section requires that EPA be notified in the semiannual report that revisions were made to the SSMP, but it does not require that a file copy of the entire revised plan be submitted.

We also disagree with the suggestion that a clarification in the rule of the meaning of ''scope of activities'' is necessary. It is the owner or operator's responsibility to define the specific scope of activities that the SSMP covers, as this is source-dependent. Moreover, these provisions are designed to give the source owner or operator flexibility. Generally, the scope of activities would include all operations and equipment specified by the owner or operator that should be included in the SSMP. To the extent that these activities are changed in the plan, we are requiring that the permitting authority be notified.

One commenter recommended that we explain how malfunctions that meet the definition of SSM under 40 CFR 63.2, but are not covered in the existing SSMP, should be reported. The commenter believed that we should add language to 40 CFR 63.6(e)(3)(viii) to cover this situation. Another commenter requested that EPA require that facilities provide the number and a description of malfunctions that occurred in the semiannual report. The commenter stated that this information would be necessary to evaluate a facility's compliance with the SSMP, as regular site visits are infeasible due to limited resources.

To comply with the rule, sources must either meet the standard or comply with the SSMP. If a malfunction not covered by the SSMP occurs and the source meets the standard, there is no need to report. If a malfunction not covered by the SSMP occurs and the source does not meet the standard, the deviation must be reported. In any case, when a malfunction occurs that was not included in the SSMP, the plan should be revised to include the previously unincluded malfunction.

However, we agree with the commenter who suggested that the number and description of malfunctions is necessary to evaluate compliance with the SSMP. Therefore, we have modified the provisions at 40 CFR 63.10(d)(5)(i) to state ''Periodic startup, shutdown, and malfunction reports. * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they shall include the number, duration, and a brief description of each startup, shutdown, and malfunction. * * *'' This change provides the implementing agency with adequate information without placing an undue additional burden on the source. The types of malfunctions will already have been identified in the SSMP so a brief description could consist of simply identifying which types of malfunctions occurred during the reporting period, as well as the number and the duration of each.

Also, two commenters requested that we remove the last sentence of the proposed 40 CFR 63.6(e)(3)(ix), which states that none of the SSMP procedures fall within the permit shield. The commenter believed the sentence could be misconstrued to mean that the SSMP is part of the title V permit and yet ineligible for the permit shield.

Concerning the applicability of the permit shield, these commenters have misinterpreted the provisions of the rule. The proposed amendments to the General Provisions concerning SSM plans were intended in part to address concerns expressed by the petitioners, who believe that the language in the current General Provisions requiring that the SSM plan be ''incorporated by reference into the source's Title V permit'' could be construed to require that permit revision procedures be followed whenever an SSM plan is revised. We do not construe the existing General Provisions in this manner, but we understand the concern expressed by the petitioners. The amendments indicate that the permit must require that the owner or operator adopt an SSM plan and then operate and maintain the source in accordance with the plan, but they cannot reasonably be construed as requiring that each element of the SSM plan be made an element of the permit. The provisions within the SSM plan will not be terms and conditions of the permit except in the limited instance where a permitting authority elects to incorporate them. Since the SSM plan is not itself part of the operating permit, and it can be revised without revision of the permit, the SSM plan is not eligible for the permit shield.

A few commenters strongly opposed the statements in the proposal preamble that the SSMP must be submitted to the permitting authority and made publicly available if someone requests it. One of the commenters believed it would be burdensome to prepare a SSMP without Confidential Business Information (CBI) in it. The commenter also expressed that such a plan would be uninformative without CBI. Two other commenters stated that they preferred that the rule specifically state that the permitting agency has the authority to request a copy of the facility's SSMP and to review and comment on it. One commenter also preferred that State and local agencies have discretion to approve or disapprove the SSMP.

We believe that the proposal preamble discussion accurately reflects 40 CFR 70.4(b)(3)(viii) of the title V permit program, which requires that the permitting authority has legal authority to: ''Make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act. The contents of a part 70 permit shall not be entitled to protection under section 114(c) of the Act.'' For this reason, we do not agree with the commenters who oppose the requirements for the SSMP to be made publicly available if requested. Owners or operators may still identify the portions of the SSMP that are considered CBI; material claimed as CBI would not be available for public disclosure except as provided under the process established by 40 CFR Part 2. We further believe, pursuant to 40 CFR 70.4(b)(3)(viii), that the authority for permitting agencies to request a facility's SSMP already exists. Therefore, we do not believe it is appropriate at the present time to revise the rule as the commenters requested.

3. Compliance Extension Request 120 Days Before Compliance Date

The proposed amendments to the compliance extension provisions were met with favor by commenters. Several commenters supported the change to allow compliance extension requests to be submitted as late as 120 days before the compliance date, rather than 1 year in advance.

One commenter expressed that this change would reduce the number of compliance extension requests. Another commenter outlined circumstances that could arise that would necessitate a late request for a compliance extension (e.g., vendor strikes, acts of God, or damaged equipment).

One commenter specifically supported the proposed provision in 40 CFR 63.6(i)(4)(i)(B) postponing the applicability of MACT standards until the permitting authority either approves or denies a compliance extension request. This commenter noted that the proposed compliance extension revisions were particularly important for sources subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Incinerators. Amendments to the performance test requirements of Hazardous Waste Incinerators rule have not been completed. The commenter noted that the amendments would have had to be promulgated by December 2001 for facilities to complete their comprehensive performance test plans by the March 2002 deadline. The ability to apply for a compliance extension would be critical if the amendments were not final by December 2001.

4. Readily Accessible Readout

The proposed amendments clarified the owner or operator's obligations with respect to the accessibility of readouts from monitoring systems required for compliance. Two commenters supported the requirement for such readouts to be readily accessible. However, several commenters proposed deleting the requirement that the readout from the monitoring equipment be ''readily accessible onsite for operational control or inspection by the operator of the equipment.'' One commenter maintained that the provision was unnecessary because 40 CFR 63.10(b) already requires files of all information to be readily available. A few of the commenters maintained that this requirement was technically infeasible, as the readout depends on the configuration of the source, type of control equipment, frequency, and whether monitoring data are read in central control booths or computers. One commenter stated that the optimal location of the readout should be left to the source. Another commenter stated that if EPA does not remove the phrase, it should be reworded to change the regulatory text from ''readout'' to ''indication of operation,'' as audible or visual alarms may also alert the operator that a problem has occurred with the continuous monitoring system (CMS). The commenter further suggested removing the terms ''in plain view'' and ''close proximity,'' as CMS readouts may be readily accessible but may not meet these requirements. For example, they may be in the control room but not in the line-of-sight of an operator, in the process unit operating block but not where the ''operators are normally operated,'' or operated by a different process unit and monitoring unit.

We recognize the commenters' concerns with the provisions governing the availability of information from monitoring equipment. To address this issue, we have revised 40 CFR 63.8(c)(2)(ii) to refer to ''readout or other indication of operation.'' This addresses the point that audible or visual alarms may be in use rather than a ''readout.'' The terms ''plain view'' and ''close proximity'' were used in the proposal preamble, although not in the regulatory text, to explain what was meant by readily accessible and to assure that inspectors would have easy access to monitoring information. However, we agree with the commenter that the required information may be readily accessible although not in plain view. ''Readily accessible'' is the source owner or operator's responsibility to ensure that monitoring information is easily available. For this reason, we made no further rule changes to explain ''readily accessible.''

5. Zero and High Level Calibration Checks

A few commenters suggested that EPA revise 40 CFR 63.8(c)(6) to clarify that

the zero and high-level calibration checks only apply to continuous emission monitoring Systems (CEMS) and continuous opacity monitoring systems (COMS), not to all CMS. Some continuous parameter monitoring systems (CPMS), such as thermocouples and weight devices, cannot be automatically calibrated.

One commenter requested that EPA delete 40 CFR 63.8(c)(6), as promulgated MACT standards already contain calibration requirements and daily system checks for CPMS. The commenter cited §§ 63.118(a)(2) and 63.152(f) of 40 CFR part 63.

To address the commenters' concern about CPMS that cannot be automatically calibrated, we have revised 40 CFR 63.8(c)(6) as follows: ''The owner or operator of a CMS that is not a CPMS, which is installed in accordance with the provisions of this part. . . . '' The calibration specifications for a CPMS are described in the last sentence of this paragraph.

We do not agree it is appropriate to delete 40 CFR 63.8(c)(6) as requested by one of the commenters. Individual standards may change this as appropriate or necessary, but these monitoring provisions will remain in the General Provisions.

6. Definition of Affected Source and New Affected Source

We proposed a new process for defining ''affected source'' and ''new affected source'' in future MACT standards. Over the period that EPA has been promulgating MACT standards, we have typically used the term ''affected source'' as an indication of the collection of processes, activities, or equipment to which each MACT standard will apply. We have adopted a broader or narrower definition of affected source depending on the nature of particular MACT requirements and the strategies available for meeting them. In some instances, we have adopted a definition as narrow as a single machine and in others, we have defined all processes, activities, and equipment at a source within the specified category or subcategory as the affected source. A broader definition of affected source permits emission requirements to apply to a larger group of processes, activities, and equipment, and may thereby facilitate more innovative and economically efficient control strategies.

In those instances where we have previously adopted a broader definition of affected source, we have sometimes established a narrower definition of the processes, activities, or equipment to which new source MACT will apply. In some instances, we believe it is both practicable and reasonable to apply new source MACT controls to a narrower set of constructed or reconstructed equipment or activities and retaining a broad definition would operate to subvert the statutory intent to require more stringent controls for new sources.

When we have adopted a broader definition of affected source, we have still determined the MACT floor for the entire affected source by evaluating emissions and the feasibility of controls separately for particular types of ''emission units'' within the affected source. This approach can afford owners and operators the option of demonstrating separate compliance by individual emission units within the affected source or by adopting more flexible control strategies and demonstrating compliance for the affected source as a whole. Moreover, a standard for a larger affected source may still be a composite of sublimits or other elements expressly directed at particular types of equipment or activities.

In light of this flexibility, we agreed with the industry petitioners that it would be feasible to adopt a broader definition of affected source on a more consistent basis. Thus, we proposed to change the General Provisions to indicate that future MACT standards will generally adopt a definition of affected source which consists of all existing HAP-emitting equipment and activities which are at a single contiguous site and are within a specific category or subcategory. We do not believe we are required to adopt this policy, but we agree with the industry petitioners that it will foster greater predictability and consistency in regulatory outcomes.

We also proposed to permit a narrower definition of affected source in particular future MACT standards when a broad definition will result in significant administrative, practical, or implementation problems, and a narrower definition would resolve these problems. For example, in some instances, the facilities within a category or subcategory which must develop appropriate compliance strategies may consider a broader definition of affected source to be confusing. In other instances, the facilities may operate dissimilar equipment or processes which do not emit the same HAP or type of HAP, and a broader definition will have little or no utility in promoting more flexible or efficient control strategies. These examples are only illustrative and are not intended to limit our discretion to adopt a narrower affected source definition in particular future MACT standards. However, when we adopt a narrower definition of ''affected source,'' we will identify the specific problems created by the broader definition and specify why a narrower definition will resolve them.

We also proposed to develop and adopt a separate definition of ''new affected source'' for each future MACT standard after evaluating facilities in the category or subcategory according to eight factors. These eight factors are: (1) Emission reduction impacts of controlling individual sources versus groups of sources, (2) cost effectiveness of controlling individual equipment, (3) flexibility to accommodate common control strategies, (4) cost/benefits of emissions averaging, (5) incentives for pollution prevention, (6) feasibility and cost of controlling processes that share common equipment, (7) feasibility and cost of monitoring, and (8) other relevant factors. Under this process, the definition of ''new affected source'' for a particular MACT standard may be the same as ''affected source'' or it may differ. The factors which we deem most important in this assessment will differ from standard to standard. When we deem it appropriate based on our evaluation of the eight factors to establish a definition of ''new affected source'' less inclusive than ''affected source,'' we will do so.

We did not receive any comments opposing the new definitions and procedures for specifying the affected source and new affected source for future MACT standards. Accordingly, we have decided to adopt these definitions and procedures as proposed.

Each future MACT standard subject to these new procedures will explicitly define ''affected source'' and ''new affected source.'' Any decision to adopt a narrower definition of affected source or to adopt a definition of new affected source differing from the definition of affected source will be explained in the individual standard.

Our proposal made it clear that we only intend to apply this new approach prospectively. We will not reconsider or revise previously promulgated MACT standards according to the new definitions and procedures. However, our proposal did not specify an effective date or a specific transitional process for implementation of these new definitions and procedures. We anticipated that there could be inconsistencies between some of the new General Provisions and previously promulgated MACT standards, and that a variety of provisions might need to be solely prospective in application or require some sort of transitional process. We specifically solicited comment on this

issue. However, the only other problem in applying the new rule to existing MACT standards which was identified in comments concerns the provisions for SSM plans in this rule and in our previously promulgated vegetable oil MACT rule, which we discuss elsewhere in this preamble.

In selecting an appropriate effective date for the new definitions and procedures for specifying the affected source and new affected source, we note that our past practice has been considerably less uniform than the one we are adopting today. While we believe it is appropriate to bring greater clarity and consistency to this process in future MACT standards, we also note that EPA typically begins working with affected facilities to devise an appropriate structure for MACT standards well before they are proposed, and that this process is well advanced for many MACT standards currently under development. We do not believe it would be practicable to require all such standards to immediately conform to the new definitions and procedures we are adopting today. Therefore, we have decided that these new definitions and procedures will be mandatory only with respect to those MACT standards which are proposed after June 30, 2002. However, we note that many standards presently in development already utilize a similar approach, and that it may also be feasible to adopt a similar approach for additional standards during the pendency of future rulemakings on individual MACT standards.

III. What Significant Comments Did We Consider and What Are the Major Changes to the Proposed Amendments to the Section 112(j) Provisions?

A comprehensive summary of public comments on the proposed section 112(j) provisions can be found in ''National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)—Background Information for Standards,'' (EPA 453/R–02–002). This section discusses the significant comments received on and major changes made to the section 112(j) provisions.

A. Impact of Missing the Section 112(j) Deadline

Several commenters expressed serious concern over the potential impact of EPA's failure to promulgate the 10-year MACT standards by the section 112(j) hammer date. Some commenters noted that there would be significant effort expended to develop the Parts 1 and 2 permit applications and case-by-case permits and observed that this effort would be for naught if the standards were issued prior to the permit. Others offered suggestions on how to extend or delay applications such that the burden is minimized. All commenters urged EPA to issue the MACT standards prior to the hammer date to eliminate the impact of section 112(j).

We appreciate the commenters' concerns, and we are making every effort to promulgate the remaining MACT standards as soon as possible. However, we note that the previous permit application extensions for the 4- and 7-year MACT rules were established because the standards were to be issued very shortly after the deadline. This is not the situation now, with a significant number of the 10-year MACT standards not scheduled for promulgation until well after the deadline. The intent of the 2-part section 112(j) application process which we proposed was to alleviate unnecessary burdens by deferring the collection of the more detailed information necessary for a complete case-by-case MACT application until after the ''hammer'' date had passed. However, it is now apparent that the process for submission of section 112(j) applications as we proposed it will not significantly alleviate the burden on sources and permitting authorities.

Section 112(j) of the CAA was designed to be a ''backstop'' to our failure to issue MACT standards. Clearly, we will not complete promulgation of all MACT standards in the 10-year bin by the section 112(j) deadline of May 15, 2002, and in fact, we will miss the schedule for numerous source categories. The task to develop MACT standards on schedule to cover all the listed source categories has been enormous, and our past schedules projecting issuance by the hammer date have proved to be unduly optimistic. However, we are still committed to completing all MACT standards in as timely a manner as practicable. Although numerous standards will be late, we currently anticipate that many of the remaining standards in the 10-year bin will be proposed before the hammer date, and that all standards in that bin will be promulgated before any case-by-case MACT determinations would be required under the 24 month timetable for permit issuance which we proposed (consisting of 6 months for submission of the Part 2 application and 18 additional months for action by the permitting authority).

We agree with the commenters that a process in which the source must gather detailed information and then prepare and submit a Part 2 title V permit application and the permitting authorities must then review each of the submitted applications and prepare for issuance of a case-by-case MACT determination represents an unnecessary burden if all MACT standards will be promulgated before any actual permits will be issued. We conclude that such resources would be better spent preparing for and implementing the MACT standards when they are promulgated. Thus, we have decided to revise the proposed rule to extend the amount of time between the Part 1 and Part 2 section 112(j) application to 24 months which coincides with the time period in which we expect to promulgate MACT standards for the remaining categories.

