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# Contents

**Federal Register**

Vol. 67, No. 114

Thursday, June 13, 2002

## **Agriculture Department**

*See* Forest Service

## **Centers for Disease Control and Prevention**

### **NOTICES**

Agency information collection activities:  
Proposed collection; comment request, 40745–40746

## **Civil Rights Commission**

### **NOTICES**

Meetings; Sunshine Act, 40687

## **Coast Guard**

### **RULES**

Drawbridge operations:  
Florida, 40606–40608 40606  
Ports and waterways safety:  
Buffalo River, Buffalo, NY; safety zone, 40610–40611  
Missouri River, Brownville, NE; security zone, 40615–  
40617  
Missouri River, Fort Calhoun, NE; security zone, 40613–  
40615  
San Juan, PR; security zones, 40608–40610  
St. Croix, U.S. Virgin Islands; security zones, 40617–  
40619  
Upper Mississippi River, Cordova, IL; security zone,  
40611–40613

## **Commerce Department**

*See* National Oceanic and Atmospheric Administration  
*See* Patent and Trademark Office

### **NOTICES**

Agency information collection activities:  
Submission for OMB review; comment request, 40687–  
40688

## **Consumer Product Safety Commission**

### **NOTICES**

Agency information collection activities:  
Proposed collection; comment request, 40689–40690

## **Defense Department**

### **RULES**

Civilian health and medical program of uniformed services  
(CHAMPUS):  
TRICARE program—  
Sub-acute and long-term care program reform, 40597–  
40606

### **NOTICES**

Meetings:  
Science Board, 40690 40690

## **Drug Enforcement Administration**

### **NOTICES**

*Applications, hearings, determinations, etc.:*  
Houba Inc., 40752

## **Education Department**

### **NOTICES**

Grants and cooperative agreements; availability, etc.:  
Elementary and secondary education—  
Safe and Drug-Free Schools and Communities National  
Programs, 40690–40691

Special education and rehabilitative services—

Centers for Independent Living Program, 40693–40695  
Parent Information and Training Program, 40691–40692  
40692–40693

## **Energy Department**

*See* Federal Energy Regulatory Commission

## **Environmental Protection Agency**

### **RULES**

Air pollutants, hazardous; national emission standards:  
Phosphoric acid manufacturing and phosphate fertilizers  
production plants, 40813–40818

### **NOTICES**

Agency information collection activities:  
Proposed collection; comment request, 40729–40730  
Meetings:  
Clean Diesel Independent Review Panel, 40730  
Pesticide registration, cancellation, etc.:  
Aventis Cropscience USA, LP, et al., 40730–40732  
Reports and guidance documents; availability, etc.:  
Lower toxicity pesticide chemicals methodology, 40732–  
40734  
Persistent organic pollutants; global action; U.S.  
perspective, 40734–40735  
Water pollution control:  
Total maximum daily loads—  
Calcasieu and Ouachita river basins, LA, 40735–40737  
40738–40742  
Ouachita river basin, LA, 40737–40738

## **Executive Office of the President**

*See* Management and Budget Office  
*See* National Drug Control Policy Office  
*See* Trade Representative, Office of United States

## **Federal Aviation Administration**

### **RULES**

Airworthiness directives:  
Boeing, 40589–40591  
Airworthiness standards:  
Special conditions—  
Learjet Model 35, 36, 35A, and 36A series airplanes,  
40587–40588  
Class E airspace, 40592–40594 40592 40592 40592 40591  
40591 40591  
Standard instrument approach procedures, 40594–40595  
40595–40597

### **PROPOSED RULES**

Airworthiness directives:  
CFM International, 40626–40627  
General Electric, 40623–40625  
Class E airspace, 40627–40629

## **Federal Communications Commission**

### **RULES**

Common carrier services:  
Long-term telephone number portability; memorandum  
opinion, etc., 40619–40621

### **PROPOSED RULES**

Digital television stations; table of assignments:  
Louisiana, 40632–40633

**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 40742–40743

Meetings:

Consumer/Disability Telecommunications Advisory Committee, 40743

Rulemaking proceedings; petitions filed, granted, denied, etc., 40743

**Federal Election Commission****RULES**

Independent expenditure reporting

Effective date, 40586

**NOTICES**

Meetings; Sunshine Act, 40743–40744

**Federal Energy Regulatory Commission****NOTICES**

Electric rate and corporate regulation filings:

Alliance Companies et al., 40708–40712

NEO California Power LLC et al., 40712–40717

Young Gas Storage Co., Inc., 40717

Environmental statements; availability, etc.:

South Carolina Electric &amp; Gas Co., 40717

Hydroelectric applications, 40717–40718 40719 40720

40721–40722 40722–40723 40723–40724 40724–40725

40725–40726 40726 40726–40727 40727–40728

Meetings:

Standard market design; data and software standards, 40728

Meetings; Sunshine Act, 40728

Practice and procedure:

Off-the-record communications, 40728–40729

*Applications, hearings, determinations, etc.:*

Algonquin Gas Transmission Co., 40695

Anaheim et al., CA, 40695

Canyon Creek Compression Co., 40695–40696

Central New York Oil &amp; Gas Co., LLC, 40696

CMS Trunkline Gas Co., LLC, 40696

Colorado Interstate Gas Co., 40697

Columbia Gulf Transmission Co., 40697

Conoco Gas &amp; Power Marketing, 40697

Discovery Gas Transmission, Inc., 40697–40698

Discovery Gas Transmission LLC, 40698

Dominion Transmission, Inc., 40698–40699 40699

Gas Research Institute, 40699

Gulf South Pipeline Co., LP, 40700

Mississippi River Transmission Corp., 40700

Natural Gas Pipeline Co. of America, 40700–40701 40701 40701

Northern Natural Gas Co., 40701–40702 40702

NRG Northern Ohio Generating LLC et al., 40702

PG&amp;E Gas Transmission, Northwest Corp., 40702–40703

Questar Pipeline Co., 40703

Reliant Energy Gas Transmission Co., 40703 40703–40704 40704

Southern LNG Inc., 40704–40705

Tennessee Gas Pipeline Co., 40705 40705–40706 40706

Trailblazer Pipeline Co., 40706

TransColorado Gas Transmission Co., 40706–40707

Transcontinental Gas Pipe Line Corp., 40707

Transwestern Pipeline Co., 40707

Viking Gas Transmission Co., 40707

Williston Basin Interstate Pipeline Co., 40707–40708 40708 40708

**Federal Reserve System****NOTICES**

Banks and bank holding companies:

Change in bank control, 40744

Formations, acquisitions, and mergers, 40744

**Federal Transit Administration****NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 40768

**Fish and Wildlife Service****RULES**

Endangered and threatened species:

Chiricahua leopard frog, 40789–40811

**PROPOSED RULES**

Endangered and threatened species:

Critical habitat designations—

Blackburn's sphinx moth, 40633–40657

Plant and animal species that are candidates or proposed for listing, findings on recycled petitions, and description of progress on listing actions; review, 40657–40679

**Foreign Claims Settlement Commission****NOTICES**

Privacy Act:

Systems of records, 40752

**Forest Service****NOTICES**

Environmental statements; notice of intent:

Bighorn National Forest, WY, 40684–40685

Sierra National Forest, CA, 40685–40686

Meetings:

Forest Counties Payments Committee, 40686–40687

**Health and Human Services Department***See Centers for Disease Control and Prevention**See Substance Abuse and Mental Health Services**Administration***NOTICES**

Meetings:

National Human Research Protections Advisory Committee, 40744–40745

**Housing and Urban Development Department****RULES**

Public and Indian housing:

Native Hawaiian Housing Block Grant and Loan

Guarantees for Native Hawaiian Housing Programs, 40773–40788

**Immigration and Naturalization Service****RULES**

Nonimmigrant classes:

Aliens—

Special registration requirements, 40581–40586

**Indian Affairs Bureau****NOTICES**

Reports and guidance documents; availability, etc.:

Trust Asset Management; Trust Reform Task Force alternatives, 40819–40832

**Interior Department***See Fish and Wildlife Service**See Indian Affairs Bureau*

See National Park Service

### Internal Revenue Service

#### PROPOSED RULES

Income taxes:

Cancellation of indebtedness; guidance, 40629–40632

### Justice Department

See Drug Enforcement Administration

See Foreign Claims Settlement Commission

See Immigration and Naturalization Service

See National Institute of Corrections

#### NOTICES

Pollution control; consent judgments:

Allied Waste Products, Inc., et al., 40750

Boston Sand & Gravel Co. et al., 40750–40751

Green Bluff Development, Inc., 40751

Hinojosa, Ausencia, 40751

Seattle Disposal Co. et al., 40751–40752

### Labor Department

See Occupational Safety and Health Administration

### Management and Budget Office

#### NOTICES

Reports and guidance documents; availability, etc.:

Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 40755

### National Drug Control Policy Office

#### NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 40742

### National Institute of Corrections

#### NOTICES

Grants and cooperative agreements; availability, etc.:

Prison Emergencies, Guide to Preparing for and Managing, 40752–40754

### National Oceanic and Atmospheric Administration

#### RULES

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—  
Pacific cod, 40621

#### PROPOSED RULES

Endangered and threatened species:

Findings on petitions, etc.—

Klamath River Basin coho salmon, 40679–40680

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Cook Inlet; non-pelagic trawl gear prohibition, 40680–  
40683

### National Park Service

#### NOTICES

Environmental statements; notice of intent:

Grand Canyon National Park, AZ, 40749–40750

Meetings:

Na-Hoapili O Kaloko Honokohau, Kaloko-Honokohau

National Historical Park Advisory Commission,  
40750

### Nuclear Regulatory Commission

#### PROPOSED RULES

Rulemaking petitions:

Performance Technology, 40622–40623

#### NOTICES

*Applications, hearings, determinations, etc.:*

Florida Power & Light Co., 40754–40755

### Occupational Safety and Health Administration

#### RULES

Wendell H. Ford Aviation Investment and Reform Act for  
21st Century; implementation:

Discrimination complaints; handling procedures, 40597

#### NOTICES

Grants and cooperative agreements; availability, etc.:

Susan Harwood Training Program, 40754

### Office of Management and Budget

See Management and Budget Office

### Office of United States Trade Representative

See Trade Representative, Office of United States

### Patent and Trademark Office

#### NOTICES

Agency information collection activities:

Proposed collection; comment request, 40688–40689

### Public Health Service

See Centers for Disease Control and Prevention

See Substance Abuse and Mental Health Services  
Administration

### Research and Special Programs Administration

#### NOTICES

Pipeline safety:

Advisory bulletins—

Gas and hazardous liquid pipeline mapping, 40768–  
40770

### Securities and Exchange Commission

#### NOTICES

Investment Company Act of 1940:

Exemption applications—

Pioneer America Income Trust et al., 40757–40761

Touchstone Investment Trust et al., 40755–40757

Meetings; Sunshine Act, 40761

Self-regulatory organizations; proposed rule changes:

Chicago Stock Exchange, Inc., 40761–40762

Municipal Securities Rulemaking Board, 40762–40763

New York Stock Exchange, Inc., 40763–40765

### Small Business Administration

#### NOTICES

Grants and cooperative agreements; availability, etc.:

Small technology-based businesses interested in Federal  
research and development programs; outreach and  
technical assistance, 40765–40766

Loan programs:

SBAExpress Pilot Loan Program; extension, 40766

### State Department

#### NOTICES

Grants and cooperative agreements; availability, etc.:

Anticorruption policies and actions taken by national  
governments; effectiveness assessment methodology,  
40766

Meetings:

International Telecommunication Advisory Committee,  
40766

### Substance Abuse and Mental Health Services Administration

#### NOTICES

Grants and cooperative agreements; availability, etc.:

State Data Infrastructure Program, 40746–40747

State Treatment Needs Assessment Program, 40747–40748

Meetings:

SAMHSA National Advisory Council, 40749

**Trade Representative, Office of United States**

**NOTICES**

World Trade Organization:

European Communities—

Consultations regarding provisional safeguard measures against steel products imports, 40766–40767

**Transportation Department**

*See* Coast Guard

*See* Federal Aviation Administration

*See* Federal Transit Administration

*See* Research and Special Programs Administration

**Treasury Department**

*See* Internal Revenue Service

**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 40770

**Veterans Affairs Department**

**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 40770–40771

Submission for OMB review; comment request, 40771–40772 40772

---

**Separate Parts In This Issue**

**Part II**

Housing and Urban Development Department, 40773–40788

**Part III**

Interior Department, Fish and Wildlife Service, 40789–40811

**Part IV**

Environmental Protection Agency, 40813–40818

**Part V**

Interior Department, Indian Affairs Bureau, 40819–40832

---

**Reader Aids**

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

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**CFR PARTS AFFECTED IN THIS ISSUE**

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

**8 CFR**

214.....40581  
264.....40581

**10 CFR****Proposed Rules:**

50.....40622

**11 CFR**

100.....40586  
104.....40586  
109.....40586

**14 CFR**

25.....40587  
39.....40589  
71 (7 documents) .....40591,  
40592  
97 (2 documents) .....40594,  
40595

**Proposed Rules:**

39 (2 documents) .....40623,  
40626  
71.....40627

**24 CFR**

1006.....40774  
1007.....40774

**26 CFR****Proposed Rules:**

1.....40629

**29 CFR**

1979.....40597

**32 CFR**

199.....40597

**33 CFR**

117 (2 documents) .....40606  
165 (6 documents) .....40608,  
40610, 40611, 40613, 40615,  
40617

**40 CFR**

63.....40814

**47 CFR**

52.....40619

**Proposed Rules:**

73.....40632

**50 CFR**

17.....40790  
679.....40621

**Proposed Rules:**

17 (2 documents) .....40633,  
40657  
223.....40679  
226.....40679  
679.....40680

# Rules and Regulations

Federal Register

Vol. 67, No. 114

Thursday, June 13, 2002

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

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Parts 214 and 264

[INS No. 2216-02; AG Order No. 2589-2002]

RIN 1115-AG70

#### Registration and Monitoring of Certain Nonimmigrants

**AGENCY:** Immigration and Naturalization Service; Justice.

**ACTION:** Proposed rule.

**SUMMARY:** Recent terrorist incidents have underscored the need to broaden the special registration requirements for nonimmigrant aliens from certain designated countries, and other nonimmigrant aliens whose presence in the United States requires closer monitoring, to require that they provide specific information at regular intervals to ensure their compliance with the terms of their visas and admission, and to ensure that they depart the United States at the end of their authorized stay. This proposed rule seeks to modify the existing requirements to require certain nonimmigrant aliens to make specific reports to the Immigration and Naturalization Service: upon arrival; approximately 30 days after arrival; every twelve months after arrival; upon certain events, such as a change of address, employment, or school; and at the time of departure from the United States.

**DATES:** Written comments must be received on or before July 15, 2002.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2216-02 on your correspondence. Comments may also be submitted

electronically to the Service at [insregs@usdoj.gov](mailto:insregs@usdoj.gov). When submitting comments electronically, please include INS No. 2216-02 in the subject heading. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Room 6100, Washington, DC 20536, telephone (202) 514-2895.

**SUPPLEMENTARY INFORMATION:** This proposed rule will apply only to a small percentage of nonimmigrant aliens: nonimmigrant aliens from selected countries specified in notices published in the **Federal Register**; and individual nonimmigrant aliens who are designated by a consular officer outside the United States or an inspection officer at the port of entry based on information that indicates the need for closer monitoring of the alien's compliance with the terms of his or her visa or admission in the national security or law enforcement interests of the United States. This proposed rule expands the existing special registration rule to require that these designated nonimmigrant aliens provide more detailed and frequent information to ensure that they comply with the conditions of their visas and admissions, along with their departures.

Currently, nonimmigrant aliens from Iran, Iraq, Libya, and Sudan are subject to special fingerprinting requirements. 63 FR 39109 (July 21, 1998).

This proposed rule does not apply to nonimmigrant aliens applying for admission to the United States under sections 101(a)(15)(A) (ambassador, public minister, career diplomat) or 101(a)(15)(G) (representative or employees of an international organization) of the Immigration and Nationality Act ("Act").

#### General and Special Registration Requirements

Section 262(a) of the Act provides that all aliens who have not previously been registered and fingerprinted, pursuant to section 221(b) of the Act, have a duty to apply for registration and to be fingerprinted if they remain in the United States for 30 days or longer. Under the existing regulations at 8 CFR 264.1(a), the Immigration and

Naturalization Service ("Service") registers nonimmigrants using Form I-94 (Arrival-Departure Record). As authorized by section 262(c) of the Act, however, the Service's existing regulations at 8 CFR 264.1(e) contain general provisions waiving the fingerprinting requirement for many nonimmigrants. Accordingly, most nonimmigrant aliens are admitted to the United States without being either fingerprinted or photographed.

Notwithstanding the general registration requirements, section 263(a) of the Act also authorizes the Attorney General to prescribe special regulations and forms for the registration, among other classes, of "aliens of any other class not lawfully admitted to the United States for permanent residence." Pursuant to this section, as well as the Attorney General's general registration authority under section 262 of the Act, the Attorney General promulgated 8 CFR 264.1(f), which authorizes the Attorney General, by notice published in the **Federal Register**, to direct that certain nonimmigrant aliens from designated foreign countries be registered, fingerprinted, and photographed by the Service at the port of entry at the time the nonimmigrant aliens apply for admission. See 25 FR 10495 (Nov. 2, 1960) (final rule); 58 FR 68024 (Dec. 20, 1993) (interim rule), 63 FR 39109 (July 21, 1998) (notice).