As the preamble to our proposal makes clear, we based our proposal to provide a 6 month period between the Part 1 and Part 2 applications in part on the concept that every applicant would automatically be given the maximum extension to supplement an incomplete application which is explicitly provided for by CAA section 112(j)(4). However, as one commenter noted, there is another provision in the statute which may be construed as providing authority to establish an incremental process for the submission of section 112(j) applications. The hammer provision in section 112(j)(2) itself establishes the requirement to submit permit applications ''beginning 18 months after'' the statutory date for promulgation of a standard. Reading this provision in context, we believe that the statute can be reasonably construed as authorizing us to provide a period of time after the hammer date in which the information necessary for a fully informative section 112(j) application can be compiled. This alternate construction also makes more practical sense because it retains the statutory process in which the permit authority can determine whether or not an application is complete and provides the applicant the extension of up to 6 months contemplated by section 112(j)(4). This assures that the time required to supplement an incomplete application will not be deducted from the time in which the permitting authority must complete its work.

While we recognize that compilation of the information needed for a Part 2 application is not likely to take 24 months, we are nevertheless reluctant to mandate that significant resources be devoted to an exercise which will ultimately be futile and unproductive. The burden of compiling a Part 2 application for simple sources containing only a small number of

emission points may not be particularly onerous, but the burden on more complex sources containing numerous sources and emission points could be significant. The sheer number of affected sources that would have to submit a Part 2 application by November 15, 2002, under the rule as proposed is very large, estimated at over 80,000. Such an exercise would also needlessly divert resources needed for other critical tasks at already overworked permitting authorities. We do not believe such an outcome was envisioned or intended by the drafters of section 112(j), particularly in the circumstance where the Federal MACT standards will actually be issued prior to the deadline for issuance of the case-by-case MACT determinations by the permitting authorities.

Accordingly, we have decided to revise our proposal to provide for a 24-month period between submission of the Part 1 application and submission of the Part 2 application. The 18-month period for issuance of the permit after receipt of a complete application which is provided by the current section 112(j) rule and by section 503(c) of title V will be retained. We are also restoring the statutory process in which the permitting authority may review the application for completeness and grant an extension of up to 6 months to remedy any deficiencies.

We received no adverse comment on requiring that the first portion (Part 1) of the section 112(j) application be due on the hammer date. We think that this is the minimum required by the statute. The Part 1 application is very short and simple, and we believe the burden is minimal. The Part 1 application will also help permitting authorities to identify sources potentially subject to the upcoming MACT standards. Sources must note that our decision to extend the time between the Part 1 and Part 2 applications is no excuse for not submitting a Part 1 application if the source can reasonably determine it is in one of the source categories or subcategories subject to the section 112(j) requirements. Failure to meet the section 112(j) requirements, including failure to make a timely Part 1 application, can lead to enforcement action. If a source is unsure about its applicability, it should submit a Part 1 application requesting an applicability determination to the permitting authority, which will then make a determination of MACT applicability.

B. Comments and Changes in Response to Our Requests for Comments

1. Notification by Permitting Authority Within 120 Days of Section 112(j) Hammer Date

In the preamble to the proposed section 112(j) amendments, we discussed changes made to clarify obligations for sources and permitting agencies when the section 112(j) deadline passes. Among the provisions included was the requirement that an owner or operator submit a Part 1 permit application within 30 days of being notified by the permitting agency that one or more sources at the major source belong to a section 112(j) category or subcategory. The permitting authority would have been required to make any such notification within 120 days after the section 112(j) deadline. We specifically requested comment on whether 120 days was sufficient time for permitting authorities to act.

In response, a few commenters expressed serious concerns about this requirement. These commenters noted that States do not always have up-to-date information on sources and that 120 days is not sufficient time for such notifications. Furthermore, these commenters recommended that this requirement be deleted because States may choose to identify and notify affected sources but should not be required to do so. A few commenters recommended that the final rule specify that owners or operators of affected sources must submit a title V permit application whether or not they receive notification.

We agree with the commenters that it is the responsibility of the affected source to submit a title V permit application regardless of notification if it can reasonably determine that it falls within a source category for which a standard has not been promulgated by the section 112(j) deadline. We believe, in most instances, that the owner or operator will be able to reasonably determine whether the source is in the category or subcategory subject to section 112(j) from provisions specified in the proposed rule for the category or subcategory. If an owner or operator is unable to make this determination, they may at their discretion contact the permitting authority for assistance in making the determination or submit a Part 1 applicability determination request. If there is doubt, the owner or operator should submit the Part 1 application. Most MACT standards will be proposed by the section 112(j) deadline of May 15, 2002, and applicability criteria will be specified in those proposals. In addition, we are posting applicability criteria on EPA's Air Toxics Website for all source categories for which MACT standards have not yet been proposed (see *www.epa.gov/ttn/atw/eparules.html*). The EPA project leads may also be directly contacted for additional information. Thus, owners or operators should know for all source categories whether or not their sources will be subject to the section 112(j) requirements. Therefore, we are retaining 40 CFR 63.52(a)(1) as proposed, which requires an owner or operator to submit an application for a title V permit or permit revision if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j). The obligation is on the source owner or operator to submit the application. Failure to submit a Part 1 application when it can reasonably be determined the source is in an applicable source category would be considered a violation.

Moreover, we also agree with the commenters that 120 days may not be sufficient time to notify owners or operators of affected sources subject to section 112(j) if those sources did not submit a title V permit application because they could not reasonably determine if they were part of a source category on which the section 112(j) ''hammer'' fell. As the commenter pointed out, State agencies do not necessarily have this information and would not be able to identify each and every affected source within 120 days, especially those in source categories that contain thousands of sources. We do not want to create an opportunity to potentially circumvent the requirements of the rule when the State fails to notify the source owner or operator by a specified time because it does not have adequate information. Therefore, in the final rule amendments, we have removed the requirement that the permitting authority must notify the owner or operator that one or more sources at the major source belong to such category or subcategory within 120 days after the section 112(j) deadline. States may still choose to identify and notify affected sources, and we encourage them to do so when they have the available information.

The Part 1 application is intentionally brief so that completing it will not be a complicated, burdensome requirement. If there are isolated instances where a Part 1 application is erroneously submitted where none is required, it would be the responsibility of the permitting authority to notify the owner or operator that the source is not in a

category or subcategory subject to section 112(j). In addition, permitting authorities have the obligation to determine MACT applicability if requested in a Part 1 application.

2. Prohibition on Backsliding

Several commenters disagreed with EPA's proposed prohibition on backsliding, which prevents a State from adopting any section 112(d) emission limitations that are less stringent than the case-by-case MACT determinations by the permitting authority under section 112(j). The commenters maintained that this policy is inconsistent with the plain language of the CAA and prior EPA policy. The commenters stated that this policy should not be adopted. Instead, one commenter proposed that the rule be revised to require States to revise permits to conform to MACT standards issued after other emission limitations have been adopted. This commenter believed that the prohibition on backsliding would create unnecessary burden and uncertainty because permitting authorities and sources would have to spend significant time and resources to determine when a MACT standard is less stringent. One commenter maintained that implementing the anti-backsliding policy would result in uneven requirements for similar industries in different States and would also require Federal enforcement of regulations that were not subject to national review.

The current section 112(j) rule does not include any prohibition on backsliding, and the current 40 CFR 63.56(c) allows the permitting authority to exercise its discretion in determining whether or not to retain more stringent provisions from a prior section 112(j) MACT determination in the operating permit. Similarly, the rule governing case-by-case MACT determinations under section 112(g) does not contain any prohibition on backsliding, and 40 CFR 63.44(c) provides that the permitting authority may exercise its discretion in deciding whether or not to retain more stringent provisions from a section 112(g) case-by-case MACT determination as applicable requirements in the operating permit.

After considering the concerns raised by the commenters, we have decided that it is best to retain this basic policy in the amended section 112(j) rule. As reflected by the provisions in the existing section 112(j) rule, we do not agree with the argument by some commenters that the statute requires the permitting authority to backslide, but we do believe that the decision whether or not to retain any more stringent provisions of a section 112(j) determination as applicable legal requirements following issuance of a section 112(d) standard should be committed to the discretion of the permitting authority that made the case-by-case determination in the first place. Accordingly, we have amended the proposed language to delete the prohibition on backsliding and to afford the permitting authority the discretion to determine whether or not backsliding is appropriate. The revisions in the language we proposed make it essentially identical to the language we adopted previously for section 112(g) determinations.

C. Other Comments and Changes

A few commenters strongly encouraged EPA to continue striving to meet all the section 112(d) or (h) deadlines so that the provisions of section 112(j) might never be necessary. A few commenters specifically urged EPA to meet the deadlines for promulgating the section 112(d) standards for various combustion sources before the ''hammer'' drops for these standards. One commenter emphasized that meeting the deadlines for standards would be the most efficient use of EPA resources with the greatest public benefit and that avoiding use of section 112(j) should be the EPA's top priority. One commenter hoped that these provisions might never be implemented, but expressed concerns about their implementation if they are necessary.

We appreciate the commenters' concerns, and we are making every effort to meet the statutory deadlines so that section 112(j) is not triggered. Nevertheless, at this point, it will not be feasible for us to complete all the MACT standards by the section 112(j) deadline. For an update on the status of section 112 rulemakings, see our website at *http://www.epa.gov/ttn/atw/eparules.html.*

One commenter maintained that most agencies would want to receive the information listed in 40 CFR 63.53(b)(2) and wondered why EPA had designated it as an optional part of the Part 2 MACT application.

The information listed in 40 CFR 63.53(b)(2) includes information about appropriate emission limitations and control technologies to meet those limitations. While the source owner or operator may choose to submit this information, it is not their responsibility to conduct the research and analysis necessary to make MACT determinations. This responsibility resides with the State or other designated permitting authority. For this reason, it is appropriate that the information listed in this paragraph be an optional part of the Part 2 MACT application.

IV. What Is the Section 112(j) Process?

Since we proposed amendments to section 112(j), we have received many questions regarding the provisions. The following paragraphs provide a general overview of the section 112(j) program.

A. If I Am an Owner or Operator of a Source, What Must I Do?

If you are an owner or operator of a major source in a source category or subcategory for which the statutory deadline for a section 112(d) emission standard is missed by 18 months, you are subject to the provisions of section 112(j). If you are unsure whether you are subject to section 112(j), you should review the appropriate proposed MACT rule to which you may be subject, you should review information on EPA's Air Toxics Website at *http://www.epa.gov/ttn/atw/eparules.html,* you may contact the EPA project lead directly, or you may submit a Part 1 MACT application to ask the State for an applicability determination. If the section 112(j) deadline arrives before you can determine your applicability, you should submit a Part 1 application. In most cases, even if the section 112(d) emission standard statutory deadline is missed by 18 months, there will be published proposed standards that you can refer to that will assist you in determining whether your source is subject to the provisions of section 112(j).

If you are subject to the provisions of section 112(j), you must apply for a title V permit or permit revision. The content of the required applications, details of the application approval process, timing of submittals, reviews, and permit issuance are specified in §§ 63.52 and 63.53 of 40 CFR part 63. The application process is a two-part process. Part 1 of the permit application requests very basic information about the affected source; the substantive information required by the permitting authority to make its MACT determination is tied to submittal of the Part 2 permit application. The Part 1 permit application must be submitted to the permitting authority by the section 112(j) deadline if it can reasonably be determined the source is in the source category or subcategory, or within 30 days after being notified in writing by the permitting authority that one or more sources at the major source belong in a subject category or subcategory.

The application content for a MACT determination is contained in 40 CFR

63.53. Information available as of the date on which the first Part 2 MACT application is filed for a source in the relevant source category or subcategory in the State or jurisdiction will be considered by the permitting authority in making its case-by-case MACT determination. The definition of ''available information'' in 40 CFR 63.51 specifies the type of information and sources of information available to the affected source owner or operator for use in completing the application.

Your Part 1 application for a MACT determination must contain the following information:

- The name and address (physical location) of your source.
- A brief description of the major source and an identification of the relevant source category.
- An identification of the types of emission points belonging to the relevant source category.
- An identification of any affected sources for which a section 112(g) MACT determination has been made.

As mentioned previously, if you are unsure whether you are subject to section 112(j), you should submit a Part 1 MACT application to ask the State for an applicability determination. If you have not submitted a Part 1 MACT application and the permitting authority notifies you that you are subject to section 112(j), you must submit an application for a title V permit or for a revision to an existing title V permit or pending title V permit within 30 days of being notified.

Your Part 2 Application for a MACT determination must contain the following information:

- For new affected sources, the anticipated date of startup of operation.
- The HAP emitted by each affected source in the relevant source category and an estimated total uncontrolled and controlled emission rate for HAP from the affected source.
- Any existing Federal, State, or local limitations or requirements applicable to the affected source.
- For each affected emission point or group of affected emission points, an identification of control technology in place.
- Information relevant to establishing the MACT floor, and, at the option of the owner or operator, a recommended MACT floor.
- Any other information reasonably needed by the permitting authority including, at the discretion of the permitting authority, information required pursuant to subpart A of 40 CFR part 63.

Your Part 2 MACT application may also, but is not required to, include the following:

- Recommended emission limitations for the affected source and support information consistent with 40 CFR 63.52(f). You may recommend a specific design, equipment, work practice, or operational standard, or combination thereof, as an emission limitation.
- A description of the control technologies that you would apply to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency and any other information deemed appropriate by the permitting authority, and identification of the affected sources to which the control technologies shall be applied.
- Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

You are required to submit your Part 2 MACT application within 24 months after submittal of your Part 1 MACT application.

B. If I Am the Permitting Authority for a Source Subject to Section 112(j), What Must I Do?

As the permitting authority for a source subject to section 112(j), you may, but are not required to, notify an owner or operator of a source of their applicability when you have available information that allows you to identify subject sources. In such cases, you should submit the notification prior to the source's Part 1 MACT application deadline. Sources that can reasonably determine they are subject must submit a Part 1 application, regardless of any notification (or lack thereof). You may notify a source that has not submitted a Part 1 application to do so, but your discretion to do this does not relieve the source of its obligation to submit an application in the absence of such a notification. You also have the responsibility of notifying owners or operators of sources that erroneously submit a Part 1 MACT application (i.e., the source is not subject to section 112(j)) that they are not subject to section 112(j), as well as notifying owners or operators of sources of their applicability when requested by an owner or operator of a source with their Part 1 MACT application.

Once you have received a Part 2 MACT application from a source, you must notify the owner or operator of the source in writing whether the application is complete or incomplete within 60 days. If you do not notify the owner or operator in writing within 60 days after the submittal, it will be assumed that the application is complete.

Potential sources that would be affected by section 112(j) would be those categories or subcategories of major sources listed for regulation under section 112(c) of the CAA for which the statutory deadline for a section 112(d) emission standard is missed by 18 months. You should start the affected source identification by first identifying those source categories and subcategories for which a section 112(d) emission standard has been missed. Using available information from the EPA obtained in the rule development process for subject sources, and other available information (e.g., EPA databases, State inventories, available literature), you should be able to identify sources subject to section 112(j) within your jurisdiction.

If you are the permitting authority for a source subject to section 112(j), you must determine case-by-case MACT for the source. You should use all available information, as described in 40 CFR 63.51. The most prominent and useful piece of information will be the proposed MACT rule and its supporting documentation. You can also supplement that information with whatever other information is available, including information submitted by the source itself.

Permitting authorities must determine a MACT emission limitation equivalent to the limitation that would apply had the MACT standard been promulgated on time. You may conduct an independent analysis to determine MACT using available information to identify the 12 percent of the best performing sources (if there are 30 or more sources) or the best performing 5 (if less than 30 sources). Alternately, you may simply look to the proposed MACT standard and use the information and analysis already prepared by EPA. Regardless of the approach adopted to issue or revise the source's title V permit under section 112(j), you must determine MACT as an equivalent emission limitation on a case-by-case basis for each category of sources. Guidance to assist you in your case-by-case MACT determination is presented in ''Guidelines for MACT Determinations under Section 112(j) Requirements,'' (EPA 453/R–02–001).

For sources in existence and subject to section 112(j) at the deadline, sources that become subject to section 112(j) after the section 112(j) deadline, and sources that make a change subject to section 112(j) after a permit is issued, you are required to issue a section 112(j) permit or a revised section 112(j) permit

with case-by-case MACT within 18 months after receiving a complete Part 2 application.

C. What Happens When a Rule Comes Out After the Hammer Date for a Given Source Category?

If the EPA promulgates emission standards under section 112(d) for a source category before the date a permit application is approved by the permitting authority, the title V permit must contain the promulgated standards rather than the section 112(j) case-by-case MACT level of control. If, however, the EPA promulgates emission standards under section 112(d) for a source after the date a permit application is approved by the permitting authority, the permitting authority must incorporate the requirements of the promulgated standards in the title V permit upon its next renewal. In such cases, the permitting authority must establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standards within a reasonable time, not to exceed 8 years after the standards are promulgated. The permitting authority is not required to revise the emission limit in the permit to reflect the promulgated standards if it determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standards. If the requirements you established in a case-by-case determination under section 112(j) are more stringent than the standards promulgated under section 112(d), you may elect to revise the permit to incorporate the less stringent requirements but you are not required to do so.

V. What Are the Environmental, Energy, Cost, and Economic Impacts of This Rule?

The General Provisions do not apply until specific relevant standards are promulgated. At that time, the impacts of the individual NESHAP will be analyzed, including the impacts of the General Provisions requirements.

The section 112(j) rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement. We estimate that approximately 84,000 affected sources may have to prepare and submit a Part 1 permit application. The total estimated cost of this 1-time event is about $9,000,000. We currently anticipate no other impacts since we plan to promulgate all the 10-year MACT standards before the need to submit a Part 2 permit application.

VI. What Are the Administrative Requirements for This Rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

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

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must approve any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required for the General Provisions because, for sources affected by CAA section 112 only, the General Provisions do not require any activities until source category-specific standards have been promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the General Provisions for each source category covered by part 63 will be estimated when standards applicable to such category are promulgated.

However, approval of an ICR is required for the section 112(j) rule. The information collection requirements in today's amendments to the final section 112(j) rule have been submitted to OMB for approval under the provisions of the PRA. The EPA has prepared an ICR document (ICR No. 1648.04), and you may obtain a copy from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The collection of information required by today's amendments to the final section 112(j) rule have an estimated nationwide recordkeeping and reporting burden of 172,480 hours ($8,984,976). This burden is a short 1-time permit application.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to (1) review instructions; (2) 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; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Policies that have federalism implications 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.''

Executive Order 13132 identifies 2 types of rules with Federalism implications—rules that impose substantial compliance costs, unless

they are expressly required by statute or there are federal funds available to cover the costs, and rules that preempt State or local law. The EPA has interpreted that rules containing ''substantial compliance costs'' are those that contain a ''significant federal intergovernmental mandate'' under Section 202 of the Unfunded Mandates Reform Act (UMRA)—i.e., it is likely to result in the expenditure by State, local, and Tribal governments in the aggregate of $100 million or more in any one year. In addition, EPA will conclude a rule also has Federalism implications if the impacts of the rule on small governments is likely to equal or exceed 1% of their revenues.

Because these final amendments do not exceed either threshold for substantial costs described above or preempt State or local law, they do not have federalism implications and 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. Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State and local governments, EPA specifically solicited comment on the rule amendments from State and local officials.

D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (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 Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or 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. There are currently no tribal governments that have approved title V permit programs to which sources would submit permit applications on May 15, 2002. Accordingly, Executive Order 13175 does not apply to this action.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. These amendments will clarify existing requirements and reduce regulatory burden. The EPA has determined that this action is not a ''significant'' regulatory action within the meaning of Executive Order 12866, and it does not impose any additional Federal mandate on State, local and tribal governments or the private sector within the meaning of the UMRA. Thus, today's final rule amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA has also determined that these amendments will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule amendments on small entities, small entities are defined as: (1) A small business whose parent company has fewer than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (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 amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory flexibility analysis is not necessary for the General Provisions amendments because it is unknown at this time which requirements from the General Provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the General Provisions will be assessed when specific emission standards affecting those sources are developed. ''Small entities'' will be defined in the context of the applicability of those standards.

Similarly, no analysis has been prepared for the amendments to the section 112(j) rule. The rule provides general guidance and procedures concerning the implementation of an underlying statutory requirement, but it does not by itself impose any regulatory requirements other than a permit application to the permitting authority or prescribe the specific content of any case-by-case determination which might be made under section 112(j). Although the final amendments will not have a significant economic impact on a substantial number of small entities,

EPA nonetheless has tried to reduce the impact of the rule amendments on small entities. We have extended the time between application deadlines for the Part 1 and Part 2 submittals so that all 10-year MACT standards would be promulgated before any Part 2 applications are due. We have also minimized the required information in the Part 1 permit application. Although we expect some small businesses to be affected by the section 112(j) permit application requirement, we cannot determine how many. In any event, the impact would be insignificant. Furthermore, the net effect of these rule amendments to the existing rule will be to reduce potential regulatory burdens.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Public Law No. 104–113) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final amendments to the General Provisions do not include any technical standards; they consist primarily of revisions to the generally applicable procedural and administrative requirements that the General Provisions overlay on NESHAP. The final amendments to the section 112(j) rule, which establishes requirements and procedures for owners or operators of major sources of HAP and permitting authorities to follow if the EPA misses the deadline for promulgation of section 112(d) standards, clarify and amend current procedural and administrative provisions to establish equivalent emissions limitations by permit. Therefore, section 112(j) is also not a vehicle for the application of voluntary consensus standards.

H. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final amendments to the General Provisions are not subject to Executive Order 13045 because the provisions provide general technology performance and compliance guidelines for section 112(d) standards, which are not based on health or safety risks. Likewise, the final amendments to the section 112(j) rule are not subject to Executive Order 13045 because they establish the process for developing case-by-case MACT, and thus are based on technology performance and not on safety or health risks.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These final amendments are not a ''major rule'' as defined by 5 U.S.C. 804(2), and therefore will be effective April 5, 2002.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The final amendments are 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.

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.

Dated: March 5, 2002.

Christine Todd Whitman,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.1 is amended by:

a. Revising paragraphs (a)(3) and (4);

b. Removing and reserving paragraphs (a)(7) and (a)(8);

c. Removing paragraphs (a)(13) and (14);

d. Removing and reserving paragraph (b)(2);

e. Revising paragraph (b)(3);

f. Revising paragraphs (c)(1), (c)(2) introductory text and (c)(2)(iii);

g. Removing and reserving paragraph (c)(4); and

h. Revising paragraph (e).

The revisions read as follows:

§ 63.1 Applicability.

(a) * * *

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (section 111, part C or D or any other authority of this Act), or a standard issued under State authority. The Administrator may specify in a specific standard under this part that facilities subject to other provisions under the Act need only comply with the provisions of that standard.

(4)(i) Each relevant standard in this part 63 must identify explicitly whether each provision in this subpart A is or is not included in such relevant standard.

(ii) If a relevant part 63 standard incorporates the requirements of 40 CFR part 60, part 61 or other part 63 standards, the relevant part 63 standard

must identify explicitly the applicability of each corresponding part 60, part 61, or other part 63 subpart A (General) provision.

(iii) The General Provisions in this subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

* * * * *

(7) [Reserved]

(8) [Reserved]

* * * * *

(b) * * *

(2) [Reserved]

(3) An owner or operator of a stationary source who is in the relevant source category and who determines that the source is not subject to a relevant standard or other requirement established under this part must keep a record as specified in § 63.10(b)(3).

(c) * * *

(1) If a relevant standard has been established under this part, the owner or operator of an affected source must comply with the provisions of that standard and of this subpart as provided in paragraph (a)(4) of this section.

(2) Except as provided in § 63.10(b)(3), if a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from a permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources pursuant to section 112(c)(3) of the Act will specify whether—

* * * * *

(iii) If a standard fails to specify what the permitting requirements will be for area sources affected by such a standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without any deferral.

* * * * *

(4) [Reserved]

* * * * *

(e) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to a source subject to an emission limitation by permit established under section 112(j) of the Act, and the requirements under the section 112(j) emission limitation are substantially as effective as the promulgated emission standard, the owner or operator may request the permitting authority to revise the source's title V permit to reflect that the emission limitation in the permit satisfies the requirements of the promulgated emission standard. The process by which the permitting authority determines whether the section 112(j) emission limitation is substantially as effective as the promulgated emission standard must include, consistent with part 70 or 71 of this chapter, the opportunity for full public, EPA, and affected State review (including the opportunity for EPA's objection) prior to the permit revision being finalized. A negative determination by the permitting authority constitutes final action for purposes of review and appeal under the applicable title V operating permit program.

3. Section 63.2 is amended by:

a. Revising the definition of *Affected source*;

b. Revising the definition of *Commenced*;

c. Revising the definition of *Construction*;

d. Revising paragraph (2) in the definition of *Effective date*;

e. Revising the definition of *Equivalent emission limitation*;

f. Revising paragraph (6) in the definition of *Federally enforceable*;

g. Revising the first sentence in the definition of *Malfunction*;

h. Revising the definition of *New source*;

i. Revising the introductory text in the definition of *Reconstruction*;

j. Amending the definition of *Relevant standard* by revising the first sentence of paragraph (4); running the undesignated paragraph at the end of paragraph (4) into pargraph (4), and revising the last sentence of newly designated text in paragraph (4);

k. Revising the definition of *Shutdown*;

l. Revising the definition of *Startup;*

m. By adding in alphabetical order definitions for *Monitoring, New affected source*, and *Working day*; and

n. By removing definitions for *Compliance plan, Lesser quantity*, and *Part 70 permit*.

The revisions and additions read as follows:

§ 63.2 Definitions.

* * * * *

Affected source, for the purposes of this part, means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. Each relevant standard will define the ''affected source,'' as defined in this paragraph unless a different definition is warranted based on a published justification as to why this definition would result in significant administrative, practical, or implementation problems and why the different definition would resolve those problems. The term ''affected source,'' as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Affected source may be defined differently for part 63 than affected facility and stationary source in parts 60 and 61, respectively. This definition of ''affected source,'' and the procedures for adopting an alternative definition of ''affected source,'' shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002.

* * * * *

Commenced means, with respect to construction or reconstruction of an affected source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

* * * * *

Construction means the on-site fabrication, erection, or installation of an affected source. Construction does not include the removal of all equipment comprising an affected source from an existing location and reinstallation of such equipment at a new location. The owner or operator of an existing affected source that is relocated may elect not to reinstall minor ancillary equipment including, but not limited to, piping, ductwork, and valves. However, removal and reinstallation of an affected source will be construed as reconstruction if it satisfies the criteria for reconstruction as defined in this section. The costs of replacing minor ancillary equipment must be considered in determining whether the existing affected source is reconstructed.

* * * * *

Effective date means: * * *

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part.

* * * * *

Equivalent emission limitation means any maximum achievable control technology emission limitation or requirements which are applicable to a

major source of hazardous air pollutants and are adopted by the Administrator (or a State with an approved permit program) on a case-by-case basis, pursuant to section 112(g) or (j) of the Act.

* * * * *

Federally enforceable * * *

(6) Limitations and conditions that are part of an operating permit where the permit and the permitting program pursuant to which it was issued meet all of the following criteria:

(i) The operating permit program has been submitted to and approved by EPA into a State implementation plan (SIP) under section 110 of the CAA;

(ii) The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not ''federally enforceable'' by EPA;

(iii) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''federally enforceable'';

(iv) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(v) The permit in question was issued only after adequate and timely notice and opportunity for comment for EPA and the public.

* * * * *

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner.* * *

Monitoring means the collection and use of measurement data or other information to control the operation of a process or pollution control device or to verify a work practice standard relative to assuring compliance with applicable requirements. Monitoring is composed of four elements:

(1) Indicator(s) of performance—the parameter or parameters you measure or observe for demonstrating proper operation of the pollution control measures or compliance with the applicable emissions limitation or standard. Indicators of performance may include direct or predicted emissions measurements (including opacity), operational parametric values that correspond to process or control device (and capture system) efficiencies or emissions rates, and recorded findings of inspection of work practice activities, materials tracking, or design characteristics. Indicators may be expressed as a single maximum or minimum value, a function of process variables (for example, within a range of pressure drops), a particular operational or work practice status (for example, a damper position, completion of a waste recovery task, materials tracking), or an interdependency between two or among more than two variables.

(2) Measurement techniques—the means by which you gather and record information of or about the indicators of performance. The components of the measurement technique include the detector type, location and installation specifications, inspection procedures, and quality assurance and quality control measures. Examples of measurement techniques include continuous emission monitoring systems, continuous opacity monitoring systems, continuous parametric monitoring systems, and manual inspections that include making records of process conditions or work practices.

(3) Monitoring frequency—the number of times you obtain and record monitoring data over a specified time interval. Examples of monitoring frequencies include at least four points equally spaced for each hour for continuous emissions or parametric monitoring systems, at least every 10 seconds for continuous opacity monitoring systems, and at least once per operating day (or week, month, etc.) for work practice or design inspections.

(4) Averaging time—the period over which you average and use data to verify proper operation of the pollution control approach or compliance with the emissions limitation or standard. Examples of averaging time include a 3-hour average in units of the emissions limitation, a 30-day rolling average emissions value, a daily average of a control device operational parametric range, and an instantaneous alarm.

New affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory that is subject to a section 112(d) or other relevant standard for new sources. This definition of ''new affected source,'' and the criteria to be utilized in implementing it, shall apply to each section 112(d) standard for which the initial proposed rule is signed by the Administrator after June 30, 2002. Each relevant standard will define the term ''new affected source,'' which will be the same as the ''affected source'' unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part establishing an emission standard applicable to such source.

* * * * *

Reconstruction, unless otherwise defined in a relevant standard, means the replacement of components of an affected or a previously nonaffected source to such an extent that:

* * * * *

Relevant standard means: * * *

(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the collection of equipment, activities, or both regulated by such standard or limitation. * * * Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part, as provided by § 63.1(a)(4), and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

* * * * *

Shutdown means the cessation of operation of an affected source or portion of an affected source for any purpose.

* * * * *

Startup means the setting in operation of an affected source or portion of an affected source for any purpose.

* * * * *

Working day means any day on which Federal Government offices (or State government offices for a State that has obtained delegation under section

112(l)) are open for normal business. Saturdays, Sundays, and official Federal (or where delegated, State) holidays are not working days.

4. Section 63.3 is amended by adding the abbreviation for standard cubic meter per minute in paragraph (b).

The revisions read as follows:

§ 63.3 Units and abbreviations.

* * * * *

(b) * * *

scmm = cubic meter at standard conditions per minute

* * * * *

5. Section 63.4 is amended by:

a. Revising paragraph (a)(1);

b. Removing and reserving paragraphs (a)(3) through (a)(5);

c. Removing paragraph (b)(3); and

d. Revising paragraph (c).

The revisions read as follows:

§ 63.4 Prohibited activities and circumvention.

(a) * * * (1) No owner or operator subject to the provisions of this part must operate any affected source in violation of the requirements of this part. Affected sources subject to and in compliance with either an extension of compliance or an exemption from compliance are not in violation of the requirements of this part. An extension of compliance can be granted by the Administrator under this part; by a State with an approved permit program; or by the President under section 112(i)(4) of the Act.

* * * * *

(3)–(5) [Reserved]

* * * * *

(c) *Fragmentation.* Fragmentation after November 15, 1990 which divides ownership of an operation, within the same facility among various owners where there is no real change in control, will not affect applicability. The owner and operator must not use fragmentation or phasing of reconstruction activities (i.e., intentionally dividing reconstruction into multiple parts for purposes of avoiding new source requirements) to avoid becoming subject to new source requirements.

6. Section 63.5 is amended by:

a. Revising the section heading;

b. Revising paragraphs (a)(1) and (2);

c. Revising paragraphs (b)(1), (b)(3) and (4);

d. Removing and reserving paragraph (b)(5);

e. Revising paragraph (b)(6);

f. Revising paragraphs (d)(1)(i), (d)(1)(ii)(B), and (d)(1)(ii)(E);

g. Removing and reserving paragraph (d)(1)(ii)(G);

h. Revising paragraph (d)(2);

i. Revising paragraph (d)(3)(vi); and

j. Revising paragraphs (f)(1) and (f)(2).

The revisions read as follows:

§ 63.5 Preconstruction review and notification requirements.

(a) * * *

(1) This section implements the preconstruction review requirements of section 112(i)(1). After the effective date of a relevant standard, promulgated pursuant to section 112(d), (f), or (h) of the Act, under this part, the preconstruction review requirements in this section apply to the owner or operator of new affected sources and reconstructed affected sources that are major-emitting as specified in this section. New and reconstructed affected sources that commence construction or reconstruction before the effective date of a relevant standard are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(2) This section includes notification requirements for new affected sources and reconstructed affected sources that are not major-emitting affected sources and that are or become subject to a relevant promulgated emission standard after the effective date of a relevant standard promulgated under this part.

(b) *Requirements for existing, newly constructed, and reconstructed affected sources.* (1) A new affected source for which construction commences after proposal of a relevant standard is subject to relevant standards for new affected sources, including compliance dates. An affected source for which reconstruction commences after proposal of a relevant standard is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

* * * * *

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, no person may, without obtaining written approval in advance from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section, do any of the following:

(i) Construct a new affected source that is major-emitting and subject to such standard;

(ii) Reconstruct an affected source that is major-emitting and subject to such standard; or

(iii) Reconstruct a major source such that the source becomes an affected source that is major-emitting and subject to the standard.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, an owner or operator who constructs a new affected source that is not major-emitting or reconstructs an affected source that is not major-emitting that is subject to such standard, or reconstructs a source such that the source becomes an affected source subject to the standard, must notify the Administrator of the intended construction or reconstruction. The notification must be submitted in accordance with the procedures in § 63.9(b).