Moreover, the Attorney General is authorized to prescribe conditions for the admission of nonimmigrant aliens under section 214 of the Act. Section 215 of the Act provides for departure control from the United States. In addition, section 265 of the Act requires that all aliens who remain in the United States for 30 days or more (other than A or G nonimmigrants) must file a notice of change of address with the Attorney General within 10 days of any change of address.

This proposed rule provides for implementation of these requirements for nonimmigrant aliens subject to special registration. However, this Supplementary Information also serves as a reminder to all aliens (not just those nonimmigrant aliens subject to special registration) of their legal obligations under section 265 of the Act to notify the Attorney General, as delegated to the Service, within 10 days of any change of address by filing the general change of address form, Form AR-11.

### Need for the Rule

The events of September 11, 2001, highlighted weaknesses in the current immigration system, which does not provide for the adequate collection of information on the activities and whereabouts of nonimmigrant aliens. Under existing regulations it is difficult to determine if such aliens follow their stated plans while in the United States, to determine if they have remained in the United States beyond their authorized period of stay, and to locate them when necessary. Moreover, current procedures do not provide for the collection of fingerprints at the port of entry from many aliens who present a heightened risk of involvement in terrorist or criminal activity. In conjunction with other changes in the regulations, this proposed rule implements special registration requirements (including fingerprinting, photographing, *etc.*) that will allow the Service to improve nonimmigrant compliance with the terms of their visas and admissions.

The difference between the general requirements and the special requirements is that the United States frequently acquires information that indicates that a specific alien's or class of aliens' activities within the United States should be more closely monitored. Such aliens should be and will be required to provide more information in their registration than other aliens to permit their activities to be followed more closely and to ensure compliance with the terms of their visas, including timely departure.

In promulgating this proposed rule, the Attorney General has determined that existing international conditions require that certain classes of nonimmigrant aliens be required to follow special registration procedures to better ensure the security of the United States through closer monitoring of compliance with the terms of their visas and admissions. The aliens in these classes are referred to in the proposed rule as "nonimmigrant aliens subject to special registration." Nonimmigrant aliens subject to special registration will include those individual aliens whom the Attorney General or the Secretary of State, through officials of their departments, have determined should be monitored within the United States in order to promote the nation's security or law enforcement interests. Such law enforcement interests include the enforcement of national immigration laws as well as the prevention of other criminal activity. The Attorney General and the Secretary of State may jointly exempt classes of nonimmigrant aliens

subject to special registration from that registration. The Attorney General or the Secretary of State may individually exempt an individual nonimmigrant alien from the requirements of special registration.

### Nonimmigrant Aliens Whom the Inspecting Officer Has Reason To Believe Present a Heightened National Security or Law Enforcement Risk

The proposed rule provides for supplemental registration at the port of entry for any nonimmigrant whom the inspecting official has reason to believe presents a national security or law enforcement risk, including the risk that the alien may violate the terms of his visa or exceed his authorized period of stay. Accordingly, this proposed rule would delegate authority to require the registration of a nonimmigrant alien whom the inspecting officer has reason to believe presents such a risk. This determination will be made according to specific criteria established by the Attorney General, in light of the observations and experience of the inspecting officers. The criteria, based on experience, are expected to change over time, but the criteria must be established and enunciated to the inspectors prior to their application.

### Form of Registration

In this proposed rule, the Attorney General specifies that nonimmigrant aliens subject to special registration must be fingerprinted and photographed, and must provide expanded information on a required form. The nonimmigrant alien will be required, under the informational form being developed by the Service, or an existing form if that option is undertaken, to provide routine and readily available information, which may include: name; passport country of issuance and number; identification and description of a second form of positive identification (*e.g.*, driver's license and number); date of birth; country of birth, nationality and citizenship; height; weight; color of hair; color of eyes; address of residence in the United States and in country of origin; telephone number(s) in the United States and in country of origin; the names, addresses, and dates of birth for both parents; points of contact in the alien's country of origin; name and address of school or employer in the United States (if applicable); name and address of former school or employer in country of origin; intended activities in the United States; and any e-mail addresses. The proposed rule also requires that such nonimmigrant aliens provide the following information at

certain intervals: an additional form of photographic identification (*e.g.*, driver's license); proof of tenancy at the listed residential address (*e.g.*, rental contract, mortgage); proof of enrollment at a school or other authorized educational institution where applicable; and/or proof of employment where applicable.

In addition, under these proposed procedures, nonimmigrant aliens subject to special registration will be fingerprinted and photographed at the port of entry. This will allow the Service to determine if an alien's fingerprints match those of known terrorists or criminals, and to detain the alien if such an identity match is established. It will also serve important law enforcement and national security purposes if the alien is later suspected of taking part in terrorist or criminal activity in the United States and will ensure that the nonimmigrant alien cannot reenter the United States in the future using a different identity.

### Relief From Requirements

A nonimmigrant alien subject to special registration may seek relief from the requirements of special registration from a Service district director or other official designated by the Attorney General. For example, an alien initially required to complete the requirements of special registration may satisfy the district director that due to exigent or unusual circumstances such requirements cannot reasonably be fulfilled.

### Nonimmigrant Aliens From Designated Countries Already in the United States

Section 265(b) of the Act provides that the Attorney General may require natives or citizens of a designated country who are already in the United States, or any subset of such class, to register pursuant to this section. In the event the Attorney General determines that it is necessary to register such nonimmigrant aliens, the Attorney General will publish a notice in the **Federal Register** describing the aliens who will be required to appear at a Service office for registration. The Attorney General's notice will describe the class of nonimmigrant aliens and the locations at which such registration may occur. The Attorney General's notice will also explain the procedures for filing a required form and/or providing fingerprints and photographs, and submitting supplemental information, if needed.

### Initial Registration at Port of Entry and Confirmation of Status

The proposed rule specifies that if a nonimmigrant alien subject to special registration stays in the United States for a period of 30 days or more, the alien must report to a designated office of the Service on or after the alien's thirtieth day in the United States, but before the alien's fortieth day in the United States, to confirm the information provided in the alien's initial registration at the port of entry.

For those aliens applying for admission to the United States who are found to be nonimmigrant aliens subject to special registration, the completion of registration is a condition of admission under section 214 of the Act. If an alien desires not to participate in special registration, the alien may withdraw his or her application for admission.

A nonimmigrant alien subject to special registration who comes to the United States to work or to study is required to provide proof of such activity when the alien appears at the designated Service office. Documentation such as enrollment forms, actual employment contracts, or pay statements must be presented to the Service to confirm the alien's registration statement. All nonimmigrant aliens subject to special registration must provide proof of residential address in the United States. These documents will be examined by the Service, the originals will be returned to the nonimmigrant alien, and a copy will be retained by the Service.

Nonimmigrant aliens often arrive at a port of entry that is distant from their final destination. For example, a nonimmigrant alien arriving at John F. Kennedy Airport in New York on an F-1 student visa may be enrolling at a college or university or other school elsewhere in the United States. This proposed provision permits a nonimmigrant alien subject to special registration who does not already have a residential address to acquire that residential address and provide the Service with an actual rental agreement or other proof of residence to update or confirm the information on the alien's initial registration statement.

### Annual Registration

A nonimmigrant alien may hold a visa which allows him or her to remain in the United States for longer than one year. For this type of nonimmigrant alien who is also subject to special registration, the proposed rule requires him or her to verify his or her activities and address, and to update any other information provided to the Service, on

an annual basis. The proposed rule requires that the nonimmigrant alien reaffirm his or her registration statement on, or within 10 days after, each anniversary of his or her arrival. The anniversary date is used as a benchmark because of the relative importance of the nonimmigrant alien's arrival in the United States to the nonimmigrant alien. The anniversary date is a natural reminder of the requirements for registration. Additionally, the fact that nonimmigrant aliens arrive in the United States on a relatively steady basis dictates that this reaffirmation process will occur at Service offices steadily throughout the year, thus avoiding a large number of re-registrations at any one time that might overload the Service or inconvenience the nonimmigrant aliens any more than necessary.

### Change of Address or Other Material Condition

As noted above, all aliens are required to provide the Service with any change of residential address. The proposed rule reiterates, for this distinct group of nonimmigrant aliens who are subject to special registration, the requirement that the nonimmigrant alien provide the Service with any change of residential address within 10 days of such change of address. The proposed rule allows a nonimmigrant alien subject to special registration to notify the Service by mail, or such other means as the Attorney General may designate, of a change of address, employment, or educational institution. Appropriate forms will be made available to such aliens at arrival, on the Internet, and at Service offices.

### Departure

The proposed rule requires that a nonimmigrant alien subject to special registration also report his or her actual departure from the United States through inspection by an already existing departure control officer established under 8 CFR part 215. This requirement means that the alien must appear before a departure control officer, i.e., an immigration inspector, at the time he or she departs the United States to close his or her registration. This notification will ensure that all special registrations are properly closed.

The proposed rule does not alter any of the requirements of part 215, or otherwise authorize a departure control officer to prohibit departure, but complements them with requirements that the nonimmigrant aliens subject to special registration report to the departure control officer in conjunction

with his or her special registration under this Part.

The requirement that an alien appear before a departure control officer at the time of departure from the United States is not new, but has been used sparingly in the past. Under this proposed rule, it will be necessary to expand the use of the departure control officer to ensure that the nonimmigrant aliens subject to special registration have complete records of their status. If actual departure control were not utilized, special registrations for the nonimmigrant aliens subject to special registration would simply stop without explanation sometime after their departure.

Departure will now be confirmed by actual presentation by the nonimmigrant aliens subject to special registration. This departure notification can then be confirmed by reference to other records, such as the actual electronic flight manifests provided by carriers. Departure control has not been used in a substantial way in the past and facility work will take substantial time to develop with airports, even for the small number of aliens covered by this proposed rule. Therefore, the Service is authorized to restrict ports of departure as facilities are developed. The nonimmigrant aliens subject to special registration will be advised of available ports of departure as they register. Accordingly, the Service is authorized to prohibit nonimmigrant aliens subject to special regulation from exiting at ports of entry that lack departure control officers and facilities.

The Department notes that departure control procedures have been demanded by Congress as a part of a complete entry-exit management system. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Div. C, § 110, Pub. L. 104-208, 110 Stat. 3009-558 (Sept. 30, 1996); Immigration and Naturalization Service Data Management Improvement Act of 2000, § 3, Pub. L. 106-215, 114 Stat. 337 (June 15, 2000); United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, tit. IV, subtit. B, § 414(b), Pub. L. 107-56, 115 Stat. 272, 353-354 (Oct. 26, 2001); Enhanced Border Security and Visa Entry Reform Act of 2002, tit. III, § 302, Pub. L. 107-173, 116 Stat. 543, 552 (May 14, 2002). Congress has required that such a system be implemented by December 31, 2003. 8 U.S.C. 1365a(d)(1). Accordingly, as the Department develops the larger system mandated by Congress, the Department will ensure appropriate integration of

the special registration system proposed in this rule.

To ensure that nonimmigrant aliens subject to special registration provide this notification of departure and to ensure actual departure, this rule proposes that substantial penalties be attached to failure to notify the Service of departure. Paragraph (f)(8) provides that failure to notify the Service of departure in this way is a failure to complete registration under section 263(a) of the Act.

Because failure to complete registration is an unlawful activity, the alien shall thereafter be presumed to be inadmissible to the United States under section 212(a)(3)(A)(ii) of the Act. This presumption may be overcome by making a showing that satisfies conditions set by the Attorney General and the Secretary of State. Other grounds of inadmissibility may also apply.

#### **Application of the Act and Penalties**

The proposed rule is an exercise of the Attorney General's authority under sections 214, 215, 262, 263, and 265 of the Act to impose conditions on admission, register aliens and special groups of aliens, and manage departure of aliens. Each registration required by the proposed rule is, therefore, a registration under sections 262 and 263 of the Act. The Act provides that a willful failure to register, or making a false statement on the registration, is punishable under section 266(a) and (c), respectively, of the Act by a fine of up to \$1,000 or by imprisonment for up to 6 months. Providing a false statement would also subject the nonimmigrant alien subject to special registration, upon conviction, to detention and removal.

The proposed rule is also an exercise of the Attorney General's authority under section 265 of the Act to provide for aliens to file changes of address and provide other required information. The Act provides that a failure to provide a change of address or provide other information would be punishable under section 266(b) of the Act by a fine of up to \$200 and imprisonment for 30 days. The Attorney General may also remove nonimmigrant aliens who violate the provisions of section 265 of the Act and the implementing regulations, even if the alien has not been subject to criminal prosecution.

#### **Conditions of Admission**

Under section 214(a) of the Act the admission of all nonimmigrant aliens to the United States "shall be for such time and under such conditions as the Attorney General may by regulations

prescribe." The Attorney General may impose conditions on admission that are rationally related to the maintenance of nonimmigrant status. *See, e.g., Narenji v. Civiletti*, 617 F.2d 745, 747 (D.C. Cir. 1980) (upholding regulation requiring Iranians on student visas to report and "provide information as to residence and maintenance of nonimmigrant status" or be subject to deportation proceedings). The regulations that currently implement section 214 provide in part that a condition of a nonimmigrant's continued stay in the country "is the full and truthful disclosure of all information requested by the Service." 8 CFR 214.1(f). The special registration requirements imposed by this proposed rule are intended in part to ensure that nonimmigrant aliens are complying with their nonimmigrant status (*e.g.*, by continuing to be students or employees, as contemplated at the time of the issuance of their visas). This rule also proposes to amend 8 CFR 214.1(f) to impose an additional condition on the admission of a nonimmigrant. The regulation requires that an alien, if chosen for special registration, must report to the INS at certain intervals to prove that he or she is maintaining nonimmigrant status. Thus, a nonimmigrant alien's wholesale failure to appear for registration at the 30-day mark, or for the annual reregistration, for example, will be deemed a failure to maintain the relevant nonimmigrant status, and will render the alien removable under section 237(a)(1)(C)(i) of the Act.

#### **Regulatory Procedures**

##### **Regulatory Flexibility Act**

The Department of Justice, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule will affect individual nonimmigrant aliens who are not considered small entities as that term is defined in 5 U.S.C. 601(6).

##### **Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed

by the Office of Management and Budget.

##### **Executive Order 13132**

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

##### **Executive Order 12988**

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

##### **Unfunded Mandates Reform Act of 1995**

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

##### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

##### **Paperwork Reduction Act**

This rule modifies existing requirements to require certain nonimmigrant aliens to make specific reports to the Immigration and Naturalization Service: upon arrival; approximately 30 days after arrival; every twelve months after arrival; upon certain events, such as a change of address, employment, or school; and at the time of departure from the United States. The Service is requiring this information to ensure such aliens comply with the terms of their visas and admission, and to ensure that they depart the United States at the end of their authorized stay.

This rule contains a new information collection which is currently under development. This information collection will be submitted to the Office of Management and Budget (OMB) for emergency approval and comments will be solicited from the public, in accordance with the Paperwork Reduction Act of 1995.

Comments on the collection of information should be sent to Brenda Dyer, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW, Rm. 1600, Washington, DC 20530.

#### List of Subjects

##### 8 CFR Part 214

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

##### 8 CFR Part 264

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

Accordingly, the Department of Justice proposes to amend chapter 1 of title 8 of the Code of Federal Regulations as follows:

#### PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

2. Amend § 214.1 by revising paragraph (f) to read as follows:

##### § 214.1 Requirements for admission, extension, and maintenance of status.

\* \* \* \* \*

(f) *Registration and false information.* A nonimmigrant's admission and continued stay in the United States is conditioned on compliance with any registration, photographing, and fingerprinting requirements under § 264.1(f) of this chapter that relate to the maintenance of nonimmigrant status and also on the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to register or to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to

maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act.

#### PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

3. The authority citation for part 264 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1184, 1201, 1301–1305.

4. Amend § 264.1 by revising paragraph (f) to read as follows:

##### § 264.1 Registration and fingerprinting.

\* \* \* \* \*

(f) *Registration, fingerprinting, and photographing of certain nonimmigrants.*

(1) Notwithstanding the provisions in paragraph (e) of this section, nonimmigrant aliens identified in paragraph (f)(2) of this section are subject to special registration, fingerprinting and photographing requirements upon arrival in the United States. This requirement shall not apply to those nonimmigrant aliens applying for admission to the United States under sections 101(a)(15)(A) or 101(a)(15)(G) of the Act. In addition, this requirement shall not apply to those classes of nonimmigrant aliens to whom the Attorney General and the Secretary of State jointly determine it shall not apply, or to any individual nonimmigrant alien to whom the Attorney General or the Secretary of State determines it shall not apply. Completion of special registration pursuant to this paragraph (f) is a condition of admission under section 214 of the Act if the inspecting officer determines that the alien is subject to registration under this paragraph (f) (hereinafter “nonimmigrant alien subject to special registration”).