(5) [Reserved]

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard must be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source.

* * * * *

(d) * * *

(1) * * *

(i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section must submit to the Administrator an application for approval of the construction or reconstruction. The application must be submitted as soon as practicable before actual construction or reconstruction begins. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9(b)(5). The owner or operator may submit the application for approval well in advance of the date actual construction or reconstruction begins in order to ensure a timely review by the Administrator and that the planned date to begin will not be delayed.

(ii) * * *

(B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2 or in the relevant standard;

* * * * *

(E) The expected date of the beginning of actual construction or reconstruction;

* * * * *

(G) [Reserved]

* * * * *

(2) *Application for approval of construction.* Each application for approval of construction must include, in addition to the information required

in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each type of emission point for each type of hazardous air pollutant that is emitted (or could reasonably be anticipated to be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions must include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions must include an estimated control efficiency (percent) for that method. Such technical information must include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(3) * * *

(vi) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in paragraphs (d)(3)(iii) through (d)(3)(v) of this section.

* * * * *

(f) * * *

(1) Preconstruction review procedures that a State utilizes for other purposes may also be utilized for purposes of this section if the procedures are substantially equivalent to those specified in this section. The Administrator will approve an application for construction or reconstruction specified in paragraphs (b)(3) and (d) of this section if the owner or operator of a new affected source or reconstructed affected source, who is subject to such requirement meets the following conditions:

(i) The owner or operator of the new affected source or reconstructed affected source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant promulgated emission standard, if the source is properly built and operated.

(ii) Provide a statement from the State or other evidence (such as State regulations) that it considered the factors specified in paragraph (e)(1) of this section.

(2) The owner or operator must submit to the Administrator the request for approval of construction or reconstruction under this paragraph (f)(2) no later than the application deadline specified in paragraph (d)(1) of this section (see also § 63.9(b)(2)). The owner or operator must include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph (f)(2).

7. Section 63.6 is amended by:

a. Revising paragraph (a)(1) introductory text;

b. Revising paragraphs (b)(1), (b)(2), (b)(3)(i), (b)(4), (b)(5), and (b)(7);

c. Revising paragraphs (c)(2) and (c)(5);

d. Revising paragraphs (e)(1)(i) and (ii);

e. Removing and reserving paragraph (e)(2);

f. Revising paragraphs (e)(3)(i) introductory text, (e)(3)(i)(A), (e)(3)(ii), the first three sentences of (e)(3)(iii) and (e)(3)(v), revising paragraphs (e)(3)(iv), (e)(3)(vii)(B), (e)(3)(vii)(C), adding paragraph (e)(3)(vii)(D), revising paragraph (e)(3)(viii) and adding paragraph (e)(3)(ix);

g. Revising paragraphs (f)(1), (f)(2)(iii)(D), and (f)(3);

h. Revising paragraph (h)(1);

i. Revising paragraph (h)(2)(iii)(C);

j. Revising paragraph (i)(4)(i)(B);

k. Revising the last sentence of paragraph (i)(4)(ii);

l. Revising paragraphs (i)(6)(i)(B)(*1*) and (*2*) and removing and reserving paragraphs (i)(6)(i)(C) & (D);

m. Revising paragraph (i)(12)(i);

n. Revising paragraph (i)(14); and

o. Adding paragraph (i)(4)(i)(C).

The revisions and additions read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

(a) * * *

(1) The requirements in this section apply to the owner or operator of affected sources for which any relevant standard has been established pursuant to section 112 of the Act and the applicability of such requirements is set out in accordance with § 63.1(a)(4) unless—

* * * * *

(b) *Compliance dates for new and reconstructed affected sources.* (1) Except as specified in paragraphs (b)(3) and (4) of this section, the owner or operator of a new or reconstructed affected source for which construction or reconstruction commences after proposal of a relevant standard that has an initial startup before the effective date of a relevant standard established under this part pursuant to section 112(d), (f), or (h) of the Act must comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (4) of this section, the owner or operator of a new or reconstructed affected source that has an initial startup after the effective date of a relevant standard established under this part pursuant to section 112(d), (f), or (h) of the Act must comply with such standard upon startup of the source.

(3) * * *

(i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; for purposes of this paragraph, a finding that controls or compliance methods are ''more stringent'' must include control technologies or performance criteria and compliance or compliance assurance methods that are different but are substantially equivalent to those required by the promulgated rule, as determined by the Administrator (or his or her authorized representative); and

* * * * *

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall not be required to comply with the section 112(f) emission standard until the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator must comply with the standard as provided in paragraphs (b)(1) and (2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or (4) of this section must notify the Administrator in accordance with § 63.9(d).

* * * * *

(7) When an area source becomes a major source by the addition of equipment or operations that meet the definition of new affected source in the relevant standard, the portion of the

existing facility that is a new affected source must comply with all requirements of that standard applicable to new sources. The source owner or operator must comply with the relevant standard upon startup.

(c) * * *

(2) If an existing source is subject to a standard established under this part pursuant to section 112(f) of the Act, the owner or operator must comply with the standard by the date 90 days after the standard's effective date, or by the date specified in an extension granted to the source by the Administrator under paragraph (i)(4)(ii) of this section, whichever is later.

* * * * *

(5) Except as provided in paragraph (b)(7) of this section, the owner or operator of an area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source shall be subject to relevant standards for existing sources. Such sources must comply by the date specified in the standards for existing area sources that become major sources. If no such compliance date is specified in the standards, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in the relevant standard for existing sources in existence at the time the standard becomes effective.

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards, i.e., meet the emission standard or comply with the startup, shutdown, and malfunction plan. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

(ii) Malfunctions must be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section. To the extent that an unexpected event arises during a startup, shutdown, or malfunction, an owner or operator must comply by minimizing emissions during such a startup, shutdown, and malfunction event consistent with safety and good air pollution control practices.

* * * * *

(2) [Reserved]

(3) * * *

(i) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction; a program of corrective action for malfunctioning process; and air pollution control and monitoring equipment used to comply with the relevant standard. This plan must be developed by the owner or operator by the source's compliance date for that relevant standard. The purpose of the startup, shutdown, and malfunction plan is to—

(A) Ensure that, at all times, the owner or operator operate and maintain affected sources, including associated air pollution control and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards;

* * * * *

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source must operate and maintain such source (including associated air pollution control and monitoring equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator must keep records for that event which demonstrate that the procedures specified in the plan were followed. These records may take the form of a ''checklist,'' or other effective form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator must keep records of these events as specified in § 63.10(b), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control and monitoring equipment. * * *

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, and the source exceeds the relevant emission standard, then the owner or operator must record the actions taken for that event and must report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator).

(v) The owner or operator must maintain at the affected source a current startup, shutdown, and malfunction plan and must make the plan available upon request for inspection and copying by the Administrator. In addition, if the startup, shutdown, and malfunction plan is subsequently revised as provided in paragraph (e)(3)(viii) of this section, the owner or operator must maintain at the affected source each previous (i.e., superseded) version of the startup, shutdown, and malfunction plan, and must make each such previous version available for inspection and copying by the Administrator for a period of 5 years after revision of the plan. If at any time after adoption of a startup, shutdown, and malfunction plan the affected source ceases operation or is otherwise no longer subject to the provisions of this part, the owner or operator must retain a copy of the most recent plan for 5 years from the date the source ceases operation or is no longer subject to this part and must make the plan available upon request for inspection and copying by the Administrator. * * *

* * * * *

(vii) * * *

(B) Fails to provide for the operation of the source (including associated air pollution control and monitoring equipment) during a startup, shutdown, or malfunction event in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards;

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control and monitoring equipment as quickly as practicable; or

(D) Includes an event that does not meet the definition of startup,

shutdown, or malfunction listed in § 63.2.

(viii) The owner or operator may periodically revise the startup, shutdown, and malfunction plan for the affected source as necessary to satisfy the requirements of this part or to reflect changes in equipment or procedures at the affected source. Unless the permitting authority provides otherwise, the owner or operator may make such revisions to the startup, shutdown, and malfunction plan without prior approval by the Administrator or the permitting authority. However, each such revision to a startup, shutdown, and malfunction plan must be reported in the semiannual report required by § 63.10(d)(5). If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator must revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control and monitoring equipment. In the event that the owner or operator makes any revision to the startup, shutdown, and malfunction plan which alters the scope of the activities at the source which are deemed to be a startup, shutdown, malfunction, or otherwise modifies the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part, the revised plan shall not take effect until after the owner or operator has provided a written notice describing the revision to the permitting authority.

(ix) The title V permit for an affected source must require that the owner or operator adopt a startup, shutdown, and malfunction plan which conforms to the provisions of this part, and that the owner or operator operate and maintain the source in accordance with the procedures specified in the current startup, shutdown, and malfunction plan. However, any revisions made to the startup, shutdown, and malfunction plan in accordance with the procedures established by this part shall not be deemed to constitute permit revisions under part 70 or part 71 of this chapter. Moreover, none of the procedures specified by the startup, shutdown, and malfunction plan for an affected source shall be deemed to fall within the permit shield provision in section 504(f) of the Act.

(f) * * *

(1) *Applicability.* The non-opacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the non-opacity emission standards set forth in this part, then that emission point must still be required to comply with the non-opacity emission standards and other applicable requirements.

(2) * * *

(iii) * * *

(D) The performance test was appropriately quality-assured, as specified in § 63.7(c).

* * * * *

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a non-opacity emission standard, as specified in paragraphs (f)(1) and (2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable), and information available to the Administrator pursuant to paragraph (e)(1)(i) of this section.

* * * * *

(h) * * *

(1) *Applicability.* The opacity and visible emission standards set forth in this part must apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart. If a startup, shutdown, or malfunction of one portion of an affected source does not affect the ability of particular emission points within other portions of the affected source to comply with the opacity and visible emission standards set forth in this part, then that emission point shall still be required to comply with the opacity and visible emission standards and other applicable requirements.

(2) * * *

(iii) * * *

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e); and

* * * * *

(i) * * *

(4)(i) * * *

(B) Any request under this paragraph for an extension of compliance with a relevant standard must be submitted in writing to the appropriate authority no later than 120 days prior to the affected source's compliance date (as specified in paragraphs (b) and (c) of this section), except as provided for in paragraph (i)(4)(i)(C) of this section. Nonfrivolous requests submitted under this paragraph will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the date of denial. Emission standards established under this part may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards.

(C) An owner or operator may submit a compliance extension request after the date specified in paragraph (i)(4)(i)(B) of this section provided the need for the compliance extension arose after that date, and before the otherwise applicable compliance date and the need arose due to circumstances beyond reasonable control of the owner or operator. This request must include, in addition to the information required in paragraph (i)(6)(i) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the problems. Nonfrivolous requests submitted under this paragraph will stay the applicability of the rule as to the emission points in question until such time as the request is granted or denied. A denial will be effective as of the original compliance date.

(ii) * * * Any request for an extension of compliance with a relevant standard under this paragraph must be submitted in writing to the Administrator not later than 90 calendar days after the effective date of the relevant standard.

* * * * *

(6)(i) * * *

(B) * * *

(*1*) The date by which on-site construction, installation of emission control equipment, or a process change is planned to be initiated; and

(*2*) The date by which final compliance is to be achieved.

(C) [Reserved]

(D) [Reserved]

* * * * *

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days

after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(i) or (i)(5) of this section. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete.

* * * * *

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (i)(10)(iii) or (iv) of this section is not met. Upon a determination to terminate, the Administrator will notify, in writing, the owner or operator of the Administrator's determination to terminate, together with:

(i) Notice of the reason for termination; and

(ii) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the determination to terminate, additional information or arguments to the Administrator before further action on the termination.

(iii) A final determination to terminate an extension of compliance will be in writing and will set forth the specific grounds on which the termination is based. The final determination will be made within 30 calendar days after presentation of additional information or arguments, or within 30 calendar days after the final date specified for the presentation if no presentation is made.

* * * * *

8. Section 63.7 is amended by:

a. Revising paragraphs (a)(1) and (a)(2) introductory text;

b. Removing and reserving paragraphs (a)(2)(i) through (viii);

c. Revising paragraph (b)(1);

d. Revising the first sentence of paragraph (b)(2);

e. Revising paragraphs (c)(3)(ii)(A) through (B);

f. Revising paragraph (c)(4)(i);

g. Revising paragraphs (e)(2)(i) through (iii);

h. Revising paragraph (f)(1);

i. Revising paragraphs (f)(2)(i) through (ii); and

j. Revising paragraph (f)(3).

The revisions read as follows:

§ 63.7 Performance testing requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.

(i)—(viii) [Reserved]

* * * * *

(b) * * *

(1) The owner or operator of an affected source must notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is initially scheduled to begin to allow the Administrator, upon request, to review an approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test.

(2) In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section due to unforeseeable circumstances beyond his or her control, the owner or operator must notify the Administrator as soon as practicable and without delay prior to the scheduled performance test date and specify the date when the performance test is rescheduled. * * *

(c) * * *

(3) * * *

(ii) * * *

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard or with only minor changes to those tests methods (see paragraph (e)(2)(i) of this section), the owner or operator must conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator is authorized to conduct the performance test using an alternative test method after the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or after the alternative method is approved (see paragraph (f) of this section). However, the owner or operator is authorized to conduct the performance test using an alternative method in the absence of notification of approval 45 days after submission of the site-specific test plan or request to use an alternative method. The owner or operator is authorized to conduct the performance test within 60 calendar days after he/she is authorized to demonstrate compliance using an alternative test method. Notwithstanding the requirements in the preceding three sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

* * * * *

(4)(i) *Performance test method audit program.* The owner or operator must analyze performance audit (PA) samples during each performance test. The owner or operator must request performance audit materials 30 days prior to the test date. Audit materials including cylinder audit gases may be obtained by contacting the appropriate EPA Regional Office or the responsible enforcement authority.

* * * * *

(e) * * *

(2) * * *

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology (see definition in § 63.90(a)). Such changes may be approved in conjunction with approval of the site-specific test plan (see paragraph (c) of this section); or

(ii) Approves the use of an intermediate or major change or alternative to a test method (see definitions in § 63.90(a)), the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times or smaller sample volumes when necessitated by process variables or other factors; or

* * * * *

(f) * * *

(1) *General.* Until authorized to use an intermediate or major change or alternative to a test method, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) * * *

(i) Notifies the Administrator of his or her intention to use an alternative test method at least 60 days before the performance test is scheduled to begin;

(ii) Uses Method 301 in appendix A of this part to validate the alternative test method. This may include the use

of specific procedures of Method 301 if use of such procedures are sufficient to validate the alternative test method; and

* * * * *

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate and issue an approval or disapproval of the alternative test method. If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator is authorized to conduct the performance test using an alternative test method after the Administrator approves the use of the alternative method. However, the owner or operator is authorized to conduct the performance test using an alternative method in the absence of notification of approval/disapproval 45 days after submission of the request to use an alternative method and the request satisfies the requirements in paragraph (f)(2) of this section. The owner or operator is authorized to conduct the performance test within 60 calendar days after he/she is authorized to demonstrate compliance using an alternative test method. Notwithstanding the requirements in the preceding three sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

* * * * *

9. Section 63.8 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraphs (b)(1)(i) and (ii);

c. Revising paragraphs (b)(2)(i) and (ii);

d. Revising paragraphs (c)(1)(i) through (iii);

e. Revising paragraph (c)(2);

f. Revising paragraph (c)(6);

g. Revising paragraph (f)(1);

h. Revising paragraphs (f)(4)(i) through (ii);

i. Adding paragraph (f)(4)(iv);

j. Revising the heading of paragraph (f)(5) and revising paragraph (f)(5)(i) introductory text;

k. Revising paragraph (g)(1); and

l. Revising paragraph (g)(5).

The revisions and additions read as follows:

§ 63.8 Monitoring requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

* * * * *

(b) * * *

(1) * * *

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures (see § 63.90(a) for definition); or

(ii) Approves the use of an intermediate or major change or alternative to any monitoring requirements or procedures (see § 63.90(a) for definition).

* * * * *

(2)(i) When the emissions from two or more affected sources are combined before being released to the atmosphere, the owner or operator may install an applicable CMS for each emission stream or for the combined emissions streams, provided the monitoring is sufficient to demonstrate compliance with the relevant standard.

(ii) If the relevant standard is a mass emission standard and the emissions from one affected source are released to the atmosphere through more than one point, the owner or operator must install an applicable CMS at each emission point unless the installation of fewer systems is—

* * * * *

(c) * * *

(1)(i) The owner or operator of an affected source must maintain and operate each CMS as specified in § 63.6(e)(1).

(ii) The owner or operator must keep the necessary parts for routine repairs of the affected CMS equipment readily available.

(iii) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3).