(2) Nonimmigrant aliens in the following categories are subject to the requirements of paragraph (f)(3) of this section:

(i) Nonimmigrant aliens who are natives or citizens of a country designated by the Attorney General, in consultation with the Secretary of State, by a notice in the **Federal Register**,

(ii) Nonimmigrant aliens whom a consular officer or an inspecting officer has reason to believe are natives or citizens of a country designated by the Attorney General, in consultation with the Secretary of State, by a notice in the **Federal Register**, or

(iii) Nonimmigrant aliens who meet pre-existing criteria, or whom a consular officer or the inspecting officer has reason to believe meet pre-existing criteria, determined by the Attorney

General or the Secretary of State to indicate that such aliens' presence in the United States warrants monitoring in the national security interests, as defined in section 219 of the Act, or law enforcement interests of the United States.

(3)(i) Any nonimmigrant alien who is included in paragraph (f)(2) of this section, and who applies for admission to the United States, shall be specially registered on a form required by the Service, shall be fingerprinted, and shall be photographed, by the Service, at the port-of-entry at such time the nonimmigrant alien applies for admission to the United States. The Service shall advise the nonimmigrant alien subject to special registration that, if the alien remains in the United States for 30 days or more, the nonimmigrant alien subject to special registration must appear at a Service office in person to complete registration by providing additional documentation confirming compliance with the requirements of his or her visa. The nonimmigrant alien subject to special registration must appear at such office between 30 and 40 days after the date on which the nonimmigrant alien subject to special registration was admitted into the United States.

(ii) At the time of verification of information for registration pursuant to paragraph (f)(3)(i) of this section, the nonimmigrant alien subject to special registration shall provide the Service with proof of compliance with the conditions of his or her nonimmigrant visa status and admission, including, but not limited to, proof of residence, employment, or registration and matriculation at an approved school or educational institution. The nonimmigrant alien subject to special registration shall provide any additional information required by the Service.

(4) The Attorney General, by publication of a notice in the **Federal Register**, also may impose such special registration, fingerprinting, and photographing requirements upon nonimmigrant aliens who are natives, citizens, or residents of specified countries or territories (or a designated subset of such natives, citizens, or residents) who have already been admitted to the United States or who are otherwise in the United States. A notice under this paragraph shall explain the procedures for appearing in person and filing the forms required by the Service, providing fingerprints, photographs, and/or submitting supplemental information or documentation.

(5) A nonimmigrant alien subject to special registration shall annually reregister in person with the Service at

the district office for the district in which the nonimmigrant alien subject to special registration's residence is located. Annual reregistration shall be in the same manner as provided in paragraph (f)(3), and shall occur within 10 days of the month and day of the anniversary of his or her original admission to the United States. Annual reregistration of a nonimmigrant alien subject to special registration under paragraph (f)(4) shall be in the manner prescribed in the applicable notice, subject to any modifications or changes included in any applicable intervening notice.

(6) In addition to the 30-day and annual reregistrations pursuant to paragraphs (f)(3) and (f)(5) of this section, any nonimmigrant alien subject to special registration who remains in the United States for 30 days or more shall notify the Service by mail or other such means as determined by the Attorney General, using a notification form designated by the Service, of any change of address of residence, change of employment, or change of educational institution, within 10 days of such change.

(7) A nonimmigrant alien subject to special registration may apply to the district director, or such other official as the Attorney General may designate, at the Service's district office in which the nonimmigrant alien subject to special registration's residence address is located and registered, for relief from the requirements of this paragraph (f). The decision of the district director or such other official is final and not appealable.

(8) When a nonimmigrant alien subject to special registration departs from the United States, he or she shall report to a departure control officer of the Service, at such port of entry as the Service may specify. Any nonimmigrant alien subject to special registration who fails, without good cause, to be examined by a departure control officer at the time of his or her departure, and to have his or her departure endorsed upon his or her special registration, shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, as an alien whom the Attorney General has reasonable grounds to believe, based on the alien's past failure to conform with the requirements for special registration, seeks to enter the United States to engage in unlawful activity. An alien may overcome this presumption by making a showing that he or she satisfies conditions set by the Attorney General and the Secretary of State.

(9) Registration under this paragraph (f) is not deemed to be complete unless

all of the information requested on the forms required by the Service, and all requested documents, are provided in a timely manner. Each annual reregistration and each change of material fact is a registration that is required under sections 262 and 263 of the Act. Each change of address required under this paragraph (f) is a change of address required under section 265 of the Act.

\* \* \* \* \*

Dated: June 10, 2002.

**Larry D. Thompson,**

*Acting Attorney General.*

[FR Doc. 02-15037 Filed 6-11-02; 10:45 am]

**BILLING CODE 4410-10-P**

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## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100, 104, and 109

[Notice 2002-10]

#### Independent Expenditure Reporting

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** On March 20, 2002, the Commission published the text of regulations regarding independent expenditure reporting. The Commission announces that these rules are effective as of June 13, 2002.

**DATES:** Effective date: June 13, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith, Acting Associate General Counsel, or Ms. Cheryl Fowle, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is announcing the effective date of revisions to the regulations at 11 CFR 100.19, 104.4(b), 104.5(f) and (g), 104.14(a), 104.18(h), 109.1(f) and 109.2 regarding independent expenditure reporting. See Explanation and Justification for Independent Expenditure Reporting, 67 *FR* 12834 (March 20, 2002). These rules implement Public Law 106-346 (Department of Transportation and Related Agencies Appropriations Act, 2001, 114 Stat. 1356 (2000)), which amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, ("the Act" or "FECA"). Under the new regulations, reports of last minute independent expenditures ("24-hour reports") must be actually received by the Commission or the Secretary of the Senate's office within 24 hours of the time the independent expenditure was made. To assist those who must meet

this new reporting deadline, the new rules allow reports of last minute independent expenditures to be filed by facsimile machine or electronic mail, unless the filer participates in the Commission's electronic filing program. Electronic filers must continue to file all reports of independent expenditures (24-hour reports as well as regularly scheduled reports) using the Commission's electronic filing system.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on Independent Expenditure Reporting were transmitted to Congress on March 15, 2002. Thirty legislative days expired in the Senate on May 14, 2002, and in the House of Representatives on May 22, 2002.

In addition, please note, the Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 81 (March 27, 2002) requires, *inter alia*, the Commission to promulgate new rules regarding the reporting of independent expenditures. The Commission is in the process of promulgating such rules, which will not take effect before November 6, 2002.

The Commission also revised FEC Form 5, Reports of Independent Expenditures by Persons Other Than Political Committees, and Schedule E, Reports of Independent Expenditures by Political Committees, and their respective instructions. These forms were transmitted to Congress (2 U.S.C. 438(d)) on May 7, 2002, and ended their ten legislative day period on May 22, 2002, in the Senate and on May 24, 2002, in the House of Representatives. The revised forms and instructions are also effective as of June 13, 2002.

Dated: June 10, 2002.

**David. M. Mason,**

*Chairman, Federal Election Commission.*

[FR Doc. 02-14901 Filed 6-12-02; 8:45 am]

**BILLING CODE 6715-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM 222, Special Conditions No. 25-204-SC]

**Special Conditions: Learjet Model 35, 36, 35A, and 36A Series Airplanes; High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Learjet Model 35, 36, 35A, and 36A series airplanes modified by Elliott Aviation Technical Products Development Inc. These airplanes, as modified by Elliott Aviation Technical Products Development Inc., will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an electronic flight instrument system (EFIS) for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is June 3, 2002. Comments must be received on or before July 15, 2002.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM222, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM222. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2799; facsimile (425) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

**Background**

On March 19, 2002, Elliott Aviation Technical Products Development Inc. applied for a supplemental type certificate (STC) to modify Learjet Model 35, 36, 35A, and 36A series airplanes. Learjet Model 35, 36, 35A, and 36A series airplanes are currently approved under Type Certificate A10CE. The modification incorporates the installation of the Universal Avionics Systems Corporation EFI-550 Electronic Flight Instrument System (EFIS). This system uses flat information display panels for display of critical flight parameters (altitude, airspeed, and

attitude) to the crew. These displays can be susceptible to disruption to both command and response signals as a result of electrical and magnetic interference. This disruption of signals could result in the loss of all critical flight information displays and annunciations or the presentation of misleading information to the pilot.

**Type Certification Basis**

Under the provisions of 14 CFR 21.101, Elliott Aviation Technical Products Development Inc. must show that the Learjet Model 35, 36, 35A, and 36A series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Learjet Model 35, 36, 35A, and 36A series airplanes include 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25-2 and 25-4, as described in Type Certificate Data Sheet A10CE.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 35, 36, 35A, and 36A series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

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

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

**Novel or Unusual Design Features**

The modified Learjet Model 35, 36, 35A, and 36A series airplanes will incorporate a new electronic flat panel display system, the Universal Avionics Systems Corporation EFI-550 Electronic Flight Instrument System (EFIS), which was not available at the time of certification of these airplanes, that

performs critical functions. This system may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

**Discussion**

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 35, 36, 35A, and 36A series airplanes, which require that new electrical and electronic systems, such as the EFIS, that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

*High-Intensity Radiated Fields (HIRF)*

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionic/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz .....	50	50
100 kHz–500 kHz .....	50	50
500 kHz–2 MHz .....	50	50
2 MHz–30 MHz .....	100	100
30 MHz–70 MHz .....	50	50
70 MHz–100 MHz .....	50	50
100 MHz–200 MHz .....	100	100
200 MHz–400 MHz .....	100	100
400 MHz–700 MHz .....	700	50
700 MHz–1 GHz .....	700	100
1 GHz–2 GHz .....	2000	200
2 GHz–4 GHz .....	3000	200
4 GHz–6 GHz .....	3000	200
6 GHz–8 GHz .....	1000	200
8 GHz–12 GHz .....	3000	300
12 GHz–18 GHz .....	2000	200
18 GHz–40 GHz .....	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to Learjet Model 35, 36, 35A, and 36A series airplanes modified by Elliott Aviation Technical Products Development Inc. Should Elliott Aviation Technical Products Development Inc. apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain novel or unusual design features on Learjet Model 35, 36, 35A, and 36A series airplanes modified by Elliott Aviation Technical Products Development Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these airplanes.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is

imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Learjet Models 35, 36, 35A and 36A airplanes modified by Elliott Aviation Technical Products Development Inc.

1. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 3, 2002.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–14979 Filed 6–12–02; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000-NM-382-AD; Amendment 39-12777; AD 2002-12-05]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 767-200 Series Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767-200 series airplanes, that requires repetitive inspections of the side panels of the nose wheel well for broken rivets and replacement of any broken rivets with bolts. This amendment also requires follow-on inspections of adjacent areas for cracks or broken rivets, whenever two or more adjacent broken rivets are found; repair of any cracks; and replacement of any broken rivets with bolts. Finally, this amendment provides for the optional replacement of all rivets in the affected areas with bolts, which terminates the repetitive inspections. The actions specified by this AD are intended to detect and correct broken rivets in the nose wheel well side panels and top panel, which could impair the function of the nose landing gear and cause fatigue cracks in the side panel and top panel webs of the nose wheel well, which could result in rapid cabin depressurization during flight. This action is intended to address the identified unsafe condition.

**DATES:** Effective July 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 18, 2002.

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

**FOR FURTHER INFORMATION CONTACT:** Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton,

Washington 98055-4056; telephone (425) 227-2772; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767-200 series airplanes was published in the **Federal Register** on December 26, 2001 (66 FR 66360). That action proposed to require repetitive inspections of the side panels of the nose wheel well for broken rivets and replacement of any broken rivets with bolts. That action also proposed to require follow-on inspections of adjacent areas for cracks or broken rivets, whenever two or more adjacent broken rivets are found; repair of any cracks; and replacement of any broken rivets with bolts. Finally, that action proposed to provide for the optional replacement of all rivets in the affected area with bolts, which would terminate the repetitive inspections.

**Request for Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Proposed Rule Is Acceptable**

One airline operator states that the proposed rule is acceptable.

**Revision of Cost Impact**

One commenter states that the cost to access the nose wheel well side panels and perform the basic inspection is 6 work hours, and that, for certain "on-condition" inspections that may be necessary, the additional cost is 16 work hours. The commenter also states that the cost of the optional terminating action (replacement of all rivets in the affected areas with bolts) is 160 work hours and \$900 in materials, per airplane. The FAA infers that the commenter is requesting that we revise the cost impact information accordingly.

We agree, in part, with the commenter's requests. We agree that information concerning the cost of performing the optional terminating action should be included in the AD, and have revised the AD to specify an estimated cost for work hours should an operator accomplish the replacement of all rivets with bolts.

However, we do not agree that costs for access and certain on-condition actions should be specified in the AD. The cost impact information in the AD is limited to the cost of actions actually required by the rule. We do not consider the costs of on-condition actions, such as performing detailed inspections if

two or more adjacent broken rivets are found. Such "on-condition" inspections and corrective actions, if necessary, would be required to be accomplished—regardless of AD direction—in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. It is unnecessary to revise the AD to add additional work hours to the cost impact information.

We do not agree that the estimated incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions, should be included in the AD. As these type of incidental costs may vary widely between operators, it would be impossible to provide a realistic and meaningful estimate of costs. Further, at the time the appropriate service information specified in this AD (Revision 1 of Boeing Service Bulletin 767-53A0090, dated September 14, 2000) was issued, no cost of parts information was available. Further, in this case, we consider that replacing the rivets with bolts may be considered as a negligible cost since those parts are common, "off-the-shelf" items. Therefore, no specific allowance for that cost was estimated in this AD, and no change to the AD is necessary in this regard.

**Change Reference to "Detailed Visual Inspection"**

We have changed all references to a "detailed visual inspection" in the NPRM to "detailed inspection" in this AD.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 62 Model 767-200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$5,520,

or \$120 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, it will take approximately 150 work hours to accomplish it, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the optional terminating action would be \$9,000 per airplane.

#### Regulatory Impact

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

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

#### List of Subjects in 14 CFR Part 39

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

#### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2002-12-05 Boeing:** Amendment 39-12777. Docket 2000-NM-382-AD.

**Applicability:** Model 767 series airplanes, line numbers 1 through 62; 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 (d) 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 broken rivets in the nose wheel well side panels and top panel, which could impair the function of the nose landing gear and cause fatigue cracks in the nose wheel well side panel and top panel webs, which could result in rapid cabin depressurization during flight, accomplish the following:

#### Initial and Repetitive Inspections

(a) Within 18 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first: Perform a detailed inspection of the nose wheel well side panels for broken rivets, in accordance with Boeing Service Bulletin 767-53A0090, Revision 1, dated September 14, 2000.

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

**Note 3:** Inspections, replacement, and repairs performed prior to the effective date of this AD in accordance with Boeing Service Bulletin 767-53A0090, dated August 3, 2000, are considered acceptable for compliance with the applicable actions specified in this amendment.

(1) If no broken rivets are detected: No further action is required as part of the initial inspection. Repeat the inspection at intervals

not to exceed 18 months or 3,000 flight cycles, whichever occurs first.

(2) If broken rivets are detected, but they do not include two or more adjacent rivets: Prior to further flight, replace the broken rivets with bolts in accordance with the service bulletin. Repeat the inspection at intervals not to exceed 18 months or 3,000 flight cycles, whichever occurs first.

(3) If two or more adjacent broken rivets are detected: Prior to further flight, perform a secondary inspection as specified in paragraph (c) of this AD.

#### Optional Terminating Action

(b) Replacement of all the rivets with bolts in accordance with Figure 5 of Boeing Service Bulletin 767-53A0090, Revision 1, dated September 14, 2000, terminates the repetitive inspection required by paragraph (a) of this AD.

#### Secondary Inspections

(c) If two or more adjacent broken rivets are found during any inspection required by paragraph (a) of this AD: Prior to further flight, perform a detailed inspection of the side panels and the top panel of the nose wheel well for cracks or broken rivets, in accordance with Boeing Service Bulletin 767-53A0090, Revision 1, dated September 14, 2000.

(1) If no cracks or additional broken rivets are found: Prior to further flight replace all of the rivets with bolts in accordance with Figure 5 of the service bulletin. This terminates the repetitive inspections required by paragraph (a) of this AD.

(2) If any cracks or additional broken rivets are found: Prior to further flight, repair the cracks and replace all of the rivets, per a method approved by the Manager, Seattle Aircraft Certification Office, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD. This terminates the repetitive inspections required by paragraph (a) of this AD.

#### Alternative Methods of Compliance

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

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

#### Special Flight Permits

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

**Incorporation by Reference**

(f) Except as provided by paragraph (c)(2) of this AD, the actions required by paragraphs (a) and (c) of this AD shall be done in accordance with Boeing Service Bulletin 767-53A0090, Revision 1, dated September 14, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on July 18, 2002.

Issued in Renton, Washington, on June 4, 2002.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02-14584 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

**[Airspace Docket No. 01-AGL-18]**

**Establishment of Class E Airspace; Flint, MI**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of a direct final rule which establishes Class E Airspace, Flint, MI.

**EFFECTIVE DATE:** The direct final rule published at 67 FR 10841 is effective 0901 UTC, August 08, 2002.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847-294-7568).

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on Monday, March 11, 2002, (67 FR 10841). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a

written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 08, 2002. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Des Plaines, Illinois on May 24, 2002.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14987 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

**[Airspace Docket No. 01-AGL-15]**

**Modification of Class E Airspace; Mount Vernon, OH**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of a direct final rule which modifies the Class E Airspace, Mount Vernon, OH.

**EFFECTIVE DATE:** The direct final rule published at 67 FR 10838 is effective 0901 UTC, August 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847-294-7568).