(2)(i) All CMS must be installed such that representative measures of emissions or process parameters from the affected source are obtained. In addition, CEMS must be located according to procedures contained in the applicable performance specification(s).

(ii) Unless the individual subpart states otherwise, the owner or operator must ensure the read out (that portion of the CMS that provides a visual display or record), or other indication of operation, from any CMS required for compliance with the emission standard is readily accessible on site for operational control or inspection by the operator of the equipment.

* * * * *

(6) The owner or operator of a CMS that is not a CPMS, which is installed in accordance with the provisions of this part and the applicable CMS performance specification(s), must check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (ii) of this section. The zero (low-level) and high-level calibration drifts must be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specification(s) specified in the relevant standard. The system shall allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases must be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces must be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity. The CPMS must be calibrated prior to use for the purposes of complying with this section. The CPMS must be checked daily for indication that the system is responding. If the CPMS system includes an internal system check, results must be recorded and checked daily for proper operation.

* * * * *

(f) * * *

(1) *General.* Until permission to use an alternative monitoring procedure (minor, intermediate, or major changes; see definition in § 63.90(a)) has been granted by the Administrator under this paragraph (f)(1), the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

* * * * *

(4)(i) *Request to use alternative monitoring procedure.* An owner or operator who wishes to use an alternative monitoring procedure must submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section. The application may be submitted at any time provided that the monitoring procedure is not the performance test method used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring procedure will serve as the performance test method that is to be used to demonstrate compliance with a relevant standard, the application must be submitted at least 60 days before the performance evaluation is scheduled to begin and

must meet the requirements for an alternative test method under § 63.7(f).

(ii) The application must contain a description of the proposed alternative monitoring system which addresses the four elements contained in the definition of monitoring in § 63.2 and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application must include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

* * * * *

(iv) Application for minor changes to monitoring procedures, as specified in paragraph (b)(1) of this section, may be made in the site-specific performance evaluation plan.

(5) *Approval of request to use alternative monitoring procedure.*

(i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. If a request for a minor change is made in conjunction with site-specific performance evaluation plan, then approval of the plan will constitute approval of the minor change. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

* * * * *

(g) *Reduction of monitoring data.*

(1) The owner or operator of each CMS must reduce the monitoring data as specified in paragraphs (g)(1) through (5) of this section.

* * * * *

(5) Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments must not be included in any data average computed under this part. For the owner or operator complying with the requirements of § 63.10(b)(2)(vii)(A) or (B), data averages must include any data recorded during periods of monitor breakdown or malfunction.

10. Section 63.9 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (b)(2)(iv);

c. Removing and reserving paragraph (b)(3);

d. Revising the introductory text of paragraph (b)(4);

e. Revising paragraph (b)(4)(i);

f. Removing and reserving paragraphs (b)(4)(ii) through (iii).

g. Revising paragraph (b)(5);

h. Revising paragraph (h)(2)(i)(E); and

i. Revising the first sentence of paragraph (h)(2)(ii);

The revisions and additions read as follows:

§ 63.9 Notification requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

* * * * *

(b) * * *

(2) * * *

(iv) A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted; and

* * * * *

(3) [Reserved]

(4) The owner or operator of a new or reconstructed major affected source for which an application for approval of construction or reconstruction is required under § 63.5(d) must provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major-emitting affected source, reconstruct a major-emitting affected source, or reconstruct a major source such that the source becomes a major-emitting affected source with the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i); and

(ii) [Reserved]

(iii) [Reserved]

* * * * *

(5) The owner or operator of a new or reconstructed affected source for which an application for approval of construction or reconstruction is not required under § 63.5(d) must provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new affected source, reconstruct an affected source, or reconstruct a source such that the source becomes an affected source, and

(ii) A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(iii) Unless the owner or operator has requested and received prior permission from the Administrator to submit less than the information in § 63.5(d), the notification must include the information required on the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i).

* * * * *

(h) * * *

(2)(i) * * *

(E) If the relevant standard applies to both major and area sources, an analysis demonstrating whether the affected source is a major source (using the emissions data generated for this notification);

* * * * *

(ii) The notification must be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity (or activities that have the same compliance date) specified in the relevant standard (unless a different reporting period is specified in the standard, in which case the letter must be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). * * *

* * * * *

11. Section 63.10 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraphs (b)(2)(ii) through (b)(2)(v);

c. Revising paragraph (b)(3); and

d. Revising the second sentence of paragraph (d)(5)(i).

The revisions read as follows:

§ 63.10 Recordkeeping and reporting requirements.

(a) * * *

(1) The applicability of this section is set out in § 63.1(a)(4).

* * * * *

(b) * * *

(2) * * *

(ii) The occurrence and duration of each malfunction of the required air pollution control and monitoring equipment;

(iii) All required maintenance performed on the air pollution control and monitoring equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3));

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of

startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a ''checklist,'' or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

* * * * *

(3) *Recordkeeping requirement for applicability determinations.* If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants regulated by any standard established pursuant to section 112(d) or (f), and that stationary source is in the source category regulated by the relevant standard, but that source is not subject to the relevant standard (or other requirement established under this part) because of limitations on the source's potential to emit or an exclusion, the owner or operator must keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination must be signed by the person making the determination and include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) must be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis must be performed in accordance with requirements established in relevant subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any. The requirements to determine applicability of a standard under § 63.1(b)(3) and to record the results of that determination under paragraph (b)(3) of this section shall not by themselves create an obligation for the owner or operator to obtain a title V permit.

* * * * *

(d) * * *

(5)(i) * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they must include the number, duration, and a brief description of each startup, shutdown, or malfunction. * * *

* * * * *

12. Section 63.11 is amended by revising paragraph (a) to read as follows:

§ 63.11 Control device requirements.

(a) *Applicability.* The applicability of this section is set out in § 63.1(a)(4).

* * * * *

Subpart B—[Amended]

13. Section 63.50 is amended by:

1. Revising paragraph (a);

2. Revising paragraph (b); and

3. Removing and reserving paragraph (c) as follows:

§ 63.50 Applicability.

(a) *General applicability.* (1) The requirements of this section through § 63.56 implement section 112(j) of the Clean Air Act (as amended in 1990). The requirements of this section through § 63.56 apply in each State beginning on the effective date of an approved title V permit program in such State. The requirements of this section through § 63.56 do not apply to research or laboratory activities as defined in § 63.51.

(2) The requirements of this section through § 63.56 apply to:

(i) The owner or operator of affected sources within a source category or subcategory under this part that are located at a major source that is subject to an approved title V permit program and for which the Administrator has failed to promulgate emission standards by the section 112(j) deadlines. If title V applicability has been deferred for a source category, then section 112(j) is not applicable for sources in that category within that State, local or tribal jurisdiction until those sources become subject to title V permitting requirements; and

(ii) Permitting authorities with an approved title V permit program.

(b) Relationship to State and local requirements. Nothing in §§ 63.50 through 63.56 shall prevent a State or local regulatory agency from imposing more stringent requirements, as a matter of State or local law, than those contained in §§ 63.50 through 63.56.

(c) [Reserved]

14. Section 63.51 is amended by:

a. Revising the introductory text of this section;

b. Adding in alphabetical order the definition of *affected source;*

c. In the definition of *Available information by* revising the introductory text and paragraphs (2) through (5);

d. Removing the definition of *emission point;*

e. Removing the definition of *emission unit;*

f. Revising the definition of *enhanced review;*

g. Revising the definition of *equivalent emission limitation;*

h. Removing the definition of *existing major source;*

i. Revising paragraphs (1)(i) and (ii) of the definition of *maximum achievable control technology (MACT) floor;*

j. Adding in alphabetical order the definition of *new affected source;*

k. Removing the definition of *new emission unit;*

l. Removing the definition of *new major source;*

m. Adding in alphabetical order the definition of *research or laboratory activities.*

n. Revising the definition of *section 112(j) deadline;*

o. Revising the definition of *similar source;* and

p. Removing the definition of *United States;*

The revisions and additions read as follows:

§ 63.51 Definitions.

Terms used in §§ 63.50 through 63.56 that are not defined in this section have the meaning given to them in the Act, or in subpart A of this part.

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is in a section 112(c) source category or subcategory for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline, and that is addressed by an applicable MACT emission limitation established pursuant to this subpart.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options under this subpart, any information that is available as of the date on which the first Part 2 MACT application is filed for a source in the relevant source category or subcategory in the State or jurisdiction; and, pursuant to the requirements of this subpart, is additional relevant information that can be expeditiously provided by the Administrator, is submitted by the applicant or others prior to or during the public comment

period on the section 112(j) equivalent emission limitation for that source, or information contained in the information sources in paragraphs (1) through (5) of this definition.

(1) * * *

(2) Relevant background information documents for a draft or proposed regulation.

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination.

(4) Relevant data and information available from the Clean Air Technology Center developed pursuant to section 112(l)(3) of the Act.

(5) Relevant data and information contained in the Aerometric Information Retrieval System (AIRS).

* * * * *

Enhanced review means a review process containing all administrative steps needed to ensure that the terms and conditions resulting from the review process can be incorporated using title V permitting procedures.

Equivalent emission limitation means an emission limitation, established under section 112(j) of the Act, which is equivalent to the MACT standard that EPA would have promulgated under section 112(d) or (h) of the Act.

* * * * *

Maximum achievable control technology (MACT) floor means:

(1) * * *

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category or subcategory, for categories and subcategories of stationary sources with 30 or more sources; or

(ii) The average emission limitation achieved by the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory, for categories or subcategories with fewer than 30 sources;

* * * * *

New affected source means the collection of equipment, activities, or both, that if constructed after the issuance of a section 112(j) permit for the source pursuant to § 63.52, is subject to the applicable MACT emission limitation for new sources. Each permit must define the term ''new affected source,'' which will be the same as the ''affected source'' unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (*e.g.,* product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

* * * * *

Research or laboratory activities means activities whose primary purpose is to conduct research and development into new processes and products where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner; and where the source is not in a source category, specifically addressing research or laboratory activities, that is listed pursuant to section 112(c)(7) of the Act.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under this part, except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999.

Similar source means that equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected source.

* * * * *

15. Section 63.52 is revised to read as follows:

§ 63.52 Approval process for new and existing affected sources.

(a) *Sources subject to section 112(j) as of the section 112(j) deadline.* The requirements of paragraphs (a)(1) and (2) of this section apply to major sources that include, as of the section 112(j) deadline, one or more sources in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part on or before an applicable section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued to the source pursuant to the requirements of the subpart, must apply to such sources.

(1) The owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of § 63.53(a) by the section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the major source belong in the category or subcategory subject to section 112(j).

(2) If an application was not submitted under paragraph (a)(1) of this section and if notified by the permitting authority, the owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of § 63.53(a) within 30 days after being notified in writing by the permitting authority that one or more sources at the major source belong to such category or subcategory. Permitting authorities are not required to make such notification.

(3) The requirements in paragraphs (a)(3)(i) through (ii) of this section apply when the owner or operator has obtained a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g) or has submitted a title V permit application for a revision that incorporates a case-by-case MACT determination under section 112(g), but has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j).

(i) When the owner or operator has a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), the owner or operator must submit an application meeting the requirements of § 63.53(a) for a title V

permit revision within 30 days of the section 112(j) deadline or within 30 days of being notified in writing by the permitting authority that one or more sources at the major source belong in such category or subcategory. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(ii) When the owner or operator has submitted a title V permit application that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), but has not received the permit incorporating the section 112(g) requirements, the owner or operator must continue to pursue a title V permit that addresses the emission limitation requirements of section 112(g). Within 30 days of issuance of that title V permit, the owner or operator must submit an application meeting the requirements of § 63.53(a) for a change to the existing title V permit. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(b) *Sources that become subject to section 112(j) after the section 112(j) deadline and that do not have a title V permit addressing section 112(j) requirements.* The requirements of paragraphs (b)(1) through (4) of this section apply to sources that do not meet the criteria in paragraph (a) of this section on the section 112(j) deadline and are, therefore, not subject to section 112(j) on that date, but where events occur subsequent to the section 112(j) deadline that would bring the source under the requirements of this subpart, and the source does not have a title V permit that addresses the requirements of section 112(j).

(1) When one or more sources in a category or subcategory subject to the requirements of this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke section 112(g) requirements, the owner or operator must submit an application meeting the requirements of § 63.53(a) within 30 days of startup of the source. This application shall be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(2) The requirements in this paragraph apply when one or more sources in a category or subcategory subject to this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does require emission limitations to be established and permitted under section 112(g), and the owner or operator has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j). In this case, the owner or operator must apply for and obtain a title V permit that addresses the emission limitation requirements of section 112(g). Within 30 days of issuance of that title V permit, the owner or operator must submit an application meeting the requirements of § 63.53(a) for a revision to the existing title V permit. Using the procedures established in paragraph (e) of this section, the permitting authority must determine whether the emission limitations adopted pursuant to the prior case-by-case MACT determination under section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. If the permitting authority determines that the emission limitations previously adopted to effectuate section 112(g) are substantially as effective as the emission limitations which the permitting authority would otherwise adopt to effectuate section 112(j) for the source, then the permitting authority must retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j). The title V permit applicable to that source must be revised accordingly. If the permitting authority does not retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j), the MACT requirements of this subpart are satisfied upon issuance of a revised title V permit incorporating any additional section 112(j) requirements.

(3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this subpart, must submit an application meeting the requirements of § 63.53(a) for a title V permit or for an application for a title V permit revision within 30 days after the date that such source becomes a major source. This application must be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, must apply to such sources.

(4) On or after April 5, 2002, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the Act that results in an area source becoming a major source that is subject to this subpart, then the owner or operator of such a major source must submit an application meeting the requirements of § 63.53(a) for a title V permit or for a change to an

existing title V permit or pending title V permit on or before the date 6 months after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(c) *Sources that have a title V permit addressing section 112(j) requirements.* The requirements of paragraphs (c)(1) and (2) of this section apply to major sources that include one or more sources in a category or subcategory for which the Administrator fails to promulgate an emission standard under this part on or before an applicable section 112(j) deadline, and the owner or operator has a permit meeting the section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the section 112(j) deadline.

(1) If the title V permit already provides the appropriate requirements that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the source must comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the section 112(j) requirements are thus satisfied.

(2) If the title V permit does not contain the appropriate requirements that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the owner or operator must submit an application for a revision to the existing title V permit that meets the requirements of § 63.53(a). The application must be submitted within 30 days of beginning construction and must be reviewed using the procedures established in paragraph (e) of this section. Existing source MACT requirements (including relevant compliance deadlines), as specified in a title V permit issued pursuant to the requirements of this subpart, shall apply to such sources.

(d) *Requests for applicability determination or notice of MACT approval.*

(1) An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part may, on or before an applicable section 112(j) deadline, request an applicability determination from the permitting authority by submitting an application meeting the requirements of § 63.53(a) by the applicable deadlines specified in paragraphs (a), (b), or (c) of this section.

(2) In addition to meeting the requirements of paragraphs (a), (b), and (c) of this section, the owner or operator of a new affected source may submit an application for a Notice of MACT Approval before construction, pursuant to § 63.54.

(e) *Permit application review.*

(1) Within 24 months after an owner or operator submits a Part 1 MACT application meeting the requirements of § 63.53(a), the owner or operator must submit a Part 2 MACT application meeting the requirements of § 63.53(b). Part 2 MACT applications must be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the affected source is located.

(2) Notwithstanding paragraph (e)(1) of this section, the owner or operator may request either an applicability determination or an equivalency determination by the permitting authority as provided in paragraphs (e)(2)(i) and (ii) of this section.

(i) As specified in paragraph (d)(1) of this section, an owner or operator may request, through submittal of an application pursuant to § 63.53(a), a determination by the permitting authority of whether one or more sources at a major source belong in a category or subcategory for which the Administrator has failed to promulgate an emission standard under this part. If the applicability determination is positive, the owner or operator must comply with the applicable provisions of this subpart. The owner or operator must submit a Part 2 MACT application within 24 months after being notified of the positive applicability determination. If the applicability determination is negative, then no further action by the owner or operator is necessary.

(ii) As specified in paragraphs (a) and (b) of this section, an owner or operator may request, through submittal of an application meeting the requirements of § 63.53(a), a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the owner or operator must comply with the applicable provisions of this subpart. The owner or operator must submit a Part 2 MACT application within 24 months of being notified of such a negative determination. A negative determination under this section constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding State title V program provisions.

(3) Within 60 days of submittal of the Part 2 MACT application, the permitting authority must notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 MACT application shall be deemed complete on the date it was submitted unless the permitting authority notifies the owner or operator in writing within 60 days of the submittal that the Part 2 MACT application is incomplete. A Part 2 MACT application is complete if it is sufficient to begin processing the application for a title V permit addressing section 112(j) requirements. In the event that the permitting

authority disapproves a permit application or determines that the application is incomplete, the owner or operator must revise and resubmit the application to meet the objections of the permitting authority. The permitting authority must specify a reasonable period in which the owner or operator is required to remedy the deficiencies in the disapproved or incomplete application. This period may not exceed 6 months from the date the owner or operator is first notified that the application has been disapproved or is incomplete.

(4) Following submittal of a Part 1 or Part 2 MACT application, the permitting authority may request additional information from the owner or operator. The owner or operator must respond to such requests in a timely manner.

(5) If the owner or operator has submitted a timely and complete application as required by this section, any failure to have a title V permit addressing section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once a complete application is submitted, the owner or operator shall not be in violation of the requirement to have a title V permit addressing section 112(j) requirements.

(f) *Permit content.* The title V permit must contain an equivalent emission limitation (or limitations) for the relevant category or subcategory determined on a case-by-case basis by the permitting authority, or, if the applicable criteria in subpart D of this part are met, the title V permit may contain an alternative emission limitation. For the purposes of the preceding sentence, early reductions made pursuant to section 112(i)(5)(A) of the Act must be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(1) The title V permit must contain an emission standard or emission limitation that is equivalent to existing source MACT and an emission standard or emission limitation that is equivalent to new source MACT for control of emissions of hazardous air pollutants. The MACT emission standards or limitations must be determined by the permitting authority and must be based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained, and operated properly. The permit must also specify the affected source and the new affected source. If construction of a new affected source or reconstruction of an affected source commences after a title V permit meeting the requirements of section 112(j) has been issued for the source, the new source MACT compliance dates must apply.

(2) The title V permit must specify any notification, operation and maintenance, performance testing, monitoring, and reporting and recordkeeping requirements. In developing the title V permit, the permitting authority must consider and specify the appropriate provisions of subpart A of this part. The title V permit must also include the information in paragraphs (f)(2)(i) through (iii) of this section.

(i) In addition to the MACT emission limitation required by paragraph (f)(1) of this section, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation.

(ii) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established pursuant to title V and paragraph (h) of this section.

(iii) Compliance dates by which the owner or operator must be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit.

(A) The owner or operator of an affected source subject to the requirements of this subpart must comply with the emission limitation(s) by the date established in the source's title V permit. In no case shall such compliance date be later than 3 years after the issuance of the permit for that source, except where the permitting authority issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B) of the Act, or unless otherwise specified in section 112(i), or in subpart D of this part.

(B) The owner or operator of a new affected source, as defined in the title V permit meeting the requirements of section 112(j), that is subject to the requirements of this subpart must comply with a new source MACT level of control immediately upon startup of the new affected source.

(g) *Permit issuance dates.*

The permitting authority must issue a title V permit meeting section 112(j) requirements within 18 months after submittal of the complete Part 2 MACT application.

(h) *Enhanced monitoring.* In accordance with section 114(a)(3) of the Act, monitoring shall be capable of demonstrating continuous compliance for each compliance period during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for directly enforcing all applicable requirements established under this subpart, including emission limitations.

(i) *MACT emission limitations.*

(1) The owner or operator of affected sources subject to paragraphs (a), (b), and (c) of this section must comply with all requirements of this subpart that are applicable to affected sources, including the compliance date for affected sources established in paragraph (f)(2)(iii)(A) of this section.

(2) The owner or operator of new affected sources subject to paragraph (c)(1) of this section must comply with all requirements of this subpart that are applicable to new affected sources, including the compliance date for new affected sources established in paragraph (f)(2)(iii)(B) of this section.

16. Section 63.53 is revised to read as follows:

§ 63.53 Application content for case-by-case MACT determinations.

(a) *Part 1 MACT application.* The Part 1 application for a MACT determination must contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an identification of the relevant source category.

(3) An identification of the types of emission points belonging to the relevant source category.

(4) An identification of any affected sources for which a section 112(g) MACT determination has been made.

(b) *Part 2 MACT application.*

(1) The Part 2 application for a MACT determination must contain the information in paragraphs (b)(1)(i) through (vi) of this section.

(i) For a new affected source, the anticipated date of startup of operation.

(ii) The hazardous air pollutants emitted by each affected source in the relevant source category and an estimated total uncontrolled and controlled emission rate for hazardous air pollutants from the affected source.

(iii) Any existing Federal, State, or local limitations or requirements applicable to the affected source.

(iv) For each affected emission point or group of affected emission points, an identification of control technology in place.

(v) Information relevant to establishing the MACT floor, and, at the option of the owner or operator, a recommended MACT floor.

(vi) Any other information reasonably needed by the permitting authority including, at the discretion of the permitting authority, information required pursuant to subpart A of this part.

(2) The Part 2 application for a MACT determination may, but is not required to, contain the following information:

(i) Recommended emission limitations for the affected source and support information consistent with § 63.52(f). The owner or operator may recommend a specific design, equipment, work practice, or operational standard, or combination thereof, as an emission limitation.

(ii) A description of the control technologies that would be applied to meet the emission limitation including technical information on the design, operation, size, estimated control efficiency and any other information deemed appropriate by the permitting authority, and identification of the affected sources to which the control technologies must be applied.

(iii) Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

17. Section 63.54 is amended by:

a. Revising the section heading and adding introductory text;

b. Revising paragraph (a)(1) through (2);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(6);

e. Revising paragraph (c)(3);

f. Revising paragraph (d);

g. Removing paragraph (e);

h. Removing paragraph (f);

i. Redesignating paragraph (g) as (e) and revising newly designated paragraph (e); and

j. Redesignating paragraph (h) as (f).

The revisions and addition read as follows:

§ 63.54 Preconstruction review procedures for new affected sources.

The requirements of this section apply to an owner or operator who constructs a new affected source subject to § 63.52(c)(1). The purpose of this section is to describe alternative review processes that the permitting authority may use to make a MACT determination for the new affected source.

(a) *Review process for new affected sources.* (1) If the permitting authority requires an owner or operator to obtain or revise a title V permit before construction of the new affected source, or when the owner or operator chooses to obtain or revise a title V permit before construction, the owner or operator must follow the procedures established under the applicable title V permit program before construction of the new affected source.

(2) If an owner or operator is not required to obtain or revise a title V permit before construction of the new affected source (and has not elected to do so), but the new affected source is covered by any preconstruction or preoperation review requirements established pursuant to section 112(g) of the Act, then the owner or operator must comply with those requirements in order to ensure that the requirements of section 112(j) and (g) are satisfied. If the new affected source is not covered by section 112(g), the permitting authority, in its discretion, may issue a Notice of MACT Approval, or the equivalent, in accordance with the procedures set forth in paragraphs (b) through (f) of this section, or an equivalent permit review process, before construction or operation of the new affected source.

* * * * *

(b) *Optional administrative procedures for preconstruction or preoperation review for new affected sources.* The permitting authority may provide for an enhanced review of section 112(j) MACT determinations for review procedures and compliance requirements equivalent to those set forth in paragraphs (b) through (f) of this section.

* * * * *

(6) Approval of an applicant's proposed control technology must be set forth in a Notice of MACT Approval (or the equivalent) as described in § 63.52(f).

(c) *Opportunity for public comment on notice of MACT approval.* * * *

* * * * *

(3) A notice by prominent advertisement in the area affected of the location of the source information and analysis specified in § 63.52(f). The form and content of the notice must be substantially equivalent to that found in § 70.7 of this chapter.

* * * * *

(d) *Review by the EPA and affected States.* The permitting authority must send copies of the preliminary notice (in time for comment) and final notice required by paragraph (c) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States. The permitting authority must provide EPA with a review period for the final notice of at least 45 days and shall not issue a final Notice of MACT Approval until EPA objections are satisfied.

(e) *Compliance with MACT determinations.* An owner or operator of a major source that is subject to a MACT determination must comply with notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements established under § 63.52(h), under title V, and at the discretion of the permitting authority, under subpart A of this part. The permitting authority must provide the EPA with the opportunity to review compliance requirements for consistency with requirements established pursuant to title V during the review period under paragraph (d) of this section.

* * * * *

18. Section 63.55 is revised to read as follows:

§ 63.55 Maximum achievable control technology (MACT) determinations for affected sources subject to case-by-case determination of equivalent emission limitations.

(a) *Requirements for permitting authorities.* The permitting authority must determine whether the § 63.53(a) Part 1 and § 63.53(b) Part 2 MACT application is complete or an application for a Notice of MACT Approval is approvable. In either case, when the application is complete or approvable, the permitting authority must establish hazardous air pollutant emissions limitations equivalent to the limitations that would apply if an emission standard had been issued in a timely manner under section 112(d) or (h) of the Act. The permitting authority must establish these emissions limitations consistent with the following requirements and principles:

(1) Emission limitations must be established for the equipment and activities within the affected sources within a source category or subcategory for which the section 112(j) deadline has passed.

(2) Each emission limitation for an existing affected source must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by affected sources in the category or subcategory for which the section 112(j) deadline has passed. This limitation must not be less stringent than the MACT floor

which must be established by the permitting authority according to the requirements of section 112(d)(3)(A) and (B) and must be based upon available information.

(3) Each emission limitation for a new affected source must reflect the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the permitting authority, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable. This limitation must not be less stringent than the emission limitation achieved in practice by the best controlled similar source which must be established by the permitting authority according to the requirements of section 112(d)(3). This limitation must be based upon available information.

(4) The permitting authority must select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation due to the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when the Administrator determines that hazardous air pollutants cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(5) Nothing in this subpart shall prevent a State or local permitting authority from establishing an emission limitation more stringent than required by Federal regulations.

(b) *Reporting to EPA.* The owner or operator must submit additional copies of its Part 1 and Part 2 MACT application for a title V permit, permit revision, or Notice of MACT Approval, whichever is applicable, to the EPA at the same time the material is submitted to the permitting authority.

19. Section 63.56 is revised to read as follows:

§ 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

(a) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected sources within a major source before the date a permit application under this paragraph (a) is approved, the title V permit must contain the promulgated standard rather than the emission limitation determined under § 63.52, and the owner or operator must comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates a relevant emission standard under section 112(d) or (h) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority must incorporate requirements of that standard in the title V permit upon its next renewal. The permitting authority must establish a compliance date in the revised permit that assures that the owner or operator must comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the date by which the owner or operator was first required to comply with the emission limitation established by the permit, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

(c) Notwithstanding the requirements of paragraph (a) or (b) of this section, the requirements of paragraphs (c)(1) and (2) of this section shall apply.

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) that is applicable to an affected source after the date a permit application under this paragraph is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the permitting authority determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standard pursuant to § 63.1(e).

(2) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected source after the date a permit application is approved under § 63.52 or § 63.54, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the permitting authority is not required to incorporate any less stringent emission limitation of the promulgated standard in the title V permit and may in its discretion consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a title V permit.

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Federal Register

Friday,
April 5, 2002

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7168–1]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action on targeted amendments to the national emission standards for the portland cement manufacturing industry promulgated on June 14, 1999 under the authority of section 112 of the Clean Air Act (CAA). The amendments make improvements to the implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring to resolve issues and questions raised since promulgation of the rule.

DATES: This direct final rule is effective on July 5, 2002 without further notice, unless significant adverse comments are received by May 6, 2002.

If significant material adverse comments are received by May 6, 2002, this direct final rule will be withdrawn and the comments addressed in a subsequent final rule based on the proposed rule published elsewhere in this issue. If no significant material adverse comments are received, no further action will be taken on the proposal and this direct final rule will become effective on July 5, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–53, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–53, Room M–1500, U.S. EPA, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. We are publishing this direct final rule without prior proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. We anticipate no adverse comment because EPA received no adverse comment when we published a document in the **Federal Register** on the settlement agreement relating to these amendments (66 FR 50643, October 4, 2001). However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the emissions standards for the portland cement manufacturing industry promulgated on June 14, 1999, if adverse comments are filed.

If we receive any relevant adverse comments on one or more distinct amendments, we will publish a timely withdrawal in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in today's rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this direct final rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–92–53.

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

Regulated Entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Industry	32731	3241	Owners or operators of portland cement manufacturing plants.
State	32731	3241	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	3241	Owners or operators of portland cement manufacturing plants.
Federal agencies	None	None	None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 4, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to this direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this direct final rule may not be

challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading this preamble to this direct final rule.

I. Background
II. Amendments to the NESHAP
A. Applicability and Designation of Affected Sources
B. Operating Limits for Kilns and In-line Kiln/Raw Mills
C. Performance Testing Requirements
D. Monitoring Requirements
E. PM and Opacity Compliance Waiver During PM CEM Testing
F. Compliance Dates
III. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
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C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Background

On June 14, 1999, we published in the **Federal Register** the final rule entitled, ''National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry'' (40 CFR part 63, subpart LLL). The American Portland Cement Alliance (APCA) petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the final rule under section 307(b)(1) of the CAA. (*See* 42 U.S.C. 7607(b)(1).) The APCA and the EPA negotiated and have agreed to the terms of a Settlement Agreement and its implementation.

The action taken today is consistent with the terms of the Settlement Agreement and reflects EPA's judgment that these amendments improve the rule's implementation. Today's action makes specific changes to the NESHAP for the portland cement manufacturing industry, generally relating to applicability, performance testing, and monitoring.

The portland cement NESHAP contains emission limitations for hazardous air pollutants (HAP) emitted by portland cement manufacturing sources. In a separate action, some of those emission limitations were remanded to EPA by the court in *National Lime Association* v. *EPA,* 233 F. 3d 625 (D.C. Cir. 2000). Today's direct final rule does not deal with any of the issues which were remanded to EPA, rather, the direct final rule amends certain provisions of the final rule dealing largely with issues of implementation.

II. Amendments to the NESHAP

A. Applicability and Designation of Affected Sources

A ''bin'' is one of the affected sources listed in § 63.1340 of the final rule, *i.e.,* a source of emissions that is subject to emissions standards in the rule. The term is not defined in the rule, which leads to potential confusion. We are, therefore, adding a definition of ''bin'' to clarify the applicability of the rule. We define ''bin'' as a manmade enclosure for storage of raw materials, clinker, or finished product prior to the further processing of these materials at a portland cement plant.

Today's action revises § 63.1340(c) of the final rule to clarify that primary and secondary crushers are not subject to the final rule regardless of their location in the production line relative to raw material storage. This was the intent of the final rule. (See 63 FR 14194, March 24, 1998 and 64 FR 31900, June 14, 1999.) However, portland cement manufacturers pointed out that the provision, as it appears in the final rule, could be interpreted to apply to crushers if they follow raw material storage:

> * * * The primary and secondary crushers and any other equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage are not subject to this subpart.* * *

Portland cement manufacturers pointed out that crushers may follow the raw material storage in the production line. We did not intend that the final rule apply to crushers because we wanted to maintain consistency with 40 CFR part 60, subpart F, the new source performance standards (NSPS) for the portland cement industry. We are, therefore, amending the final rule to clarify that primary and secondary crushers are not covered by the final rule regardless of their location relative to raw material storage.

Section 63.1356 of the final rule is being revised to clarify that the systems used to convey and transfer coal from the coal mill to the kiln at portland cement plants that are major sources of HAP are not subject to the NSPS for coal preparation plants (40 CFR part 60, subpart Y). The final portland cement NESHAP already cover conveying system transfer points associated with coal preparation plants at portland cement plants that are major sources. There is no need for these sources to be subject to duplicative requirements, *i.e.,* to also be covered by the NSPS for coal preparation plants. Further, these emission sources will be subject to more stringent opacity requirements (10 percent) under the NESHAP than under the NSPS for coal preparation plants (40 CFR part 60, subpart Y). Other coal conveying transfer points will continue to be subject to the NSPS for coal preparation plants.

The list of affected sources in § 63.1340(b)(7) of the final rule is being amended to clarify that coal conveying system transfer points associated with conveying of coal from the mill to the kiln are included as affected sources.

Section 63.1356(a) of the final rule is being revised to clarify that in exempting affected sources subject to the portland cement NESHAP from duplicative requirements under 40 CFR part 60, subpart F, it was not our intention that these sources would then become affected sources under the requirements of 40 CFR part 60, subpart OOO (NSPS for Nonmetallic Mineral Processing Plants). The requirements of 40 CFR part 60, subpart OOO may apply to certain sources at a portland cement plant depending on whether or not 40 CFR part 60, subpart F, applies to that source. In particular, 40 CFR 60.670(b) states that if an emission source is subject to 40 CFR part 60, subpart F, or follows in the plant process a source that is subject to subpart F, then 40 CFR part 60, subpart OOO does not apply to that source. The purpose of § 63.1356(a) of the final rule is to avoid having a source that is subject to certain requirements under this subpart also be subject to the same requirements under 40 CFR part 60, subparts F or OOO.

The list of affected sources in the portland cement NESHAP is being amended by combining into one paragraph the affected sources, ''bagging system'' and ''bulk loading or unloading system,'' making the rule language consistent with the NSPS for portland cement plants (40 CFR part 60, subpart F).