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on Monday, March 11, 2002, (67 FR 10838). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 8, 2002. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Des Plaines, Illinois on May 24, 2002.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14986 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

**[Airspace Docket No. 01-AGL-21]**

**Modification of Class E Airspace; Zanesville, OH**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; withdrawal.

**SUMMARY:** This document withdraws a direct final rule which modifies Class E airspace, Zanesville, OH.

**DATES:** The direct final rule published on Monday, March 11, 2002 at 67 FR 10835 is withdrawn as of June 14, 2002.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847-294-7568).

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on Monday, March 11, 2002, (67 FR 10835). The rule increased the radius of Class E airspace at Zanesville, OH. FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 08, 2002. Eight (8) comments were received in response to this airspace action. All eight (8) were objections and adverse in nature, and in accordance with Direct Final Rulemaking Procedures, the action must be withdrawn. A Notice Of Proposed Rulemaking, will be forthcoming.

Issued in Des Plaines, Illinois on May 30, 2002.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14984 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 01-AGL-20]

**Modification of Class E Airspace;  
Washington Court House, OH****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Direct final rule; confirmation of effective date.**SUMMARY:** This document confirms the effective date of a direct final rule which Class E airspace, Washington Court House, OH.**EFFECTIVE DATE:** The direct final rule published at 67 FR 10840 is effective 0901 UTC, August 08, 2002.**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847-294-7568).**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on Monday, March 11, 2002, (67 FR 10840). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 08, 2002. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Des Plaines, Illinois on May 24, 2002.

**Nancy B. Shelton,***Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14983 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-M****DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 01-AGL-19]

**Modification of Class E Airspace;  
Ashland, OH****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Direct final rule; confirmation of effective date.**SUMMARY:** This document confirms the effective date of a direct final rule which modifies Class E Airspace, Ashland, OH.**EFFECTIVE DATE:** The direct final rule published at 67 FR 10836 is effective 0901 UTC, August 8, 2002.**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847-294-7568).**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on Monday, March 11 2002, (67 FR 10836). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 8, 2002. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Des Plaines, Illinois on May 24, 2002.

**Nancy B. Shelton,***Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14982 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-M****DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 01-AGL-16]

**Modification of Class E Airspace;  
Portsmouth, OH****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Direct final rule; confirmation of effective date.**SUMMARY:** This document confirms the effective date of a direct final rule which modifies the Class E Airspace, Portsmouth, OH.**EFFECTIVE DATE:** The direct final rule published at 67 FR 10839 is effective 0901 UTC, August 8, 2002.**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847-294-7568).**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on Monday, March 11, 2002, (67 FR 10839). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 8, 2002. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Des Plaines, Illinois on May 24, 2002.

**Nancy B. Shelton,***Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14981 Filed 6-17-02; 8:45 am]

**BILLING CODE 4910-13-M****DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 02-AGL-06]

**Modification of Class E Airspace; St.  
Ignace, MI****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Direct final rule; request for comments.**SUMMARY:** This document modifies Class E airspace at St. Ignace, MI. Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPS) have been developed for Mackinac County Airport, St. Ignace MI. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Mackinac County Airport.**DATES:** Effective 0901 UTC, August 08, 2002. Comments must be received on or before August 6, 2002.**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Regional

Counsel, AGL-7, Rules Docket No. 02-AGL-06, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Airspace Branch, AGL-520, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:** This amendments to 14 CFR part 71 modifies Class E airspace at St. Ignace, Michigan, to accommodate aircraft, executing the proposed RNAV (GPS) SIAPS by modifying existing controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR Sec. 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### The Direct Final Rule Procedure

The FAA anticipate that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments on objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above.

If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

#### Comments Invited

Although this action is in the form of a final rule and was not preceded by a

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 02-AGL-06." The postcard will be date stamped and returned to the commenter.

#### Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

#### § 71.7 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AGL MI E5 St. Ignace, MI [Revised]

St. Ignace, Mackinac County Airport, MI  
(Lat. 45°53'25" N., long. 84°44'15" W.)  
Newberry, Luce County Airport, MI  
(Lat. 46°18'40" N., long. 85°27'26" W.)  
Sault Ste Marie, Chippewa County Int'l  
Airport, MI  
(Lat. 46°15'03" N., long. 84°28'21" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Mackinac County Airport, excluding that airspace within the Mackinac Island, MI Class E5 airspace and that airspace extending upward from 1,200 feet above the surface bounded on the north by the area starting at 4 miles north of the 103 bearing from the Newberry, Luce County Airport at 16.1 miles to a point 4 miles south of V316 at the 22-mile radius of the Chippewa County Int'l Airport counterclockwise to lat. 46°03'00" N. to lat. 46°03'00" N., long. 85°08'00" W. to 8.3 miles south of the 103° bearing from the Newberry airport at 16.1 miles to the point of beginning.

\* \* \* \* \*

Issued in Des Plaines, Illinois on May 22, 2002.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14980 Filed 6-12-02; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 97

[Docket No. 30313; Amdt. No. 3009]

#### Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained, from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:**

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8270-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

#### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP

amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

#### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on June 7, 2002.

**James J. Ballough,**

*Director, Flight Standards Service.*

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

#### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISLMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

\* \* \* *Effective August 8, 2002*

Alturas, CA, Alturas Municipal, NDB RWY 31, Amdt 1, CANCELLED  
 Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25L, Orig-A  
 Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25R, Orig-A  
 Mammoth Lakes, CA, Mammoth Yosemite, RNAV (GPS) Rwy 27, Orig  
 Mammoth Lakes, CA, Mammoth Yosemite, GPS Rwy 27, Orig-A, CANCELLED  
 Jacksonville, FL, Jacksonville Intl, RNAV (GPS) RWY 31, Orig  
 De Kalb IL, De Kalb Taylor Muni, LOC/DME RWY 2, Amdt 1  
 Frederick, MD, Frederick Muni, GPS RWY 5, Amdt 1A  
 Alma, MI, Gratiot Community, VOR/DME RWY 18, Orig  
 Angola, NY, Angola, VOR/DME-A, Amdt 1, CANCELLED  
 Angola, NY, Angola, GPS RWY 1, Orig, CANCELLED  
 Angola, NY, Angola, GPS RWY 19, Orig, CANCELLED  
 Elmira, NY, Elmira/Corning Regional, RNAV (GPS) RWY 28, Amdt 1  
 Lockport, NY, North Buffalo Suburban, RNAV (GPS) RWY 28, Orig  
 Lockport, NY, North Buffalo Suburban, GPS RWY 28, Orig, CANCELLED  
 East Liverpool, OH, Columbiana County, VOR RWY 25, Amdt 5  
 San Juan, PR, Luis Munoz Marin Intl, VOR RWY 26, Amdt 19A  
 San Juan, PR, Luis Munoz Marin Intl, RNAV (GPS) RWY 26, Orig  
 Block Island, RI, Block Island State, RNAV (GPS) Rwy 28, Orig  
 Block Island, RI, Block Island State, GPS RWY 28, Orig, CANCELLED  
 Amarillo, TX, Amarillo Intl, VOR/DME RWY 22, Amdt 1  
 Nacogdoches, TX, A.L. Mangham Jr Regional, NDB RWY 36, Amdt 1A  
 Nacogdoches, TX, A.L. Mangham Jr Regional, NDB RWY 18, Amdt 1A  
 Nacogdoches, TX, A.L. Mangham Jr Regional, GPS RWY 33, Orig-A  
 Nacogdoches, TX, A.L. Mangham Jr Regional, GPS RWY 36, Orig-A  
 Brookneal, VA, Brookneal/Campbell County, VOR/DME-A, Amdt 1  
 Brookneal, VA, Brookneal/Campbell County, RNAV (GPS) RWY 24, Orig  
 Norfolk, VA, Chesapeake Regional, VOR/DME RWY 23, Orig-A  
 Roanoke, VA, Roanoke Regional Woodrum Field, RADAR-1, Amdt 8, CANCELLED  
 Milwaukee, WI, General Mitchell Intl, RADAR-1, Amdt 23, CANCELLED

[FR Doc. 02-14988 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 97**

[Docket No. 30314; Amdt. No. 3010]

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs

Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/T NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were

applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on June 7, 2002.

**James J. Ballough,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing,

amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.37 COPTER SIAPs, Identified as follows:

\* \* \* *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	Subject
05/21/02	OH	Wilmington	Airborne Airpark	2/4337	ILS Rwy 22R, Amdt 4B.
05/21/02	OH	Wilmington	Airborne Airpark	2/4338	ILS Rwy 4L, Amdt 4.
05/21/02	OH	Wilmington	Airborne Airpark	2/4339	ILS Rwy 4R, Orig.
05/21/02	OH	Wilmington	Airborne Airpark	2/4340	ILS Rwy 22L, Orig.
05/22/02	OH	Wilmington	Airborne Airpark	2/4363	NDB Rwy 22R, Amdt 7C.
05/22/02	FL	Orlando	Executive	2/5019	LOC BC Rwy 25, Amdt 20A.
05/23/02	WA	Spokane	Spokane Intl	2/4427	ILS Rwy 21 (CAT I, II), Amdt 19A.
05/23/02	WV	Huntington	Tri-State/Milton J. Ferguson Field.	2/4436	ILS Rwy 30 Amdt 4A.
05/24/02	IA	Mason City	Mason City	2/4485	NDB Rwy 35, Amdt 5.
05/24/02	AK	Klawock	Klawock	2/4486	NDB/DME Rwy 1, Orig-A.
05/24/02	AK	Klawock	Klawock	2/4487	GPS Rwy 1, Orig.
05/24/02	WI	Watertown	Watertown Muni	2/4490	NDB Rwy 5, Amdt 1A.
05/29/02	MS	Corinth	Roscoe Turner	2/4637	ILS Rwy 17, Orig.
05/29/02	MS	Corinth	Roscoe Turner	2/4638	GPS Rwy 17, Orig.
05/29/02	TN	Knoxville	McGhee-Tyson	2/4639	ILS Rwy 23R (CAT I/II), Amdt 10A.
05/29/02	TN	Knoxville	McGhee-Tyson	2/4641	ILS Rwy 5L, Amdt 7.
05/29/02	TN	Knoxville	McGhee-Tyson	2/4642	RNAV (GPS) Rwy 5L, Orig.
05/29/02	TN	Knoxville	McGhee-Tyson	2/4645	NDB Rwy 5L, Amdt 4.
05/29/02	TN	Knoxville	McGhee-Tyson	2/4652	Radar-1, Amdt 21A.
05/29/02	IL	Bloomington/Normal	Bloomington/Central IL Regl Arpt at Bloomington-Normal.	2/4658	LOC BC Rwy 11, Amdt 8A.
05/29/02	IL	Bloomington/Normal	Bloomington/Central IL Regl Arpt at Bloomington-Normal.	2/4660	ILS Rwy 29, Amdt 8D.
05/29/02	IL	Bloomington/Normal	Bloomington/Central IL Regl Arpt at Bloomington-Normal.	2/4661	ILS Rwy 20, Amdt 1.
05/29/02	IL	Bloomington/Normal	Bloomington/Central IL Regl Arpt at Bloomington-Normal.	2/4662	VOR Rwy 11, Amdt 12B.
05/29/02	IA	Dubuque	Dubuque Regional	2/4663	VOR Rwy 31, Amdt 11D.
05/29/02	IA	Dubuque	Dubuque Regional	2/4664	LOC Rwy 31, Orig-A.
05/29/02	IA	Dubuque	Dubuque Regional	2/4665	NDB or GPS Rwy 31, Amdt 8D.
05/29/02	UT	Salt Lake City	Salt Lake City Intl	2/4761	ILS Rwy 35, Amdt 1D.
05/29/02	TN	Knoxville	McGhee-Tyson	2/5034	VOR Rwy 23R, Amdt 6A.
05/29/02	TN	Knoxville	McGhee-Tyson	2/5039	NDB or GPS Rwy 5R, Amdt 4.
05/30/02	CT	Danbury	Danbury Muni	2/4683	VOR or GPS-A, Amdt 9.
05/30/02	LA	Lake Charles	Lake Charles Regional	2/4685	ILS Rwy 15, Amdt 19B.
05/30/02	PA	Philipsburg	Mid-State	2/4705	NDB Rwy 16, Amdt 6A.
05/30/02	PA	Philipsburg	Mid-State	2/4706	ILS Rwy 16, Amdt 6.
05/30/02	PA	Philipsburg	Mid-State	2/4707	VOR Rwy 24, Amdt 15A.

FDC Date	State	City	Airport	FDC No.	Subject
05/31/02 .....	TX	Houston .....	Sugar Land Muni/Hull Field .....	2/4769	RNAV (GPS) Rwy 17, Orig.
05/31/02 .....	LA	New Orleans .....	Louis Armstrong New Orleans Intl.	2/4843	ILS Rwy 28, Amdt 4B.
06/03/02 .....	PA	Philadelphia .....	Philadelphia Intl .....	2/4932	ILS Prm Rwy 26, Amdt 1B.
06/03/02 .....	CA	Monterey .....	Monterey Peninsula .....	2/4949	ILS Rwy 10R, Amdt 26A.
06/04/02 .....	CT	Willimantic .....	Windham .....	2/4944	VOR or GPS-A, Amdt 8A.
06/04/02 .....	WA	Pasco .....	Tri-Cities .....	2/4955	VOR or GPS Rwy 21R, Amdt 4A.
06/04/02 .....	WA	Pasco .....	Tri-Cities .....	2/4956	ILS Rwy 21R, Amdt 10B.
06/05/02 .....	TN	Knoxville .....	McGhee-Tyson .....	2/5035	VOR or GPS Rwy 23L, Amdt 4A.

[FR Doc. 02-14989 Filed 6-12-02; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1979

[Docket No. C-07]

RIN 1218-AB99

#### Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Interim final rule; reopening of comment period.

**SUMMARY:** On April 1, 2002, OSHA published an interim final rule titled, "Procedures for the Handling of Discrimination Complaints under section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century." The period for submitting written comments is being extended to allow information and data to be collected by those industries and employee groups affected by the rule.

**DATES:** Comments must be received by June 30, 2002.

**ADDRESSES:** Submit written comments to: OSHA Docket Office, Docket C-07, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW, Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience, comments may be transmitted by facsimile ("FAX") machine to (202) 693-1681. This is not a toll-free number. If commenters transmit comments by FAX and also submit a hard copy by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

**FOR FURTHER INFORMATION CONTACT:** John Spear, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3618, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693-2187. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

**SUPPLEMENTARY INFORMATION:** On April 1, 2002, at 67 FR 15454, OSHA published an Interim Final Rule titled, "Procedures for the Handling of Discrimination Complaints under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century." In that document OSHA requested comments on or before May 31, 2002. However, at the request of the Association of Flight Attendants, AFL-CIO, OSHA is extending the comment period an additional 30 days until June 30, 2002, to allow additional time for interested parties to gather information and submit informed comments to assist the Agency.

**Authority:** This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

Signed at Washington, DC, this 7th day of June, 2002.

**John L. Henshaw,**

*Assistant Secretary for Occupational Safety and Health.*

[FR Doc. 02-14950 Filed 6-12-02; 8:45 am]

BILLING CODE 4510-26-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

RIN 0720-AA73

#### TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers

**AGENCY:** Office of the Secretary, DoD

**ACTION:** Interim final rule.

**SUMMARY:** This rule partially implements the TRICARE "sub-acute and long-term care program reform" enacted by Congress in the National Defense Authorization Act for Fiscal Year 2002, specifically: Establishment of "an effective, efficient, and integrated sub-acute care benefits program," with skilled nursing facility and home health care benefits modeled after those of the Medicare program; adoption of Medicare payment methods for skilled nursing facility, home health care, and certain other institutional health care providers; adoption of Medicare rules on balance billing of beneficiaries, prohibiting it by institutional providers and limiting it by non-institutional providers; and change in the statutory exclusion of coverage for custodial and domiciliary care. The Department is publishing this rule as an interim final rule to implement the statutory requirements and effective dates. Public comments, however, are invited and will be considered for possible revisions to this rule.

**DATES:** Written comments will be accepted until August 12, 2002. This rule implements specific statutory requirements with specific statutory effective dates. This rule is effective August 12, 2002, or as soon thereafter as the Director, TRICARE Management Activity can effectively and efficiently implement through contract change. If the rule is not effective August 12, 2002, notice will be published in the **Federal Register** when the contract changes

have been completed to implement the rule.

**ADDRESSES:** Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011-9066.

**FOR FURTHER INFORMATION CONTACT:** For payments to Skilled Nursing Facilities and Skilled Nursing Facility (SNF) services, Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676-3801. For Home Health Care (HHC) benefits and payment methods, David E. Bennett, TRICARE Management Activity, Medical Benefits and Reimbursement Systems, telephone (303) 676-3494. For payments for clinical laboratory and certain other services in hospital outpatient departments and emergency departments and balance billing limits, Stan Regensberg, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone, (303) 676-3742.

**SUPPLEMENTARY INFORMATION:**

**I. Overview**

In the National Defense Authorization Act for Fiscal Year 2002 (NDAA-02), Pub. L. 107-107 (December 28, 2001), Congress enacted several reforms relating to TRICARE coverage and payment methods for skilled nursing and home health care services. The statutory "Sub-Acute and Long-Term Care Program Reform" under section 701 of this Act added a new 10 U.S.C. 1074j, which provides in pertinent part: § 1074j. Sub-Acute Care Program

(a) Establishment.—The Secretary of Defense shall establish an effective, efficient, and integrated sub-acute care benefits program under this chapter \* \* \*

(b) Benefits.—(1) The program shall include a uniform skilled nursing facility benefit that shall be provided in the same manner and under the conditions described in Section 1861(h) and (i) of the Social Security Act (42 U.S.C. 1935x(h) and (i)), except that the limitation on the number of days of coverage under Section 1812(a) and (b) of such Act (42 U.S.C. 1395d(a) and (b)) shall not be applicable under the program. Skilled nursing facility care for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

\* \* \* \* \*

(3) The program shall include a comprehensive, part-time or intermittent home health care benefit that shall be provided in the manner and under the conditions described in Section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

In addition to these requirements that TRICARE establish an integrated sub-acute care program consisting of skilled

nursing facility and home health care services modeled after the Medicare program, Congress also, in section 707 of NDAA-02, changed the statutory authorization (in 10 U.S.C. 1079(j)(2)) that TRICARE payment methods for institutional care "may be" determined to the extent practicable in accordance with Medicare payment rules to a mandate that TRICARE payment methods "shall be" so determined. This command is effective 90 days after the date of enactment. A third Congressional action in NDAA-02, also in Section 707, is the statutory codification of existing TRICARE policy—modeled after Medicare—that institutional providers are not permitted to balance bill beneficiaries for charges above the TRICARE payment amount and that non-institutional providers may not balance bill in excess of 15 per cent over the TRICARE Maximum Allowable Cost.

A fourth component of this reform program (in Section 701(c)) is the narrowing of the statutory exclusions of custodial and domiciliary care by the adoption of new definitions of "custodial care" and "domiciliary care" that have the effect of eliminating current program restrictions on paying for certain medically necessary care.

This interim final rule implements these statutory requirements. We are adopting for TRICARE a skilled nursing facility benefit similar to Medicare's, but as specified in the statute, without Medicare's day limits. We are also adopting Medicare's prospective payment method for skilled nursing facility care. Similarly, we are adopting the Medicare benefit structure and payment method for home health care services. We are applying to SNF and HHC providers the statutory prohibition against balance billing. In addition, we are incorporating the new statutory definitions of "custodial care" and "domiciliary care." Finally, this rule also provides clarification of existing payment policies for clinical laboratory and rehabilitation therapy services, radiology services procedures, and routine venipuncture in hospital outpatient and emergency departments that were adopted under the allowable charge methodology under 32 CFR 199.14.

We note that the series of sub-acute and long-term care program reforms adopted by Congress in NDAA-02 included several parts that are not being implemented in this interim final rule. Most significant are: repeal of the Case Management Program under 10 U.S.C. 1079(a)(17) (repealed—along with several other related enactments—by Section 701(g)(2) of NDAA-02);

continuation of the Case Management Program for certain beneficiaries currently covered by it (Section 701(d)); and establishment of a new program of extended benefits for disabled family members of active duty services members (Section 701(b)). These and several other related statutory changes will be implemented through regulatory changes in the very near future. In the meantime, the case management process of 32 CFR 199.4(i) will remain available to provide services to eligible beneficiaries of the new extended benefits program, consistent with the statutory specifications.

Finally, we note that Congress included as Section 8101 of the DoD 2002 Appropriations Act, a general provision identical to a provision included in the 2000 (Section 8118) and 2001 (Section 8100) Appropriations Acts concerning implementation of the case management program under 10 U.S.C. 1079(a)(17). Although Sections 8118 and 8100 of the 2000 and 2001 Appropriations Acts were repealed by Section 701(g)(1)(B) and (C) of NDAA-02, the same provision was reenacted in the 2002 Appropriations Act. By its terms, Section 8101 of the DoD 2002 Appropriations Act, exclusively addresses implementation of a program (the case management program under 10 U.S.C. 1079(a)(17)) that has now been repealed. Thus, we consider Section 8101 as not affecting implementation of the sub-acute and long-term care reform program adopted by Congress in NDAA-02.

The program reforms adopted by Congress and implemented in this interim final rule take major steps toward achieving the Congressional objective of an effective, efficient, and integrated sub-acute care benefits program.

**II. Skilled Nursing Facility Benefits**

As noted above, 10 U.S.C. 1074j requires TRICARE to include a skilled nursing facility benefit that shall for the most part be provided in the manner and under the conditions described under Medicare. As a result, TRICARE is adopting Medicare's three-day-prior-hospitalization requirement for coverage of a SNF admission. Accordingly, for a SNF admission to be covered under TRICARE, the beneficiary must have a qualifying hospital stay (meaning an inpatient hospital stay), of not less than three consecutive days before the beneficiary is discharged from the hospital. The beneficiary must enter the SNF within 30 days after discharge from the hospital, or within such time as it would be medically appropriate to begin an active course of treatment, where the

individual's condition is such that SNF care would not be medically appropriate within 30 days after discharge from a hospital. The skilled services must be for a medical condition that was either treated during the qualifying three-day hospital stay, or started while the beneficiary was already receiving covered SNF care. Additionally, an individual shall be deemed not have been discharged from a SNF, if within 30 days after discharge from a SNF, the individual is again admitted to the same or a different SNF. These coverage requirements are the same as applied under Medicare. We are not, however, adopting Medicare's 100-day limit on SNF services. Consistent with the statute, SNF coverage for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

### III. Payments for Skilled Nursing Facility Services

TRICARE had not to date reformed payment methods applicable to SNFs due to the very small volume of SNF services paid for by TRICARE. The volume of such services is now expected to increase significantly because of the Congressional action in 2000 reinstating TRICARE coverage secondary to Medicare for Medicare-eligible DoD health care beneficiaries (Section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-398). Coincident with Congressional action in directing adoption of Medicare payment methods for institutional providers, we have undertaken a review of the Medicare payment method and rates for SNF care under Section 1888(e) of the Social Security Act (42 U.S.C. 1395yy) and 42 CFR part 413, subpart J. That review and assessment have convinced us that adoption of Medicare SNF payment methods and rates is not only required by law, but also fair, feasible, practicable, and appropriate.

Medicare implemented its per diem Prospective Payment System (PPS) for SNF care covering all costs (routine, ancillary and capital) of Medicare-covered SNF services as of July 1, 1998. The Medicare payment rates are based upon resident assessments. All Medicare-certified SNFs are required to conduct assessments on residents using a standardized assessment tool, called the Minimum Data Set (MDS). Medicare then uses information from this assessment to categorize SNF patients into seven major categories: (1) Rehabilitation; (2) Extensive Services; (3) Special Care; (4) Clinically Complex; (5) Impaired Cognition; (6) Behavior Problems; and (7) Reduced Physical

Function. This is done using the Resource Utilization Group (RUG)—III grouper. The RUG—III grouper is a computer program that converts resident specific assessment data into a case-mix classification. In classifying patients into groups based upon their clinical and functional characteristics, the grouper further subdivides each of these seven categories resulting in 44 specific patient RUGs.

For each of the 44 RUGs, the Medicare SNF per diem payment is calculated as the sum of three parts—the nursing component, the therapy component and the non-case-mix component. Under the nursing and therapy components of the payment rate, each of the 44 RUGs carries a uniquely assigned relative weight factor. This relative weight factor, or case mix index, represents a relative index or resource consumption. Resource-intensive patients are assigned to a RUG that carries a higher relative weight factor. This RUG-specific relative weight factor is multiplied by the applicable nursing and therapy base rates (which vary depending on whether the SNF is urban or rural) to develop the nursing and therapy components of the per diem payment rate. These two components are then added to the non-case-mix adjusted component resulting in the total PPS per diem payment rate.

A key part of the Medicare SNF payment system is the use of the MDS to classify SNF residents into one of the 44 RUG groups. An important issue is whether the RUG—III classification system used by Medicare to classify patients into the 44 RUG groups would be practicable for the TRICARE SNF benefit. We think that it would be practicable. Much of the SNF care for which TRICARE will be paying is as second payer to Medicare for the same patient. Even for non-Medicare-eligible patients (e.g., most patients under age 65), the characteristics recognized by the RUG—III system would be equally applicable. In this regard, we note that more than ten states have decided to use the RUG—III system to classify Medicaid patients into RUGs and several other states are currently in the developmental stages of implementing the RUG—III system. This reflects a broad view that the MDS and RUGs are appropriate for non-Medicare SNF residents. In our review and discussions, we could not identify any significant barriers to the use of the RUG—III system to classify TRICARE patients.

One implementation issue that we have identified related to classification concerns the timing of residents assessments. The Medicare SNF payment system requires periodic

patient assessments. The Centers for Medicare and Medicaid Services (CMS) requires that SNF patients be assessed on days 5, 14, 30, 60, and 90, as well as be reassessed if there are status changes between these periodic assessments. We have considered the level of assessment required after 100 days when TRICARE becomes primary payer for patients whose SNF care must continue beyond the Medicare benefit limit. We believe continuing to assess patients every 30 days would be consistent with Medicare's practice of skilled authorization.

A second implementation issue concerns the use of MDS for neonates and very young children. The MDS was not designed for very young children. As a result, we believe that children under ten should not be assessed using the MDS. We will review the methods used by Medicaid programs and may adopt one of their assessment methods at a later time. Until then, the allowed charge for children under age ten in a SNF will continue to be the billed charge.

We have also considered whether the Medicare SNF payment rates and weights are appropriate for TRICARE. We believe they are. For some of the payment methods TRICARE has adopted for non-SNF providers that are based on the Medicare's system, we have developed DoD-specific weights and rates. In some, such as for physician payments, we implemented our own phase-in process, but have not reached comparability with Medicare. In the case of SNF PPS, the Medicare weights and rates were developed to be used nationally—like TRICARE—thus, we have no special State considerations that some Medicaid programs would have. In addition, the TRICARE population group that will be the primary user of SNF services and the Medicare population group are quite similar. Thus, we believe that there is no reason why the Medicare weights and rates would not be appropriate to use. However, we will carefully monitor the TRICARE SNF patient characteristics to ensure that the weights and rates are appropriate. If necessary, the weights and rates could be modified after one or more years of experience.

Based on all of these considerations and the statutory requirements, the Department is adopting for TRICARE the Medicare payment methods and rates, including MDS assessments, RUG—III classifications, and Medicare weights and per diem rates. For patient stays longer than 90 days, MDS assessment would be required every 30 days.

In adopting the Medicare's SNF payment methodology, we are also incorporating into our rule a provision that has been in the TRICARE Operations Manual requiring that TRICARE-eligible SNFs must be Medicare-certified institutions. We believe this policy facilitates assurance of quality of care and is consistent with the payment approach we are adopting.

#### IV. Home Health Care Benefits

Home health agencies (HHAs) are currently recognized as authorized providers under TRICARE, but payment only extends to services rendered by otherwise authorized TRICARE individual professional providers, such as registered nurses, physical and occupational therapists, and speech pathologists. Coverage of services provided by home health aides and medical social workers are currently not allowed except under the hospice benefit. Payment is also extended under the TRICARE-allowable charge methodology for medical supplies that are essential in enabling HHA professional staff to effectively carry out physician ordered treatment of the beneficiary's illness or injury. Unlike Medicare, TRICARE currently requires HHAs to have either community Health Accreditation Program or Joint Commission on the Accreditation of Healthcare Organizations accreditation to quality as network providers. These certification requirements will be changed to make them consistent with those of Medicare in order to effectively accommodate adoption of the new HHA prospective payment system; i.e., to require Medicare certification/approval for provider authorization status under TRICARE.

Medicare's home health benefit structure and conditions for coverage are being adopted coincident with implementation of the new prospective payment system including those provisions under Sections 1861(m), 1861(o), and 1891 of the Social Security Act and 42 CFR part 484. In general, coverage extends to part-time or intermittent skilled nursing care and home health aide services from qualified providers. The specific benefit structure and conditions for coverage are set forth in the new Section 199.4(e)(22) of the regulation.

In adopting this new benefit structure for TRICARE, we note the potential need for some transition time or other accommodation for some patients currently receiving home health services under present program coverage rules. Our regulation (Section 199.1(n)) allows the recognition of special circumstance

and authority of the Director to address them.

#### V. Payment Method for Home Health Care Services

TRICARE is adopting Medicare's benefit structure and prospective payment system for reimbursement of HHAs that are currently in effect for the Medicare program under Section 4603 of the Balanced Budget Act of 1997, as amended by Section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, and by Sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999. This includes adoption of the comprehensive Outcome and Assessment Information Set (OASIS) and consolidating billing requirements.

The adoption of the Medicare HHA prospective payment system replaces the retrospective physician-oriented fee-for-service model currently used for payment of home health services under TRICARE. Under the new prospective payment system, TRICARE will reimburse HHAs a fixed case-mix and wage-adjusted 60-day episode payment amount for professional home health services, along with routine and non-routine medical supplies provided under the beneficiary's plan of care. Durable medical equipment and osteoporosis drugs receive a separate payment amount in addition to the prospective payment system amount for home health care services.

The variation in reimbursement among beneficiaries receiving home health care under this newly adopted prospective payment system will be dependent on the severity of the beneficiary's condition and expected resource consumption over a 60-day episode-of-care, with special reimbursement provisions for major intervening events, significant changes in conditions, and low or high resource utilization. The resource consumption of these beneficiaries will be assessed using OASIS selected data elements. The score values obtained from these selected data elements will be used to classify home health beneficiaries into one of 80 Home Health Resource Groups (HHRGs) based on their average expected resource costs relative to other home health care patients.

The HHRG classification determines the cost weight; i.e., the appropriate case-mix weight adjustment factor that indicates the relative resources used and costliness of treating different patients. The cost weight for a particular HHRG is then multiplied by a standard average prospective payment amount for a 60-day episode of home health care. The

case-mix adjusted standard prospective payment amount is then adjusted to reflect the geographic variation in wages to come up with the final HHA payment amount.

As indicated above, the ordinary unit of payment is based on a 60-day episode of care. Payment covers the entire episode of care regardless of the number of days of care actually provided during the 60-day period. There are exceptions to this standard payment period under certain conditions that will result in reduced or additional amounts being paid. If the beneficiary is still in treatment at the end of the initial 60-day episode of care, a physician must re-certify that the beneficiary is correctly assigned to one of the HHRGs, and a new episode of care may begin. There is currently no limit on the number of medically necessary consecutive 60-day episodes that beneficiaries may receive under the HHA prospective payment system.

As noted above, the variation in reimbursement among beneficiaries receiving HHC under this newly adopted prospective payment system will be dependent on the severity of the beneficiary's condition and expected resource consumption over a 60-day episode-of-care, with special reimbursement provisions for major intervening events, significant changes in condition, and low or high resource utilization. A case mix system has been developed to measure the severity and projected resource utilization of beneficiaries receiving home health services using selected data elements off of the OASIS assessment instrument (i.e., the assessment document submitted by HHAs for reimbursement) and an additional element measuring receipt of at least ten visits for therapy services. These key data elements are organized and assigned a score value in order to measure the impact of clinical, functional and services utilization dimensions on total resource use. The resulting summed scores are used to assign a beneficiary to a particular severity level within each of the following dimensions:

- *Clinical Dimension*—The clinical dimension has four severity levels (0–3) and takes into account the beneficiary's primary diagnosis and prevalent medical conditions.
- *Functional Dimension*—The functional dimension assesses the beneficiary's ability to perform various activities of daily living (e.g., the beneficiary's ability to dress and bathe) and consists of five severity levels (0–4).
- *Services Utilization Dimension*—The Services utilization dimension has

four severity levels (0–3) and indicates whether the beneficiary was discharged from a skilled nursing facility or rehabilitation hospital within the past 14 days and whether the patient is expected to receive ten or more occupational, physical and/or speech therapy visits.

A case-mix grouper is used for assigning a severity level within each of the above dimensions and for classifying the beneficiary into one of 80 HHRGs. The HHRG indicates the extent and severity of the beneficiary's home health needs reflected in its relative case-mix weight (cost weight). The case-mix weight indicates the group's relative resource use and cost of treating different patients. The case-mix weights for Fiscal Year 2001 ranged from 0.5265 to 2.8113. The standardized prospective payment rate is multiplied by the beneficiary's assigned HHRG case-mix weight to come up with the 60-day episode payment.

As with the SNF MDS classification system, we believe the HHRG should not be used for children under ten. They are thus exempt from the HHA prospective payment system.

#### **VI. Balance Billing Limitations**

Consistent with the Congressional action discussed above, we are revising Section 199.6 of the regulation to specify that institutional providers, including SNFs and HHAs, are required, in order to be TRICARE-authorized providers, to be participating providers on all claims. They must accept as payment in full, except for any required beneficiary deductible and copayment amounts, the TRICARE payment as payment in full. Medicare and TRICARE payment rates are designed to fully reimburse the institutions and are required by Medicare and TRICARE to be accepted as full reimbursement. TRICARE eligible hospitals, SNFs, and HHAs must enter into a participation agreement.

#### **VII. Definitions of "Custodial Care" and "Domiciliary Care"**

As noted above, Congress adopted definitions of "custodial care" and "domiciliary care" that we are incorporating into the TRICARE regulation. Custodial and domiciliary care continue to be excluded by the statute and regulation. However, the new definitions narrow the exclusions, resulting in increasing coverage of medically necessary care. This is also consistent with the Congressional effort largely to standardize TRICARE and Medicare sub-acute care coverage and payment policies. As a corollary to these definitions, we are also adopting a

definition of the term "activities of daily living."