B. Operating Limits for Kilns and In-line Kiln/Raw Mills

Section 63.1344(a)(3) of the final rule is being revised to indicate that the operating limit for gas stream temperature pertaining to the inlet to the alkali bypass particulate matter (PM) control device may be established during a performance test either with or without the raw mill being in operation.

This revision provides additional flexibility in that the test for dioxin/furan (D/F) emissions from the alkali bypass may be conducted whether the raw mill is operating or not since D/F emissions in the alkali bypass are not affected by the operation of the raw mill. Alkali bypass emissions are not affected by the operation of the raw mill since the alkali bypass gas stream does not pass through the raw mill.

C. Performance Testing Requirements

Today's direct final rule revises the performance testing requirements in 40 CFR 63.1349(e) to clarify conditions under which changes in operation will require repeat performance testing. This revision provides a more understandable description of the criteria for determining when the performance tests need to be repeated. In the current final rule, a new performance test is required if there is a ''significant change in feed or fuel from that used in the previous performance test.'' Under today's amendments, a new test is required if a change in operations may adversely affect compliance. This allows sources the flexibility to make changes in their kiln's operation without having to retest (and establish new temperature operating limits for D/F) if the change will not adversely affect compliance. Further, if the operational change will only adversely affect compliance with one of the pollutant emission limits (for example, PM, but not D/F), then the source will only be required to retest for that one pollutant. This amendment may be less costly to industry (e.g., test only if compliance may be adversely affected versus test after any significant change in feed or fuels, which is largely pointless if compliance is not adversely affected), while being at least equally protective. This amendment is also consistent with and reaffirms § 63.7(e) of the General Provisions in 40 CFR part 63, subpart A, which states that performance tests must be conducted under representative conditions.

Section 63.1349(e) of the final rule is further amended by adding paragraphs (e)(3)(i) through (iv). This amendment will allow a source that is required to conduct a new performance test under paragraph (e)(1) of this section to operate under the planned operational change conditions for a period not to exceed 360 hours, provided that certain conditions are met. This amendment allows the source sufficient time to (1) equilibrate the operation of the kiln after the change has occurred (which could take days), (2) conduct any emissions checks (pretests) prior to the actual performance test, and (3) conduct the actual performance test. The time required to conduct a performance test could exceed 1 week, especially if both PM and D/F tests are to be conducted, and if both the main and alkali bypass stacks need to be tested. However, the 360-hour waiver is allowed only if certain requirements are met. If the source is conducting a D/F test to reestablish a new temperature operating limit, the source must submit temperature monitoring data for the entire pretest period and document the results of the performance test. Prior notice must be given to the Administrator of the planned change and once the planned operational period begins, the source must conduct and complete the performance test within 360 hours. The requirement that the source must actually conduct the performance test prevents a source from falsely claiming an operational change is needed in order to obtain the 360-hour waiver.

Today's direct final rule amends § 63.1349(b) of the final rule to require performance testing under ''representative'' conditions rather than under ''the highest load or capacity reasonably expected to occur.'' This amendment makes the NESHAP consistent with the General Provisions' requirements (cited above) that performance tests be conducted under representative conditions. The implication of this amendment is that the performance test should be conducted at the highest production rate at which the kiln normally would operate. If the kiln is operated under a condition not representative of the condition during the performance test, *e.g.*, the kiln is operated at a production rate higher than the production rate at which it was tested, the performance test will need to be re-conducted and temperature limit(s) reestablished. This is in accordance with today's amendments to 40 CFR 63.1349(e) which state that a new performance test is required if a change in operations may adversely affect compliance.

Today's action amends § 63.1349(b)(3) of the final rule to allow the D/F performance test of an alkali bypass associated with an in-line kiln/raw mill to be conducted either with the raw mill operating or with the raw mill not operating. This amendment is consistent with the amendment to § 63.1344(a)(3) (discussed earlier) allowing the operating limit affecting the temperature at the inlet to the alkali bypass PM control device to be established either with the raw mill operating or with the raw mill not operating. This will provide greater flexibility since D/F emissions in the alkali bypass are not affected by the operation of the raw mill.

D. Monitoring Requirements

Corresponding to the amendments requiring that performance tests be conducted under representative performance conditions, paragraphs (c)(2)(i), (d)(2)(i), and (e) of 40 CFR 63.1350 are being amended to require that the daily manual observations of opacity or visible emissions (VE) be conducted under representative performance conditions as well.

Section 63.1350(k) of the final rule requires affected sources to install PM continuous emission monitors (CEM). However, as noted in the Settlement Agreement, we agreed to state in this preamble that § 63.1350(k) of the final rule currently requires sources to install PM CEM, but does not specify a deadline by which sources would be required to comply with this requirement.

We are amending the requirements of § 63.1350(e)(2) of the final rule to conduct follow-up VE tests when VE were observed previously. This amendment allows the source to have 2 consecutive calendar days of visible emissions prior to having to conduct a follow-up test by Method 9 (40 CFR part 60, appendix A). The final rule as promulgated requires a Method 9 test be conducted within 24 hours for a particular raw or finish mill if VE are observed during the daily test by Method 22 (40 CFR part 60, appendix A). We agree with industry that this may be overly burdensome since the presence of VE does not necessarily indicate whether a source is in violation of the 10 percent opacity limit. Further, if VE are observed, corrective action may be taken by the source to eliminate the emissions prior to the subsequent Method 22 test and, thereby, eliminate the emissions and avoid having to do a more costly Method 9 test.

Section 63.1350 of the final rule is being amended to give sources the option of installing continuous monitoring systems on raw mills and finish mills in place of daily Method 22 testing, which is required in the final rule. This amendment allows a source the option to use continuous monitoring equipment (e.g., continuous opacity monitors or bag leak detectors) in lieu of the manual measurement (Method 22) of VE and opacity. We believe that these continuous monitoring options are just as effective in demonstrating compliance as the currently required manual methods. Some sources may prefer to use these instruments in lieu of daily visual monitoring.

We are revising the requirements of § 63.1350(a)(4) of the final rule so that Method 22 VE monitoring is not required for conveying system transfer points if they are totally enclosed. This amendment eliminates the need for VE monitoring at totally enclosed transfer points, since we expect minimal VE from such transfer points. As indicated in the Settlement Agreement with the APCA, ''the enclosures for these transfer points shall be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan.'' The other amendments to § 63.1350(a)(4) provide procedures for monitoring of VE for transfer points inside buildings.

We are also revising Table 1 to subpart LLL to clarify that § 63.6(h)(7) of the NESHAP General Provisions applies to the final rule. The EPA inadvertently omitted this table entry from the final rule.

E. PM and Opacity Compliance Waiver During PM CEM Testing

Section 63.1357 of the final rule specifies the conditions under which an owner or operator is exempt from compliance with PM and opacity standards for the purpose of conducting tests to correlate PM CEM with manual method results. The final rule provides a 96-hour waiver from compliance. For sources that do choose to use a PM CEM, we are clarifying that they may petition us for additional time for the waiver from the PM and opacity limits during the correlation testing if additional time is needed to finish the PM CEM correlation testing.

F. Compliance Dates

Section 63.1351 of the final rule is being revised to correct erroneous compliance deadlines specified in the final rule. This amendment adds a few more days to the compliance date to give an existing source a full 3 years to comply with the standards. We are also changing the compliance date for new sources to coincide with the publication date of the final rule in the **Federal Register**.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments do not constitute a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the amendments. Thus, Executive Order 13132 does not apply to this direct final rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 direct final rule is not subject to Executive Order 13045, because it is not an economically significant regulatory action as defined by Executive Order 12866, and because it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

This direct final 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.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA

to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the direct final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this direct final rule.

G. Regulatory Flexibility Act, As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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. Sections 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 effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of applicability, testing, and monitoring. We have therefore concluded that today's final rule will have no adverse impacts on any small entities and may relieve burden in some cases.

Although the direct final rule will not have a significant economic impact on a substantial number of small entities, we worked with portland cement industry, including small entities, throughout the rulemaking process. Meetings were held on a regular basis with industry representatives in connection with the settlement agreement, to discuss the development of the direct final rule, exchange information, and solicit comments on final rule requirements.

H. Paperwork Reduction Act

The information collection requirements in the final rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060–0416. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1801.02) and a copy may be obtained from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epamail.epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded from the internet at *http://www.epa.gov/icr.*

Today's action makes clarifying changes to the promulgated rule and imposes no new information collection requirements on industry. Because only clarifying changes are being made, there is no additional burden on industry as a result of this direct final rule and the ICR has not been revised.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule will be effective on July 5, 2002, unless significant adverse comments are received by May 6, 2002.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 28, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart LLL—[Amended]

2. Section 63.1340 is amended by revising paragraphs (b)(7) and (8), deleting paragraph (b)(9), and revising paragraph (c) to read as follows:

§ 63.1340 Applicability and designation of affected sources.

* * * * *

(b) * * *

(7) Each conveying system transfer point including those associated with coal preparation used to convey coal from the mill to the kiln at any portland cement plant which is a major source; and

(8) Each bagging and bulk loading and unloading system at any portland cement plant which is a major source.

(c) For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. Any equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage is not subject to this subpart. In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

* * * * *

3. Section 63.1341 is amended by adding in alphabetical order the definition for the term *Bin* to read as follows:

§ 63.1341 Definitions.

* * * * *

Bin means a manmade enclosure for storage of raw materials, clinker, or finished product prior to further processing at a portland cement plant.

* * * * *

4. Section 63.1344 is amended by revising paragraph (a)(3) to read as follows:

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

(a) * * *

(3) If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass specified in paragraph (b) of this section and established during the performance test, with or without the raw mill operating, is not exceeded.

* * * * *

5. Section 63.1349 is amended by revising paragraphs (b)(1)(i), (b)(2), (b)(3), (b)(3)(i), (e), and Table 1 to § 63.1349 to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(b) * * *

(1) * * *

(i) Method 5 of appendix A to part 60 of this chapter shall be used to determine PM emissions. Each performance test shall consist of three separate runs under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). Each run shall be conducted for at least 1 hour, and the minimum sample volume shall be 0.85 dscm (30 dscf). The average of the three runs shall be used to determine compliance. A determination of the PM collected in the impingers (''back half'') of the Method 5 particulate sampling train is not required to demonstrate initial compliance with the PM standards of this subpart. However, this shall not preclude the permitting authority from requiring a determination of the ''back half'' for other purposes.

* * * * *

(2) The owner or operator of any affected source subject to limitations on opacity under this subpart that is not subject to paragraph (b)(1) of this section shall demonstrate initial compliance with the affected source opacity limit by conducting a test in accordance with Method 9 of appendix A to part 60 of this chapter. The performance test shall be conducted under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The maximum 6-minute average opacity exhibited during the test period shall be used to determine whether the affected source is in initial compliance with the standard. The duration of the Method 9 performance test shall be 3 hours (30 6-minute averages), except that the duration of the Method 9 performance test may be reduced to 1 hour if the conditions of paragraphs (b)(2)(i) through (ii) of this section apply:

* * * * *

(3) The owner or operator of an affected source subject to limitations on D/F emissions under this subpart shall demonstrate initial compliance with the D/F emission limit by conducting a performance test using Method 23 of appendix A to part 60 of this chapter. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a kiln or in-line kiln/raw mill equipped with an alkali bypass shall conduct simultaneous performance tests of the kiln or in-line kiln/raw mill exhaust and the alkali bypass. However, the owner or operator of an in-line kiln/raw mill may conduct a performance test of the alkali bypass exhaust when the raw mill of the in-line kiln/raw mill is operating or not operating.

(i) Each performance test shall consist of three separate runs; each run shall be conducted under the conditions that exist when the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of each run shall be at least 3 hours, and the sample volume for each run shall be at least 2.5 dscm (90 dscf). The concentration shall be determined for each run, and the arithmetic average of the concentrations measured for the three runs shall be calculated and used to determine compliance.

* * * * *

(e)(1) If a source plans to undertake a change in operations that may adversely affect compliance with an applicable D/F standard under this subpart, the source must conduct a performance test and establish new temperature limit(s) as specified in paragraph (b)(3) of this section.

(2) If a source plans to undertake a change in operations that may adversely affect compliance with an applicable PM standard under § 63.1343, the source must conduct a performance test as specified in paragraph (b)(1) of this section.

(3) In preparation for and while conducting a performance test required in paragraph (e)(1) of this section, a source may operate under the planned operational change conditions for a period not to exceed 360 hours, provided that the conditions in paragraphs (e)(3)(i) through (iv) of this section are met. The source shall submit temperature and other monitoring data that are recorded during the pretest operations.

(i) The source must provide the Administrator written notice at least 60 days prior to undertaking an operational change that may adversely affect compliance with an applicable standard

under this subpart, or as soon as practicable where 60 days advance notice is not feasible. Notice provided under this paragraph shall include a description of the planned change, the emissions standards that may be affected by the change, and a schedule for completion of the performance test required under paragraph (e)(1) of this section, including when the planned operational change period would begin.

(ii) The performance test results must be documented in a test report according to paragraph (a) of this section.

(iii) A test plan must be made available to the Administrator prior to testing, if requested.

(iv) The performance test must be conducted, and it must be completed within 360 hours after the planned operational change period begins.

* * * * *

TABLE 1 TO § 63.1349.—SUMMARY OF PERFORMANCE TEST REQUIREMENTS

Affected source and pollutant	Performance test
New and existing kiln and in-line kiln/raw mil[b c] PM	EPA Method 5[a].
New and existing kiln and in-line kiln/raw mill[b c] Opacity	COM if feasible[d e] or EPA Method 9 visual opacity readings.
New and existing kiln and in-line kiln/raw mill[b c f g] D/F	EPA Method 23[h].
New greenfield kiln and in-line kiln/raw mill[c] THC	THC CEM (EPA PS–8A)[i].
New and existing clinker cooler PM	EPA Method 5[a].
New and existing clinker cooler opacity	COM[d j] or EPA Method 9 visual opacity readings.
New and existing raw and finish mill opacity	EPA Method 9[a j].
New and existing raw material dryer and materials handling processes (raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) opacity.	EPA Method 9[a j].
New greenfield raw material dryer THC	THC CEM (EPA PS–8A)[i].

[a] Required initially and every 5 years thereafter.
[b] Includes main exhaust and alkali bypass.
[c] In-line kiln/raw mill to be tested with and without raw mill in operation.
[d] Must meet COM performance specification criteria. If the fabric filter or electrostatic precipitator has multiple stacks, daily EPA Method 9 visual opacity readings may be taken instead of using a COM.
[e] Opacity limit is 20 percent.
[f] Alkali bypass is tested with the raw mill operating or not operating.
[g] Temperature and (if applicable) activated carbon injection parameters determined separately with and without the raw mill operating.
[h] Required initially and every 30 months thereafter.
[i] EPA Performance Specification (PS)–8A of appendix B to part 60 of this chapter.
[j] Opacity limit is 10 percent.

6. Section 63.1350 is amended by:

a. Adding paragraphs (a)(4)(v) through (a)(4)(vii);

b. Revising paragraph (c)(2)(i);

c. Revising paragraph (d)(2)(i);

d. Revising paragraphs (e) and (e)(2);

e. Redesignating paragraph (m) as paragraph (n) and adding a new paragraph (m); and

f. Revising Table 1 to § 63.1350.

The revisions and additions read as follows:

§ 63.1350 Monitoring requirements.

(a) * * *

(4) * * *

(v) The requirement to conduct Method 22 visible emissions monitoring under this paragraph shall not apply to any totally enclosed conveying system transfer point, regardless of the location of the transfer point. ''Totally enclosed conveying system transfer point'' shall mean a conveying system transfer point that is enclosed on all sides, top, and bottom.

(vi) If any partially enclosed or unenclosed conveying system transfer point is located in a building, the owner or operator of the portland cement plant shall have the option to conduct a Method 22 visible emissions monitoring test according to the requirements of paragraphs (a)(4)(i) through (iv) of this section for each such conveying system transfer point located within the building, or for the building itself (according to paragraph (a)(4)(vii) of this section).

(vii) If visible emissions from a building are monitored, the requirements of paragraphs (a)(4)(i) through (iv) of this section apply to the monitoring of the building, and you must also do the following: Test visible emissions from each side, roof and vent of the building for at least 1 minute. The test must be conducted under normal operating conditions.

* * * * *

(c) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(d) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(e) The owner or operator of a raw mill or finish mill shall monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator PMCD of these affected sources in accordance with the procedures of Method 22 of appendix A to part 60 of this chapter. The Method 22 test shall be conducted while the affected source is operating at the representative performance conditions in accordance with § 63.7(e). The duration of the Method 22 test shall be 6 minutes. If visible emissions are observed during any Method 22 visible emissions test, the owner or operator must:

* * * * *

(2) Within 24 hours of the end of the Method 22 test in which visible emissions were observed, conduct a followup Method 22 test of each stack from which visible emissions were observed during the previous Method 22

test. If visible emissions are observed during the followup Method 22 test from any stack from which visible emissions were observed during the previous Method 22 test, conduct a visual opacity test of each stack from which emissions were observed during the follow up Method 22 test in accordance with Method 9 of appendix A to part 60 of this chapter. The duration of the Method 9 test shall be 30 minutes.