#### **VIII. Payment Methods for Hospital Outpatient Services**

Medicare implemented a new Outpatient Prospective Payment System (OPPS) on August 1, 2000, as a payment methodology for facility charges in hospital outpatient departments and emergency departments. This system replaced Medicare's prior payment methodology for such services, which was largely based on provider cost reports, but included some fee schedules. The Medicare OPPS is being phased in from 2000 to 2004, with a series of transitional payment adjustments that are based partly upon the prior Medicare cost reports and Medicare's prior cost-based methodology. Consistent with the TRICARE payment reform statutory authority and general policy, we plan to follow the Medicare approach.

However, because of complexities of the Medicare transition process and the lack of TRICARE cost report data comparable to Medicare's, it is not practicable for the Department to adopt Medicare OPPS for hospital outpatient services at this time. A separate regulatory initiative in the future will address hospital outpatient services not covered by this regulation. We anticipate eventual adoption of the Medicare OPPS for most TRICARE hospital outpatient services covered by the Medicare OPPS.

This rule addresses payments for four categories of hospital based outpatient services. The first three apply to hospital outpatient clinical laboratory services and rehabilitation therapy services and routine venipuncture. For these services, payments are based on the TRICARE-allowable cost method in effect for professional providers.

The fourth category addresses hospital outpatient radiology services procedures for which CHAMPUS Maximum Allowable Charge (CMAC) technical component rates exist. For these procedures, we will use the CMAC technical component rate to reimburse hospital facility costs for radiology services.

#### **IX. Regulatory Procedures**

This rule has been reviewed by the Office of Management and Budget as required under Executive Order 12866. This is a major rule under the Congressional Review Act. This rule is economically significant as it would result in reduced TRICARE payments to skilled nursing facilities (SNFs) in excess of \$100 million per year. The projected volume of services is a function of the recent Congressional

action restoring TRICARE eligibility to Medicare-eligible DoD beneficiaries. The estimates of reduction are based on historical TRICARE costs and an assessment of potential users times average benefit costs per person for each of the provisions addressed. The reduction will be at least partially offset by increases in Medicare payments. This rule will result in increased Medicare payments to SNFs, home health agencies, and other institutional providers of \$4 million in FY03. Benefits of the rule include substantially standardizing sub-acute care benefits and payments between Medicare and TRICARE, particularly important because most TRICARE sub-acute care services are for beneficiaries also covered by Medicare. This regulation would affect small entities such as SNFs. Even though this is an economically significant rule, it does not require a regulatory flexibility analysis as the significant policy action was taken by Congress and the rule merely puts it into effect. The policy of the Regulatory Flexibility Act that agencies adequately evaluate all potential options for an action does not apply when Congress has already dictated the action.

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized. Comments on information collection requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, marked "Attention Desk Officer for Department of Defense, Health Affairs."

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be unnecessary, impractical, and contrary to the public interest.

This rule implements specific statutory requirements with specific statutory effective dates. This rule is effective 60 days from the date of publication in the **Federal Register**, or as soon thereafter as the Director, TRICARE Management Activity can effectively and efficiently implement through contract change. If the rule is not implemented 60 days from the date of publication in the **Federal Register**, notice will be published in the **Federal Register** when the contract changes

have been completed to implement the rule.

Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by revising the definitions of "custodial care", "domiciliary care", "skilled nursing facility" and "skilled nursing services", by adding definitions of "activities of daily living", "case-mix index", "homebound", "home health discipline", "home health market basket index", "intermittent home health aide and skilled nursing services", and "part-time home health aide and skilled nursing services" in alphabetical order, and by removing the definitions of "essentials of daily living" and "private duty (special) nursing services", to read as follows:

§ 199.2 Definitions.

\* \* \* \* \*

(b) \* \* \*

Activities of daily living. Care that consists of providing food (including special diets), clothing, and shelter; personal hygiene services; observation and general monitoring; bowel training or management (unless abnormalities in bowel function are of a severity to result in a need for medical or surgical intervention in the absence of skilled services); safety precautions; general preventive procedures (such as turning to prevent bedsores); passive exercise; companionship; recreation; transportation; and such other elements of personal care that reasonably can be performed by an untrained adult with minimal instruction or supervision. Activities of daily living may also be referred to as "essentials of daily living".

\* \* \* \* \*

Case-mix index. Case-mix index is a scale that measures the relative difference in resources intensity among different groups receiving home health services.

\* \* \* \* \*

Custodial care. The term "custodial care" means treatment or services, regardless of who recommends such treatment or services or where such treatment or services are provided, that:

- (1) Can be rendered safely and reasonably by a person who is not medically skilled; or
(2) Is or are designed mainly to help the patient with the activities of daily living.

\* \* \* \* \*

Domiciliary care. The term "domiciliary care" means care provided to a patient in an institution or homelike environment because:

- (1) Providing support for the activities of daily living in the home is not available or is unsuitable; or
(2) Members of the patient's family are unwilling to provide the care.

\* \* \* \* \*

Homebound. A beneficiary's condition is such that there exists a normal inability to leave home and, consequently, leaving home would require considerable and taxing effort. Any absence of an individual from the home attributable to the need to receive health care treatment—including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a state, or accredited to furnish adult day-care services in the state shall not disqualify an individual from being considered to be confined to his home. Any other absence of an individual from the home shall not disqualify an individual if the absence is infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. Also, absences from the home for non-medical purposes, such as an occasional trip to the barber, a walk around the block or a drive, would not necessarily negate the beneficiary's homebound status if the absences are undertaken on an infrequent basis and are of relatively short duration.

Home health discipline. One of six home health disciplines covered under the home health benefit (skilled nursing services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Home health market basket index. An index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

\* \* \* \* \*

Intermittent home health aide and skilled nursing services. Intermittent means:

(1) Up to and including 28 hours per week of skilled nursing and home health aide services combined, provided on a less-than-daily basis;

(2) Up to 35 hours per week of skilled nursing and home health aide services combined that are provided on a less-than-daily basis, subject to review by managed care support contractors on a case-by-case basis, based upon documentation justifying the need for and reasonableness of such additional care; or

(3) Up to and including full-time (i.e., eight hours per day) skilled nursing and home health aide services combined which are provided and needed seven days per week for temporary, but not indefinite, periods of time of up to 21 days with allowances for extensions in exceptional circumstances where the need for care in excess of 21 days is finite and predictable.

\* \* \* \* \*

Part-time home health aide and skilled nursing services. Part-time means:

(1) Up to and including 28 hours per week of skilled nursing and home health aide services combined for less than eight hours per day; or

(2) Up to 35 hours per week of skilled nursing and home health aide services combined for less than eight hours per day subject to review by managed care support contractors on a case-by-case basis, based upon documentation justifying the need for and reasonableness of such additional care.

\* \* \* \* \*

Skilled nursing facility. An institution (or a distinct part of an institution) that meets the criteria as set forth in § 199.6(b)(4)(vi).

Skilled nursing services. Skilled nursing services includes application of professional nursing services and skills by an RN, LPN, or LVN, that are required to be performed under the general supervision/direction of a TRICARE-authorized physician to ensure the safety of the patient and achieve the medically desired result in accordance with accepted standards of practice.

\* \* \* \* \*

3. Section 199.4 is amended by redesignating the current paragraph (b)(3)(xiv) as (b)(3)(xv), by adding new paragraphs (b)(3)(xiv) and (e)(21), and by removing and reserving paragraphs (c)(2)(xv) and (c)(3)(xii) to read as follows:

§ 199.4 Basic program benefits.

(b) \* \* \*

(3) \* \* \*

(xiv) *Skilled nursing facility (SNF) services.* Covered services in SNFs are the same as provided under Medicare under section 1861(h) and (i) of the Social Security Act (42 U.S.C. 1395x(h) and (i)) and 42 CFR part 409, subparts C and D, except that the Medicare limitation on the number of days of coverage under section 1812(a) and (b) of the Social Security Act (42 U.S.C. 1395d(a) and (b)) and 42 CFR 409.61(b) shall not be applicable under TRICARE. Skilled nursing facility care for each spell of illness shall continue to be provided for as long as necessary and appropriate. For a SNF admission to be covered under TRICARE, the beneficiary must have a qualifying hospital stay meaning an inpatient hospital stay of three consecutive days or more, not including the hospital leave day. The beneficiary must enter the SNF within 30 days of leaving the hospital, or within such time as it would be medically appropriate to begin an active course of treatment, where the individual's condition is such that SNF care would not be medically appropriate within 30 days after discharge from a hospital. The skilled services must be for a medical condition that was either treated during the qualifying three-day hospital stay, or started while the beneficiary was already receiving covered SNF care. Additionally, an individual shall be deemed not to have been discharged from a SNF, if within 30 days after discharge from a SNF, the individual is again admitted to a SNF. Adoption by TRICARE of most Medicare coverage standards does not include Medicare coinsurance amounts. Extended care services furnished to an inpatient of a SNF by such SNF (except as provided in paragraphs (b)(3)(xiv)(C), (b)(3)(xiv)(F), and (b)(3)(xiv)(G) of this section) include:

(A) Nursing care provided by or under the supervision of a registered professional nurse;

(B) Bed and board in connection with the furnishing of such nursing care;

(C) Physical or occupational therapy or speech-language pathology services furnished by the SNF or by others under arrangements with them by the facility;

(D) Medical social services;

(E) Such drugs, biological, supplies, appliances, and equipment, furnished for use in the SNF, as are ordinarily furnished for the care and treatment of inpatients;

(F) Medical services provided by an intern or resident-in-training of a hospital with which the facility has such an agreement in effect; and

(G) Such other services necessary to the health of the patients as are

generally provided by SNFs, or by others under arrangements with them made by the facility.

\* \* \* \* \*

(e) \* \* \*

(21) *Home health services.* Home health services are covered when furnished by, or under arrangement with, a home health agency (HHA) that participates in the TRICARE program, and provides care on a visiting basis in the beneficiary's home. Covered HHA services are the same as those provided under Medicare under section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)) and 42 CFR part 409, subpart E.

(i) *Benefit coverage.* Coverage will be extended for the following home health services subject to the conditions of coverage prescribed in paragraph (e)(21)(ii) of this section:

(A) Part-time or intermittent skilled nursing care furnished by a registered nurse or a licensed practical (vocational) nurse under the supervision of a registered nurse;

(B) Physical therapy, speech-language pathology, and occupational therapy;

(C) Medical social services under the direction of a physician;

(D) Part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Director TMA;

(E) Medical supplies, a covered osteoporosis drug (as defined in the Social Security Act 1861(kk), but excluding other drugs and biologicals) and durable medical equipment;

(F) Medical services provided by an intern or resident-in-training of a hospital, under an approved teaching program of the hospital in the case of an HHA that is affiliated or under common control of a hospital; and

(G) Services at hospitals, SNFs or rehabilitation centers when they involve equipment too cumbersome to bring to the home but not including transportation of the individual in connection with any such item or service.

(ii) *Conditions for Coverage.* The following conditions/criteria must be met in order to be eligible for the HHA benefits and services referenced in paragraph (e)(21)(i) of this section:

(A) The person for whom the services are provided is an eligible TRICARE beneficiary.

(B) The HHA that is providing the services to the beneficiary has in effect a valid agreement to participate in the TRICARE program.

(C) Physician certifies the need for home health services because the beneficiary is homebound.

(D) The services are provided under a plan of care established and approved by a physician.

(1) The plan of care must contain all pertinent diagnoses, including the patient's mental status, the types of services, supplies, and equipment required, the frequency of visits to be made, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, all medications and treatments, safety measures to protect against injury, instructions for timely discharge or referral, and any additional items the HHA or physician chooses to include.

(2) The orders on the plan of care must specify the type of services to be provided to the beneficiary, both with respect to the professional who will provide them and the nature of the individual services, as well as the frequency of the services.

(E) The beneficiary must need skilled nursing care on an intermittent basis or physical therapy or speech-language pathology services, or have continued need for occupational therapy after the need for skilled nursing care, physical therapy, or speech-language pathology services has ceased.

(F) The beneficiary must receive, and an HHA must provide, a patient-specific, comprehensive assessment that:

(1) Accurately reflects the patient's current health status and includes information that may be used to demonstrate the patient's progress toward achievement of desired outcomes;

(2) Identifies the beneficiary's continuing need for home care and meets the beneficiary's medical, nursing, rehabilitative, social, and discharge planning needs.

(3) Incorporates the use of the current version of the Outcome and Assessment Information Set (OASIS) items, using the language and groupings of the OASIS items, as specified by the Director, TRICARE Management Activity.

(G) TRICARE is the appropriate payer.

(H) The services for which payment is claimed are not otherwise excluded from payment.

(I) Any other conditions of coverage/participation that may be required under Medicare's HHA benefit; i.e., coverage guidelines as prescribed under Sections 1861(o) and 1891 of the Social Security Act (42 U.S.C. 1395x(o) and 1395bbb) and 42 CFR Part 484.

\* \* \* \* \*

4. Section 199.6 is amended by revising paragraphs (a)(8)(i)(A),

(a)(8)(i)(B), (a)(11)(i) and (d)(5), and adding new paragraphs (a)(8)(iii), (b)(4)(vi)(K) and (b)(4)(xv), to read as follows:

§ 199.6 Authorized providers.

- (a) \* \* \*
(8) \* \* \*
(i) \* \* \*

(A) An institutional provider in § 199.6(b), in order to be an authorized provider under TRICARE, must be a participating provider for all claims.

(B) A SNR or a HHA, in order to be an authorized provider under TRICARE, must enter into a participation agreement with TRICARE for all claims.

(iii) Claim-by-claim participation. Individual providers that are not participating providers pursuant to paragraph (a)(8)(ii) of this section may elect to participate on a claim-by-claim basis. They may do so by signing the appropriate space on the claims form and submitting it to the appropriate TRICARE contractor on behalf of the beneficiary.

- (11) \* \* \*

(i) In general. Individual providers including providers salaried or under contract by an institutional provider and other providers who are not participating providers may not balance bill a beneficiary an amount that exceeds the applicable balance billing limit. The balance billing limit shall be the same percentage as the Medicare limiting charge percentage for nonparticipating practitioners and suppliers.

- (b) \* \* \*
(4) \* \* \*
(vi) \* \* \*

(K) Is an authorized provider under the Medicare program, and meets the requirements of Title 18 of the social Security Act, sections 1819(a), (b), (c), and (d) (42 U.S.C. 1395i-3(a)-(d)).

(xv) Home health agencies (HHAs). HHAs must be Medicare approved and meet all Medicare conditions of participation under sections 1861(o) and 1891 of the Social Security Act (42 U.S.C. 1395x(o) and 1395bbb) and 42 CFR part 484 in relation to TRICARE beneficiaries in order to receive payment under the TRICARE program. An HHA may be found to be out of compliance with a particular Medicare condition of participation and still participate in the TRICARE program as long as the HHA is allowed continued participation in Medicare while the condition of noncompliance is being

corrected. An HHA is a public or private organization, or a subdivision of such an agency or organization, that meets the following requirements:

(A) Engaged in providing skilled nursing services and other therapeutic services, such as physical therapy, speech-language pathology services, or occupational therapy, medical services, and home health aide services.

(1) Makes available part-time or intermittent skilled nursing services and at least one other therapeutic service on a visiting basis in place of residence used as a patient's home.

(2) Furnishes at least one of the qualifying services directly through agency employees, but may furnish the second qualifying service and additional services under arrangement with another HHA or organization.

(B) Policies established by a professional group associated with the agency or organization (including at least one physician and one registered nurse) to govern the services and provides for supervision of such services by a physician or a registered nurse.

(C) Maintains clinical records for all patients.

(D) Licensed in accordance with State and local law or is approved by the State or local licensing agency as meeting the licensing standards, where applicable.

(E) Enters into an agreement with TRICARE in order to participate and to be eligible for payment under the program. In this agreement the HHA and TRICARE agree that the HHA will:

(1) Not charge the beneficiary or any other person for items or services for which the beneficiary is entitled to have payment under the TRICARE HHA prospective payment system.

(2) Be allowed to charge the beneficiary for items or services requested by the beneficiary in addition to those that are covered under the TRICARE HHA prospective payment system.

(F) Abide by the following consolidated billing requirements:

(1) The HHA must submit all TRICARE claims for all services, excluding durable medical equipment (DME), while the beneficiary is under the home health plan without regard to whether or not the item or service was furnished by the HHA, by others under arrangement with the HHA, or under any other contracting or consulting arrangement.

(2) Separate payment will be made for DME items and services provided under the home health benefit which are under the DME fee schedule. DME is

excluded from the consolidated billing requirements.

(3) Home health services included in consolidated billing are:

- (i) Part-time or intermittent skilled nursing;
(ii) Part-time or intermittent home health aide services;
(iii) Physical therapy, occupational therapy and speech-language pathology;
(iv) Medical social services;
(v) Routine and non-routine medical supplies;
(vi) A covered osteoporosis drug (not paid under PPS rate) but excluding other drugs and biologicals;
(vii) Medical services provided by an intern or resident-in-training of a hospital, under an approved teaching program of the hospital in the case of an HHA that is affiliated or under common control of a hospital;
(viii) Services at hospitals, SNFs or rehabilitation centers when they involve equipment too cumbersome to bring home.