* * * * *

(m) The requirements under paragraph (e) of this section to conduct daily Method 22 testing shall not apply to any specific raw mill or finish mill equipped with a continuous opacity monitor COM or bag leak detection system (BLDS). If the owner or operator chooses to install a COM in lieu of conducting the daily visual emissions testing required under paragraph (e) of this section, then the COM must be installed at the outlet of the PM control device of the raw mill or finish mill, and the COM must be installed, maintained, calibrated, and operated as required by the general provisions in subpart A of this part and according to PS–1 of appendix B to part 60 of this chapter. To remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 10 percent. If the average opacity for any 6-minute block period exceeds 10 percent, this shall constitute a violation of the standard. If the owner or operator chooses to install a BLDS in lieu of conducting the daily visual emissions testing required under paragraph (e) of this section, the requirements in paragraphs (m)(1) through (9) of this section apply to each BLDS:

(1) The BLDS must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less. ''Certify'' shall mean that the instrument manufacturer has tested the instrument on gas streams having a range of particle size distributions and confirmed by means of valid filterable PM tests that the minimum detectable concentration limit is at or below 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The sensor on the BLDS must provide output of relative PM emissions.

(3) The BLDS must have an alarm that will activate automatically when it detects a significant increase in relative PM emissions greater than a preset level.

(4) The presence of an alarm condition should be clearly apparent to facility operating personnel.

(5) For a positive-pressure fabric filter, each compartment or cell must have a bag leak detector. For a negative-pressure or induced-air fabric filter, the bag leak detector must be installed downstream of the fabric filter. If multiple bag leak detectors are required (for either type of fabric filter), detectors may share the system instrumentation and alarm.

(6) All BLDS must be installed, operated, adjusted, and maintained so that they are based on the manufacturer's written specifications and recommendations. The EPA recommends that where appropriate, the standard operating procedures manual for each bag leak detection system include concepts from EPA's ''Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015, September 1997).

(7) The baseline output of the system must be established as follows:

(i) Adjust the range and the averaging period of the device; and

(ii) Establish the alarm set points and the alarm delay time.

(8) After initial adjustment, the range, averaging period, alarm set points, or alarm delay time may not be adjusted except as specified in the operations and maintenance plan required by paragraph (a) of this section. In no event may the range be increased by more than 100 percent or decreased by more than 50 percent over a 1 calendar year period unless a responsible official as defined in § 63.2 certifies in writing to the Administrator that the fabric filter has been inspected and found to be in good operating condition.

(9) The owner or operator must maintain and operate the fabric filter such that the bag leak detector alarm is not activated and alarm condition does not exist for more than 5 percent of the total operating time in a 6-month block period. Each time the alarm activates, alarm time will be counted as the actual amount of time taken by the owner or operator to initiate corrective actions. If inspection of the fabric filter demonstrates that no corrective actions are necessary, no alarm time will be counted. The owner or operator must continuously record the output from the BLDS during periods of normal operation. Normal operation does not include periods when the BLDS is being maintained or during startup, shutdown or malfunction.

* * * * *

TABLE 1 TO § 63.1350.—MONITORING REQUIREMENTS

Affected source/pollutant or opacity	Monitor type/operation/process	Monitoring requirements
All affected sources	Operations and maintenance plan .	Prepare written plan for all affected sources and control devices.
All kilns and in-line kiln raw mills at major sources (including alkali bypass)/opacity .	Continuous opacity monitor, if applicable .	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable .	Daily test of at least 30-minutes, while kiln is at representative performance conditions.
Kilns and in-line raw mills at major sources (including alkali bypass)/particulate matter .	Particulate matter continuous monitoring systems .	Deferred
Kilns and in-line kiln raw mills at major and area sources (including alkali bypass)/D/F .	Combustion system inspection .	Conduct annual inspection of components of combustion system.
	Continuous temperature monitoring at PMCD inlet .	Install, operate, calibrate and maintain continuous temperature monitoring and recording system; calculate three-hour rolling averages; verify temperature sensor calibration at least quarterly.

TABLE 1 TO § 63.1350.—MONITORING REQUIREMENTS—Continued

Affected source/pollutant or opacity	Monitor type/operation/process	Monitoring requirements
	Activated carbon injection rate monitor, if applicable .	Install, operate, calibrate and maintain continuous activated carbon injection rate monitor; calculate three-hour rolling averages; verify calibration at least quarterly; install, operate, calibrate and maintain carrier gas flow rate monitor or carrier gas pressure drop monitor; calculate three-hour rolling averages; document carbon specifications.
New greenfield kilns and inline kiln raw mills at major and area sources/THC .	Total hydrocarbon continuous emission monitor .	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.
Clinker coolers at major sources/opacity	Continuous opacity monitor, if applicable .	Install, calibrate, maintain and operate in accordance with general provisions and with PS–1.
	Method 9 opacity test, if applicable .	Daily test of at least applicable 30-minutes, while kiln is at representative performance conditions.
Raw mills and finish mills at major sources/opacity	Method 22 visible emissions test .	Conduct daily 6-minute Method 22 visible emissions test while mill is operating at representative performance conditions; if visible emissions are observed, initiate corrective action within one hour and conduct follow up Method 22 test. If visible emissions are observed, conduct 30-minute Method 9 test.
New greenfield raw material dryers at major and area sources/THC .	Total hydrocarbon continuous emission monitor .	Install, operate, and maintain THC CEM in accordance with PS–8A; calculate 30-day block average THC concentration.
Raw material dryers; raw material, clinker, finished product storage bins; conveying system transfer points, excluding totally enclosed conveying system transfer points; bagging systems; and bulk loading and unloading systems at major sources/opacity .	Method 22 visible emissions test .	As specified in operation and maintenance plan.

7. Section 63.1351 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.1351 Compliance dates.

(a) The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is June 14, 2002.

(b) The compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998 is June 14, 1999 or upon startup of operations, whichever is later.

* * * * *

8. Section 63.1356 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 63.1356 Exemption from new source performance standards.

(a) Except as provided in paragraphs (a)(1) and (2) of this section, any affected source subject to the provisions of this subpart is exempt from any otherwise applicable new source performance standard contained in subpart F or subpart OOO of part 60 of this chapter.

* * * * *

(b) The requirements of subpart Y of part 60 of this chapter, ''Standards of Performance for Coal Preparation Plants,'' do not apply to conveying system transfer points used to convey coal from the mill to the kiln that are associated with coal preparation at a portland cement plant that is a major source under this subpart.

9. Section 63.1357 is amended by revising paragraph (e) to read as follows:

§ 63.1357 Temporary, conditioned exemption from particulate matter and opacity standards.

* * * * *

(e) The PM and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for the purposes of conducting tests to correlate PM CEMS with manual method test results, including all runs and conditions, except as described in this paragraph. Where additional time is required to correlate a PM CEMS device, a source may petition the Administrator for an extension of the 96-hour aggregate waiver of compliance with the PM and opacity standards. An extension of the 96-hour aggregate waiver is renewable at the discretion of the Administrator.

* * * * *

10. Table 1 to subpart LLL of part 63 is revised to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to Subpart LLL	Explanation
63.1(a)(1)–(4)	Applicability	Yes .	
63.1(a)(5)	.....	No	[Reserved]
63.1(a)(6)–(8)	Applicability	Yes .	
63.1(a)(9)	.....	No	[Reserved]
63.1(a)(10)–(14)	Applicability	Yes .	
63.1(b)(1)	Initial Applicability Determination	No	§ 63.1340 specifies applicability.
63.1(b)(2)–(3)	Initial Applicability Determination	Yes .	

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Requirement	Applies to Subpart LLL	Explanation
63.1(c)(1)	Applicability After Standard Established .	Yes .	
63.1(c)(2)	Permit Requirements	Yes	Area sources must obtain Title V permits.
63.1(c)(3)		No	[Reserved]
63.1(c)(4)–(5)	Extensions, Notifications	Yes .	
63.1(d)		No	[Reserved]
63.1(e)	Applicability of Permit Program	Yes .	
63.2	Definitions	Yes	Additional definitions in § 63.1341.
63.3(a)–(c)	Units and Abbreviations	Yes .	
63.4(a)(1)–(3)	Prohibited Activities	Yes .	
63.4(a)(4)		No	[Reserved]
63.4(a)(5)	Compliance date	Yes .	
63.4(b)–(c)	Circumvention, Severability	Yes .	
63.5(a)(1)–(2)	Construction/Reconstruction	Yes .	
63.5(b)(1)	Compliance Dates	Yes .	
63.5(b)(2)		No	[Reserved]
63.5(b)(3)–(6)	Construction Approval, Applicability	Yes .	
63.5(c)		No	[Reserved]
63.5(d)(1)–(4)	Approval of Construction/Reconstruction .	Yes .	
63.5(e)	Approval of Construction/Reconstruction .	Yes .	
63.5(f)(1)–(2)	Approval of Construction/Reconstruction .	Yes .	
63.6(a)	Compliance for Standards and Maintenance .	Yes .	
63.6(b)(1)–(5)	Compliance Dates	Yes .	
63.6(b)(6)		No	[Reserved]
63.6(b)(7)	Compliance Dates	Yes .	
63.6(c)(1)–(2)	Compliance Dates	Yes .	
63.6(c)(3)–(4)		No	[Reserved]
63.6(c)(5)	Compliance Dates	Yes .	
63.6(d)		No	[Reserved]
63.6(e)(1)–(2)	Operation & Maintenance	Yes .	
63.6(e)(3)	Startup, Shutdown Malfunction Plan	Yes .	
63.6(f)(1)–(3)	Compliance with Emission Standards	Yes .	
63.6(g)(1)–(3)	Alternative Standard	Yes .	
63.6(h)(1)–(2)	Opacity/VE Standards	Yes .	
63.6(h)(3)		No	[Reserved]
63.6(h)(4)–(h)(5)(i)	Opacity/VE Standards	Yes .	
63.6(h)(5)(ii)–(iv)	Opacity/VE Standards	No	Test duration specified in subpart LLL.
63.6(h)(6)	Opacity/VE Standards	Yes .	
63.6(h)(7)	Opacity/VE Standards	Yes .	
63.6(i)(1)–(14)	Extension of Compliance	Yes .	
63.6(i)(15)		No	[Reserved]
63.6(i)(16)	Extension of Compliance	Yes .	
63.6(j)	Exemption from Compliance	Yes .	
63.7(a)(1)–(3)	Performance Testing Requirements	Yes	§ 63.1349 has specific requirements.
63.7(b)	Notification	Yes .	
63.7(c)	Quality Assurance/Test Plan	Yes .	
63.7(d)	Testing Facilities	Yes .	
63.7(e)(1)–(4)	Conduct of Tests	Yes .	
63.7(f)	Alternative Test Method	Yes .	
63.7(g)	Data Analysis	Yes .	
63.7(h)	Waiver of Tests	Yes .	
63.8(a)(1)	Monitoring Requirements	Yes .	
63.8(a)(2)	Monitoring	No	§ 63.1350 includes CEMS requirements.
63.8(a)(3)		No	[Reserved]
63.8(a)(4)	Monitoring	No	Flares not applicable.
63.8(b)(1)–(3)	Conduct of Monitoring	Yes .	
63.8(c)(1)–(8)	CMS Operation/Maintenance	Yes	Performance specification supersedes requirements for THC CEMS Temperature and activated carbon injection monitoring data reduction requirements given in subpart LLL.
63.8(d)	Quality Control	Yes .	
63.8(e)	Performance Evaluation for CMS	Yes	Performance specification supersedes requirements for THC CEMS.
63.8(f)(1)–(5)	Alternative Monitoring Method	Yes	Additional requirements in § 63.1350(l).

TABLE 1 TO SUBPART LLL OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Requirement	Applies to Subpart LLL	Explaination
63.8(f)(6)	Alternative to RATA Test	Yes .	
63.8(g)	Data Reduction	Yes .	
63.9(a)	Notification Requirements	Yes .	
63.9(b)(1)–(5)	Initial Notifications	Yes .	
63.9(c)	Request for Compliance Extension	Yes .	
63.9(d)	New Source Notification for Special Compliance Requirements .	Yes .	
63.9(e)	Notification of Performance Test	Yes .	
63.9(f)	Notification of VE/Opacity Test	Yes	Notification not required for VE/opacity test under § 63.1350(e) and (j).
63.9(g)	Additional CMS Notifications	Yes .	
63.9(h)(1)–(3)	Notification of Compliance Status	Yes .	
63.9(h)(4)		No	[Reserved]
63.9(h)(5)–(6)	Notification of Compliance Status	Yes .	
63.9(i)	Adjustment of Deadlines	Yes .	
63.9(j)	Change in Previous Information	Yes .	
63.10(a)	Recordkeeping/Reporting	Yes .	
63.10(b)	General Requirements	Yes .	
63.10(c)(1)	Additional CMS Recordkeeping	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(c)(2)–(4)		No	[Reserved]
63.10(c)(5)–(8)	Additional CMS Recordkeeping	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(c)(9)		No	[Reserved]
63.10(c)(10)–(15)	Additional CMS Recordkeeping	Yes	PS–8A supersedes requirements for THC CEMS.
63.10(d)(1)	General Reporting Requirements	Yes .	
63.10(d)(2)	Performance Test Results	Yes .	
63.10(d)(3)	Opacity or VE Observations	Yes .	
63.10(d)(4)	Progress Reports	Yes .	
63.10(d)(5)	Startup, Shutdown, Malfunction Reports .	Yes .	
63.10(e)(1)–(2)	Additional CMS Reports	Yes .	
63.10(e)(3)	Excess Emissions and CMS Performance Reports .	Yes	Exceedances are defined in subpart LLL.
63.10(f)	Waiver for Recordkeeping/Reporting	Yes .	
63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
63.12(a)–(c)	State Authority and Delegations	Yes .	
63.13(a)–(c)	State/Regional Addresses	Yes .	
63.14(a)–(b)	Incorporation by Reference	Yes .	
63.15(a)–(b)	Availability of Information	Yes .	

[FR Doc. 02–8161 Filed 4–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7168–2]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: The EPA is proposing targeted amendments to the national emission standards for the portland cement manufacturing industry promulgated on June 14, 1999 under the authority of section 112 of the Clean Air Act (CAA). This action proposes improvements for implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring to resolve issues and questions raised since promulgation of the rule.

In the Rules and Regulations section of this **Federal Register**, we are making these amendments in a direct final rule, without prior proposal, because we view these revisions as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for these revisions in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register**. All public comments will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second commenter period on that subsequent final rule. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Written comments must be received by May 6, 2002, unless a hearing is requested by April 15, 2002. If a hearing is requested, written comments must be received by May 20, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 15, 2002, a public hearing will be held on April 19, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket Number A–92–53, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket A–92–53, Room M–1500, U.S. EPA, 401 M Street SW, Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below. Comments may also be submitted electronically by following the instructions provided in

SUPPLEMENTARY INFORMATION:

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina at 10:30 a.m.

Docket. Docket No. A–92–53 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect format. All comments and data submitted in electronic form must note the docket number A–92–53. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, MC–C404–02, Attn: Mr. Joseph Wood, U.S. EPA, Research Triangle Park, North Carolina 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Tanya Medley, Minerals and Inorganic Chemicals Group (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5422, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Tanya Medley to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

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

Regulated Entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Industry	32731	3241	Owners or operators of portland cement manufacturing plants.
State	32731	3241	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	3241	Owners or operators of portland cement manufacturing plants.
Federal agencies	None	None	None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, *etc.* is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Direct Final Rule. A direct final rule identical to this proposal is published in the Rules and Regulations section of this **Federal Register**. If we receive relevant adverse comment on one or more distinct amendments in this proposal, we will publish a timely notice in the **Federal Register** informing the public which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule. If no relevant adverse comments are received, no further action will be taken on this proposal and the direct final rule will become effective as provided in that notice.

The regulatory text for this proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, see the direct final rule.

What Are the Administrative Requirements for This Action?

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

We have determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. The purpose of the proposed amendments is to clarify the rule and, therefore, will not impose new requirements or compliance costs on industry. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although the proposed amendments will not have a significant impact on a substantial number of small entities, we worked with the portland cement industry, including small entities, throughout the rulemaking process. Meetings were held on a regular basis with industry representatives to discuss the development of the proposed amendments in connection with the settlement agreement, exchange information, and solicit comments on the proposed requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 28, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–8162 Filed 4–4–02; 8:45 am]

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Water supply:
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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.

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