(G) Meet such other requirements as the Secretary of Health and Human Services and/or Secretary of Defense may find necessary in the interest of the health and safety of the individuals who are provided care and services by such agency or organization.

(5) Medical equipment firms, medical supply firms, and Durable Medical Equipment, Prosthetic, Orthotic, Supplies providers/suppliers. Any firm, supplier, or provider that is an authorized provider under Medicare or is otherwise designated an authorized provider by the Director, TRICARE Management Activity.

5. Section 199.14 is amended by redesignating paragraphs (h), (i), (j), (k), and (l) as (j), (k), (l), (m) and (n), by adding new paragraphs (a)(5), (h), and (i), and by revising paragraph (b) to read as follows:

§ 199.14 Provider reimbursement methods.

(5) Hospital outpatient services. This paragraph (a)(5) establishes payment methods for certain outpatient services, including emergency services, provided by hospitals.

(i) Clinical laboratory services. Services provided on an outpatient basis by hospital-based clinical laboratories are paid on the same basis as services covered by the allowable charge method under paragraph (h)(1)(viii) of this section.

(ii) Rehabilitation therapy services. Rehabilitation therapy services provided

on an outpatient basis by hospitals are paid on the same basis as rehabilitation therapy services covered by the allowable charge method under paragraph (h)(1) of this section.

(iii) *Venipuncture*. Routine venipuncture services provided on an outpatient basis by hospitals are paid on the same basis as such services covered by the allowable charge method under paragraph (h)(1) of this section. Routine venipuncture services provided on an outpatient basis by institutional providers other than hospitals are also paid on this basis.

(iv) *Radiology services*. TRICARE payments for hospital outpatient radiology services are based on the allowable charge method under paragraph (h)(1) of the section in the case of radiology services for which the CMAC rates establish under that paragraph provide a payment rate for the technical component of the radiology services provided. Hospital charges for an outpatient radiology service are reimbursed using the CMAC technical component rate.

(b) *Skilled nursing facilities (SNFs)*.  
(1) *Use of Medicare prospective payment system and rates*. TRICARE payments to SNFs are determined using the same methods and rates used under the Medicare prospective payment system for SNFs under 42 CFR part 413, subpart J, except for children under age ten. SNFs receive a per diem payment of a predetermined Federal payment rate appropriate for the case based on patient classification (using the RUG classification system), urban or rural location of the facility, and area wage index.

(2) *Payment in full*. The SNF payment rates represent payment in full (subject to any applicable beneficiary cost shares) for all costs (routine, ancillary, and capital-related) associated with furnishing inpatient SNF services to TRICARE beneficiaries other than costs associated with operating approved educational activities.

(3) *Education costs*. Costs for approved educational activities shall be subject to separate payment under procedures established by the Director, TRICARE Management Activity. Such procedures shall be similar to procedures for payments for direct medical education costs of hospitals under paragraph (a)(1)(iii)(G)(2) of this section.

(4) *Resident assessment data*. SNFs are required to submit the same resident assessment data as is required under the Medicare program. (The residential assessment is addressed in the Medicare regulations at 42 CFR 483.20.) SNFs must submit assessments according to

an assessment schedule. This schedule must include performance of patient assessments on the 5th, 14th, and 30th days of SNF care and at each successive 30 day interval of SNF admissions that are longer than 30 days. It must also include such other assessments that are necessary to account for changes in patient care needs. TRICARE pays a default rate for the days of a patient's care for which the SNF has failed to comply with the assessment schedule.

\* \* \* \* \*

(h) *Reimbursement of Home Health Agencies (HHAs)*. HHAs will be reimbursed using the same methods and rates as used under the Medicare HHA prospective payment system under section 1895 of the Social Security Act (42 U.S.C. 1395fff) and 42 CFR part 484, subpart E, except for children under age ten and except as otherwise necessary to recognize distinct characteristics of TRICARE beneficiaries and as described in instructions issued by the Director, TMA. Under this methodology, an HHA will receive a fixed case-mix and wage-adjusted national 60-day episode payment amount as payment in full for all costs associated with furnishing home health services to TRICARE-eligible beneficiaries with the exception of osteoporosis drugs and DME. The full case-mix and wage-adjusted 60-day episode amount will be payment in full subject to the following adjustments and additional payments:

(1) *Split percentage payments*. The initial percentage payment for initial episodes is paid to an HHA at 60 percent of the case-mix and wage adjusted 60-day episode rate. The residual final payment for initial episodes is paid at 40 percent of the case-mix and wage adjusted 60-day episode rate. The initial percentage payment for subsequent episodes is paid at 50 percent of the case-mix and wage-adjusted 60-day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage-adjusted 60-day episode rate.

(2) *Low-utilization payment*. A low utilization payment is applied when a HHA furnishes four or fewer visits to a beneficiary during the 60-day episode. The visits are paid at the national per-visit amount by discipline updated annually by the applicable market basket for each visit type.

(3) *Partial episode payment (PEP)*. A PEP adjustment is used for payment of an episode of less than 60 days resulting from a beneficiary's elected transfer prior to the end of the 60-day episode or discharge and readmission of a beneficiary to the same HHA before the

end of the 60-day episode. The PEP payment is calculated by multiplying the proportion of the 60-day episode during which the beneficiary remained under the care of the original HHA by the beneficiary's assigned 60-day episode payment.

(4) *Significant change in condition (SCIC)*. The full-episode payment amount is adjusted if a beneficiary experiences a significant change in condition during the 60-day episode that was not envisioned in the initial treatment plan. The total significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both prior to and after the patient experienced a significant change in condition during the 60-day episode. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the total SCIC adjustment determined at the end of the 60-day episode. The SCIC payment adjustment is calculated in two parts:

(i) The first part of the SCIC payment adjustment reflects the adjustment to the level of payment prior to the significant change in the patient's condition during the 60-day episode.

(ii) The second part of the SCIC payment adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode.

(5) *Outlier payment*. Outlier payments are allowed in addition to regular 60-day episode payments for beneficiaries generating excessively high treatment costs. The outlier payment is a proportion of the imputed costs beyond the outlier threshold for each case-mix (HHRG) group.

(6) *Services paid outside the HHA prospective payment system*. The following are services that receive a separate payment amount in addition to the prospective payment amount for home health services:

(i) *Durable medical equipment (DME)*. Reimbursement of DME is based on the same amounts established under the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule under 42 CFR part 414, subpart D.

(ii) *Osteoporosis drugs*. Although osteoporosis drugs are subject to home health consolidated billing, they continue to be paid on a cost basis, in addition to episode payments.

(7) *Accelerated payments*. Upon request, an accelerated payment may be made to an HHA that is receiving payment under the home health

prospective payment system if the HHA is experiencing financial difficulties because there is a delay by the contractor in making payment to the HHA. The following are criteria for making accelerated payments:

(i) *Approval of payment.* An HHA's request for an accelerated payment must be approved by the contractor and TRICARE Management Activity (TMA).

(ii) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(iii) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as HHA bills are processed or by direct payment by the HHA.

(8) *Assessment data.* Beneficiary assessment data, incorporating the use of the current version of the OASIS items, must be submitted to the contractor for payment under the HHA prospective payment system.

(9) *Administrative review.* An HHA is not entitled to judicial or administrative review with regard to:

(i) Establishment of the payment unit, including the national 60-day prospective episode payment rate, adjustments and outlier payment.

(ii) Establishment of transition period, definition and application of the unit of payment.

(iii) Computation of the initial standard prospective payment amounts.

(iv) Establishment of case-mix and area wage adjustment factors.

(i) *Changes in Federal Law affecting Medicare.* With regard to paragraph (b) and (h) of this section, the Department of Defense must, within the time frame specified in law and to the extent it is practicable, bring the TRICARE program into compliance with any changes in Federal Law affecting the Medicare program that occur after the effective date of the DoD rule to implement the prospective payment systems for skilled nursing facilities and home health agencies.

\* \* \* \* \*

Dated: June 5, 2002.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02-14707 Filed 6-12-02; 8:45 am]

**BILLING CODE 5001-08-M**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

[CGD07-02-057]

**Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach, Broward County, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, Florida, from June 4, 2002 to July 31, 2002. This deviation allows this bridge to only open a single-leaf of the bridge every 20 minutes. Double-leaf openings will be available with a two-hour advance notice to the bridge tender. This temporary deviation is required to allow the bridge owner to safely complete repairs to the bridge.

**DATES:** This deviation is effective from 12:01 a.m. on June 4, 2002 to 8 p.m. on July 31, 2002.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Section at (305) 415-6744.

**SUPPLEMENTARY INFORMATION:** The Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, Broward County, Florida, has a vertical clearance of 22 feet at mean high water and a horizontal clearance of 45 feet between the down span and the fender system. The existing operating regulations in 33 CFR part 117 require the bridge to open on signal.

PCL Contractors notified the Coast Guard on April 16, 2002, that the work on the bascule leaves had started and due to a safety issue involving welding deck plates, they requested a 20 minute opening schedule. On April 22, 2002, the Coast Guard contacted the Florida Department of Transportation representative, URS, to discuss this

request. It was determined that the contractor did need the bridge to be put on a 20 minute temporary operating schedule. Additionally, URS requested that the bridge be allowed to only open a single-leaf, with double-leaf openings available with a two-hour advance notice to the bridge tender. This action is necessary to facilitate worker's safety during repairs to the bridge without significantly hindering navigation, as a full opening will be provided with a two-hour advance notice to the bridge tender.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 to complete repairs to the drawbridge. Under this deviation, the Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, need only open a single-leaf on the hour, 20 minutes after the hour, and 40 minutes after the hour from 12:01 a.m. on June 4, 2002, to 8 p.m. on July 31, 2002. A double-leaf opening will be available if two-hour advance notice is provided to the bridge tender from 12:01 a.m. on June 4, 2002, to 8 p.m. on July 31, 2002.

Dated: June 4, 2002.

**Greg Shapley,**

*Chief, Bridge Administration Branch, Seventh Coast Guard District.*

[FR Doc. 02-14969 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

[CGD07-01-144]

RIN 2115-AE47

**Drawbridge Operation Regulations; Sanibel Causeway Bridge, Okeechobee Waterway, Punta Rassa, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations governing the operation of the Sanibel Causeway bridge, Okeechobee Waterway, mile 151, Punta Rassa, Florida. This rule requires the draw to open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday, except Federal holidays, the draw need only open on the hour and half hour. On Saturday, Sunday, and Federal holidays the draw shall open on signal, except that from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour and three quarter hour. From 10 p.m. until 6 a.m. daily, the draw will open on signal if at

least five minutes advance notice is given. This action is intended to improve movement of vehicular traffic while not unreasonably interfering with the movement of vessel traffic.

**DATES:** This rule is effective July 15, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD7-01-144] and are available for inspection or copying at Commander (obr) Seventh Coast Guard District, 909 SE 1st Ave, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415-6743.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On February 4, 2002 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Sanibel Causeway Drawbridge, Okeechobee Waterway, Florida in the **Federal Register** (67 FR 23). We received three letters commenting on the proposed rule. No public hearing was requested, and none was held.

**Background and Purpose**

The Sanibel Causeway bascule bridge is part of a two-lane narrow, undivided arterial roadway, which is the only roadway on and off Sanibel Island. This roadway is severely congested due to insufficient vehicular capacity. The existing regulation is published in 33 CFR 117.317(j) and allows the bridge to open on signal, except from 11 a.m. until 6 p.m. daily, the draw need only open on the hour, quarter hour, half hour, and three quarter hour. From 10 p.m. to 6 a.m., the draw will open on signal if at least a five minute advance notice is given. The new rule will allow the bridge to open on signal, except that from 7 a.m. until 6 p.m., Monday through Friday, except Federal holidays, the draw only need open on the hour and half hour. On Saturday, Sunday, and Federal holidays the draw shall open on signal except that from 7 a.m. until 6 p.m. the draw need only open on the hour, quarter hour, half hour and three-quarter hour. From 10 p.m. until 6 a.m. the draw will open on signal if at least five minutes advance notice is given.

**Discussion of Comments and Changes**

We received three letters of comment concerning this proposed rule. All the

letters supported the proposal. No changes were made to the proposed rule as a result of the comments.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The economic impact of this rule will be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule only slightly modifies the existing bridge schedule.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Sanibel Causeway bridge between the hours of 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities because this rule only slightly modifies the existing operation schedule and the maximum waiting time for vessels to pass will be about 25 minutes.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal

regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

### Indian Tribal Governments

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

### Energy Effects

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

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.317(j) is revised to read as follows:

#### § 117.317 Okeechobee Waterway

\* \* \* \* \*

(j) Sanibel Causeway bridge, mile 151 at Punta Rassa. The draw shall open on signal, except that from 7 a.m. until 6 p.m. Monday through Friday, except Federal holidays, the draw need only open on the hour and half hour. On Saturday, Sunday, and Federal holidays

the draw shall open on signal, except that from 7 a.m. until 6 p.m., the draw need only open on the hour, quarter hour, half hour and three-quarter hour. From 10 p.m. until 6 a.m. daily, the draw shall open on signal if at least five minutes advance notice is given to the bridge tender.

Dated: May 26, 2002.

**John E. Crowley, Jr.,**

*Captain, Coast Guard, Acting Commander,  
Seventh Coast Guard District.*

[FR Doc. 02-14968 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD07-02-047]

RIN 2115-AA97

#### Security Zone; San Juan, Puerto Rico

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

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

**DATES:** This rule is effective from 11:59 p.m. on June 15, 2002 until 11:59 p.m. on October 31, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD07-02-047] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00969 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Chip Lopez, Marine Safety Office San Juan, Puerto Rico at (787) 706-2444.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since the Captain of the Port of San Juan has determined that immediate action is needed to protect the public, ports and waterways of the United States near San Juan.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and written information via facsimile and electronic mail to inform mariners of this regulation.

### Background and Purpose

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

On January 17, 2002 the Coast Guard published a temporary final rule in the **Federal Register** that established temporary moving and fixed security zones 50 yards around all cruise ships entering, departing or moored in the Port of San Juan (67 FR 2330). That rule expired on February 28, 2002. The Captain of the Port issued another temporary final rule extending the security zones around cruise ships until June 15, 2002 (CGD07-02-015). The Captain of the Port has determined that this rule is necessary to protect the Port of San Juan from subversive activity. The Captain of the Port intends to issue a notice of proposed rulemaking in a separate document to be published in the **Federal Register** proposing to create

permanent security zones around cruise ships in the Port of San Juan.

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

### Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because vessels may be allowed to transit around these zones or enter the zones on a case-by-case basis with the authorization of the Captain of the Port.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to transit around these zones or enter the zones on a case by case basis with the authorization of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

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

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Environmental

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

### Protection of Children

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

### Indian Tribal Governments

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

### Energy Effects

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

### List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T07–047 is added to read as follows:

### § 165.T07–047 Security Zone; Port of San Juan, Puerto Rico.

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

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

(c) *Dates.* This rule is effective at 11:59 p.m. on June 15, 2002 until 11:59 p.m. on October 31, 2002.

Dated: June 3, 2002.

**J.A. Servidio,**

*Commander, U. S. Coast Guard, Captain of the Port, San Juan.*

[FR Doc. 02–14972 Filed 6–12–02; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD09–02–029]

RIN 2115–AA97

#### Safety Zone; Buffalo River, Buffalo, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of

the Buffalo River. The safety zone is necessary to ensure the safety of persons and vessels from the hazards associated with blasting operations being conducted in the Buffalo River in the vicinity of the Buffalo Naval and Servicemen's Park. This safety zone is intended to restrict vessel traffic from a portion of the Buffalo River in Buffalo, NY.

**DATES:** This rule is effective from 3:30 p.m. on May 31, 2002 until 4:30 p.m. on July 31, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–023 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander David Flaherty, U. S. Coast Guard Marine Safety Office Buffalo, at (716) 843–9574.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule that would be effective before the necessary date. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The Coast Guard has not received any complaints or negative comments with regard to this event.

##### Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and the general public during blasting operations in the Buffalo River in the vicinity of the Naval and Servicemen's Park. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

##### Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (see **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

##### Collection of Information

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

## Federalism

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

## Unfunded Mandates Reform Act

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

## Taking of Private Property

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

## Civil Justice Reform

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

## Protection of Children

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

## Indian Tribal Governments

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

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

## Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 165

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

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

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

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

2. From May 31, 2002 until July 31, 2002 a new temporary § 165.T09–029 is added to read as follows:

### § 165.T09–029 Safety Zone; Buffalo River, Buffalo, NY

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Buffalo River from 42°52′23″ N, 078°52′46″ W; east northeast to 42°52′26″ N, 078°52′39″ W; then northwest along the shoreline to 42°52′41″ N, 078°53′10″ W; then south to 42°52′3″ N, 078°53′10″ W; then along the shoreline back to the starting point. These coordinates are based upon North American Datum 1983.

(b) *Enforcement Period.* This section is effective from 3:30 p.m. May 31, 2002 until 4:30 p.m. July 31, 2002. The safety zone will be enforced during these dates from 3:30 p.m. until 4:30 p.m. excluding weekends and holidays, unless the Coast Guard Captain of the Port Buffalo or the designated Patrol Commander cease enforcement. The designated

Patrol Commander on scene may be contacted on VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo, or the designated Patrol Commander.

Dated: May 22, 2002.

**S.D. Hardy,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 02–14970 Filed 6–12–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP St. Louis–02–003]

RIN 2115–AA97

### Security Zone; Upper Mississippi River, Mile Marker 507.3 to 506.3, Left Descending Bank, Cordova, IL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the effective period of the security zone at the Quad Cities Nuclear Power Plant, published February 28, 2002. We are extending the effective period of this established security zone until October 15, 2002, to allow adequate time for a proposed permanent rule to be developed through informal rulemaking. This temporary rule will continue to prohibit entry of persons and vessels into this security zone except as authorized by the Captain of the Port St. Louis.

**DATES:** The revision of § 165.T08–003 (b) is effective June 13, 2002. Section 165.T08–003, added at 67 FR 9208, February 28, 2002, effective from 8 a.m. January 14, 2002, through 8 a.m. June 15, 2002, is extended and will remain in effect through 8 a.m. on October 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP St. Louis–02–003] and are available for inspection or copying at Marine Safety Office St. Louis, 1222 Spruce St., Rm. 8.104E, St. Louis, Missouri 63103–2835, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) David Webb, Marine Safety Detachment Quad Cities, Rock Island, IL at (309) 782–0627.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On February 28, 2002, we published a temporary final rule entitled "Security Zone; Upper Mississippi River, Mile Marker 507.3 to 506.3, Left Descending Bank, Cordova, IL" in the **Federal Register** (67 FR 9207). The effective period for this rule was from February 28, 2002 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was immediately required to respond to the security concerns associated with nuclear power plant facilities. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security measures were required. We have determined that the need for a continued security zone regulation exists. The Coast Guard will, during the effective period of this temporary final rule, complete notice and comment rulemaking for permanent regulations tailored to the present and foreseeable security environment.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This extension preserves the status quo of the original security zone. There is no indication that the present temporary final rule has been burdensome on the public. Delaying the effective date of the rule would be contrary to public interest since action is needed to continue to respond to existing security risks.

### Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated.

In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding nuclear power plants, the Captain of the Port, St. Louis established a temporary security zone around the Quad Cities Nuclear Power Plant in Cordova, Illinois.

This zone includes all water extending 300 feet from the shoreline of the left descending bank on the Upper Mississippi River, beginning at mile marker 507.3 and ending at mile marker 506.3. All persons and vessels are prohibited from entering the security

zone without the express permission of the Captain of the Port St. Louis or his designated representative.

The temporary security zone was to expire on June 15, 2002. In order to provide continuous protection while a permanent zone is being promulgated through notice and comment rulemaking, the Coast Guard is extending the effective date of this zone until October 15, 2002.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zone does not include any portion of the navigable channel. Vessel traffic should be able to safely transit around this zone. Vessels that must transit through the security zone may seek permission from the Captain of the Port St. Louis or his designated representative.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above. If you are a small business entity and are significantly affected by this regulation please contact LT Dave Webb, U.S. Coast Guard Marine Safety Detachment Quad Cities, Rock Island Arsenal Bldg 218, Rock Island, IL 61299-0627 at (309) 782-0627.

### Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

### Collection of Information

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

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

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

### Indian Tribal Governments

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

### Energy Effect

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

### Environment

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

### List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise temporary § 165.T08-003 paragraph (b) to read as follows:

**§ 165.T08-003 Security Zone; Upper Mississippi River, Mile Marker 507.3 to 506.3, Left Descending Bank, Cordova, IL.**

\* \* \* \* \*

(b) *Effective dates.* This section is effective from 8 a.m. on January 14, 2002 through 8 a.m. on October 15, 2002.

\* \* \* \* \*

Dated: June 7, 2002.

**E.A. Washburn,**

*Commander, U.S. Coast Guard, Captain of the Port St. Louis.*

[FR Doc. 02-14966 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP St. Louis-02-001]

RIN 2115-AA97

#### **Security Zone; Missouri River, Mile Marker 646.0 to 645.6, Fort Calhoun, NE**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is amending the temporary final rule for the security zone at the Fort Calhoun Nuclear Power Plant published March 7, 2002, to permit deeper draft vessels that must use the navigable channel to safely navigate the river, to transit through the security zone. We are also extending the effective period of this established security zone until October 15, 2002, to allow adequate time for a proposed permanent rule to be developed through informal rulemaking. This temporary rule will continue to prohibit entry of persons and vessels into this security zone except as authorized by this section or by the Captain of the Port St. Louis.

**DATES:** The amendments to § 165.T08-001 are effective on June 13, 2002. Section 165.T08-001, added at 67 FR 10327, March 7, 2002, effective from 12 p.m. January 7, 2002, through 8 a.m. June 15, 2002 is extended and will

remain in effect through 8 a.m. on October 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP St. Louis-02-001] and are available for inspection or copying at Marine Safety Office St. Louis, 1222 Spruce St., Rm. 8.104E, St. Louis, Missouri 63103-2835, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (LT) David Webb, Marine Safety Detachment Quad Cities, Rock Island, IL at (309) 782-0627.

### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On March 7, 2002, we published a temporary final rule entitled "Security Zone; Missouri River, Mile Marker 646.0 to 645.6, Fort Calhoun, NE" in the **Federal Register** (67 FR 10325). The effective period for this rule was from January 7, 2002 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was immediately required to respond to the security concerns associated with nuclear power plant facilities. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security measures were required.

We have determined that the need for a continued security zone regulation exists. The Coast Guard will, during the effective period of this temporary final rule, complete notice and comment rulemaking for permanent regulations tailored to the present and foreseeable security environment.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This extension preserves the status quo for many vessels and is less restrictive for vessels that can only safely navigate within the navigable channel. While there is no indication that the present temporary final rule has been burdensome on the public it is being amended to reflect changes made in the notice of proposed rulemaking to make this a permanent security zone. Delaying the effective date of the rule would be contrary to public interest since action is needed to continue to respond to existing security risks.

#### Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the

Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated.

In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding nuclear power plants, the Captain of the Port, St. Louis established a temporary security zone around the Fort Calhoun Nuclear Power Plant in Fort Calhoun, Nebraska.

This zone includes all water extending 75 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 646.0 and ending at mile marker 645.6. This security zone contains a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or his designated representative. Vessels requiring use of the channel for safe navigation are authorized entry into the zone but must remain within the channel unless otherwise expressly authorized by the Captain of the Port St. Louis or his designated representative.

The temporary security zone was to expire on June 15, 2002. In order to provide continuous protection while a permanent zone is being promulgated through notice and comment rulemaking, the Coast Guard is extending the effective date of this zone until October 15, 2002.

#### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zone allows deeper draft vessels to continue their transit, provided that they remain within the channel. Vessels that must transit through the security zone who are not required to transit the navigable channel or who wish to transit outside of the channel may seek

permission from the Captain of the Port St. Louis or his designated representative.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above. If you are a small business entity and are significantly affected by this regulation please contact LT Dave Webb, U.S. Coast Guard Marine Safety Detachment Quad Cities, Rock Island Arsenal Bldg 218, Rock Island, IL 61299–0627 at (309) 782–0627.

#### **Assistance for Small Entities**

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### **Collection of Information**

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

#### **Federalism**

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

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

#### **Unfunded Mandates Reform Act**

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

#### **Taking of Private Property**

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

#### **Civil Justice Reform**

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

#### **Protection of Children**

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

#### **Indian Tribal Governments**

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

#### **Energy Effect**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

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

#### List of Subjects in 33 CFR Part 165

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

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

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise temporary § 165.T08-001 paragraphs (b) and (d) to read as follows:

#### § 165.T08-001 Security Zone; Missouri River, Mile Marker 646.0 to 645.6, Fort Calhoun, Nebraska.

\* \* \* \* \*

(b) *Effective dates.* This section is effective from 12 p.m. on January 7, 2002 through 8 a.m. on October 15, 2002.

\* \* \* \* \*

(d) *Regulations.* (1) Entry into this security zone by persons or vessels is prohibited unless authorized by the Coast Guard Captain of the Port St. Louis or his designated representative.

(2) All vessels that can safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or his designated representative. Deeper draft vessels that are required to use the channel for safe navigation are authorized entry into the zone but must remain within the channel unless expressly authorized by the Captain of the Port St. Louis or his designated representative.

(3) Vessels or persons requiring permission to enter into the security zone must contact the Captain of the

Port, St. Louis at telephone number (314) 406-4629 or Marine Safety Detachment Quad Cities at telephone number (309) 782-0627 or Coast Guard Group Upper Mississippi River at telephone number (319) 524-7511 or on VHF marine channel 16 in order to seek permission to enter the security zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, St. Louis or his designated representative.

(4) Designated representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 7, 2002.

**E.A. Washburn,**

*Commander, U.S. Coast Guard, Captain of the Port St. Louis.*

[FR Doc. 02-14965 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 165

[COTP St. Louis-02-002]

RIN 2115-AA97

#### Security Zone; Missouri River, Mile Marker 532.9 to 532.5, Brownville, NE

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is amending the temporary final rule for the security zone at the Cooper Nuclear Power Plant, published March 7, 2002, to permit deeper draft vessels that must use the navigable channel to safely navigate the river, to transit through the security zone. We are also extending the effective period of this established security zone until October 15, 2002, to allow adequate time for a proposed permanent rule to be developed through informal rulemaking. This temporary rule will continue to prohibit entry of persons and vessels into this security zone except as authorized by this section or by the Captain of the Port St. Louis.

**DATES:** The amendments to § 165.T08-002 are effective on June 13, 2002. Section 165.T08-002, added at 67 FR 10325, March 7, 2002, effective from 12 p.m. January 7, 2002, through 8 a.m. June 15, 2002 is extended and will remain in effect through 8 a.m. on October 15, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP St. Louis -02-002] and are available for

inspection or copying at Marine Safety Office St. Louis, 1222 Spruce St., Rm. 8.104E, St. Louis, Missouri 63103-2835, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant (LT) David Webb, Marine Safety Detachment Quad Cities, Rock Island, IL at (309) 782-0627.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On March 7, 2002, we published a temporary final rule entitled "Security Zone; Missouri River, Mile Marker 532.9 to 532.5, Brownville, NE" in the **Federal Register** (67 FR 10324). The effective period for this rule was from January 7, 2002 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was immediately required to respond to the security concerns associated with nuclear power plant facilities. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security measures were required. We have determined that the need for a continued security zone regulation exists. The Coast Guard will, during the effective period of this temporary final rule, complete notice and comment rulemaking for permanent regulations tailored to the present and foreseeable security environment.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This extension preserves the status quo for many vessels and is less restrictive for vessels that can only safely navigate within the navigable channel. While there is no indication that the present temporary final rule has been burdensome on the public it is being amended to reflect changes made in the notice of proposed rulemaking to make this a permanent security zone. Delaying the effective date of the rule would be contrary to public interest since action is needed to continue to respond to existing security risks.

#### Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated.

In response to these terrorist acts and warnings, heightened awareness for the

security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding nuclear power plants, the Captain of the Port, St. Louis established a temporary security zone around the Cooper Nuclear Power Plant in Brownville, Nebraska.

This zone includes all water extending 250 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 532.9 and ending at mile marker 532.5. This security zone contains a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or his designated representative. Vessels requiring use of the channel for safe navigation are authorized entry into the zone but must remain within the channel unless otherwise expressly authorized by the Captain of the Port St. Louis or his designated representative.

The temporary security zone was to expire on June 15, 2002. In order to provide continuous protection while a permanent zone is being promulgated through notice and comment rulemaking, the Coast Guard is extending the effective date of this zone until October 15, 2002.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zone allows deeper draft vessels to continue their transit, provided that they remain within the channel. Vessels that must transit through the security zone who are not required to transit the navigable channel or who wish to transit outside of the channel may seek permission from the Captain of the Port St. Louis or his designated representative.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated under the Regulatory Evaluation above. If you are a small business entity and are significantly affected by this regulation please contact LT Dave Webb, U.S. Coast Guard Marine Safety Detachment Quad Cities, Rock Island Arsenal Bldg 218, Rock Island, IL 61299-0627 at (309) 782-0627.

#### Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

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

#### Federalism

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

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

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

#### Indian Tribal Governments

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

#### Energy Effect

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

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

2. Revise temporary § 165.T08-002 paragraphs (b) and (d) to read as follows:

**§ 165.T08-002 Security Zone; Missouri River, Mile Marker 532.9 to 532.5, Brownville, Nebraska.**

\* \* \* \* \*

(b) *Effective dates.* This section is effective from 12 p.m. on January 7, 2002 through 8 a.m. on October 15, 2002.

\* \* \* \* \*

(d) *Regulations.* (1) Entry into this security zone by persons or vessels is prohibited unless authorized by the Coast Guard Captain of the Port St. Louis or his designated representative.

(2) All vessels that can safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or his designated representative. Deeper draft vessels that are required to use the channel for safe navigation are authorized entry into the zone but must remain within the channel unless expressly authorized by the Captain of the Port St. Louis or his designated representative.

(3) Vessels or persons requiring permission to enter into the security zone must contact the Captain of the Port, St. Louis at telephone number (314) 406-4629 or Marine Safety Detachment Quad Cities at telephone number (309) 782-0627 or Coast Guard Group Upper Mississippi River at telephone number (319) 524-7511 or on

VHF marine channel 16 in order to seek permission to enter the security zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, St. Louis or his designated representative.

(4) Designated representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 7, 2002.

**E.A. Washburn,**

*Commander, U.S. Coast Guard, Captain of the Port St. Louis.*

[FR Doc. 02-14964 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[CGD07-02-052]

RIN 2115-AA97

**Security Zone; Regulations; St. Croix, U.S. Virgin Islands**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary fixed security zone around all commercial tank and freight vessels moored at every dock at the HOVENSA refinery at St. Croix, U.S. Virgin Islands. All persons aboard commercial tank and freight vessels moored at the HOVENSA docks must remain on board for the duration of the port call unless escorted by designated HOVENSA personnel or specifically permitted to disembark by the U.S. Coast Guard Captain of the Port San Juan. This security zone is needed for national security reasons to protect the public and port of HOVENSA from potential subversive acts. This security zone is similar to the temporary rule removed on May 9, 2002.

**DATES:** This rule becomes effective at 5 a.m. on May 25, 2002 and will terminate at 11:59 p.m. on October 31, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD 07-02-052] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00968, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Chip Lopez, Marine Safety

Office San Juan, Puerto Rico at (787) 706-2444.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

**Background and Purpose**

Due to the highly volatile nature of the substances stored at the HOVENSA facility, there is a risk that subversive activity could be launched by persons aboard commercial tank and freight vessels calling at the HOVENSA facility in St Croix, U.S. Virgin Islands. The Captain of the Port San Juan is reducing this risk by prohibiting all persons aboard these vessels from disembarking while moored at the HOVENSA facility unless escorted by designated HOVENSA personnel or specifically permitted by the Captain of the Port San Juan. HOVENSA security personnel, in conjunction with local police department personnel, will be present to enforce this security zone.

A security zone regulation for the same location, with the same regulation, was published in the **Federal Register** on September 28, 2001 (66 FR 49534). That rule was extended twice by a temporary rule issued in October 2001 (that was sent to Washington, DC for publication in the **Federal Register** but was delayed in the mail [CGD07-01-125; 67 FR 9194, 9197, February 28, 2002]), and another issued in January 2002 (67 FR 4911, February 1, 2002). However, this rule was removed in a final rule published in the **Federal Register** on May 9, 2002 (67 FR 31128) because the Captain of the Port determined there was no longer any need for this rule.

The Captain of the Port San Juan has identified the need to reinstate a security zone for national security reasons and to protect the public and the port of HOVENSA from potential subversive acts. The Captain of the Port

believes that additional temporary security procedures are needed to supplement the existing HOVENSA security procedures to protect this facility.

#### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because this rule is in effect for a limited time and crewmembers may be allowed to disembark when escorted by designated HOVENSA security or authorized by the Captain of the Port of San Juan.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because persons may be allowed to disembark the vessels on a case-by-case basis with the authorization of the Captain of the Port and this temporary rule is only in effect for a limited time.

#### Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

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

#### Collection of Information

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

#### Federalism

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

#### Unfunded Mandates Reform Act

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

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Environmental

The Coast Guard has considered the environmental impact of this rule and will prepare a categorical exclusion as per Figure 2–1, paragraph 34(g) of the Coast Guard NEPA Implementing Procedures, Commandant Instruction M16475.1D. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

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

#### Energy Effects

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

#### List of Subjects in 33 CFR Part 165

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

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

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

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

2. A new temporary § 165.T07–052 is added to read as follows:

#### **§ 165.T07–052 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.**

(a) *Regulated area.* A temporary fixed security zone is established 20 yards around all commercial tank and freight vessels moored at every dock at the HOVENSA refinery at St Croix, U. S. Virgin Islands.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, all persons aboard commercial

tank and freight vessels moored at the docks in the regulated area must remain on board for the duration of the port call unless escorted by designated HOVENSA personnel or specifically authorized by the Captain of the Port San Juan, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157.1 Mhz).

(c) *Dates.* This section becomes effective at 5 a.m. on May 25, 2002, and will terminate at 11:59 p.m. on October 31, 2002.

Dated: May 24, 2002.

**J.A. Servidio,**

*Commander, U. S. Coast Guard, Captain of the Port, San Juan.*

[FR Doc. 02-14971 Filed 6-12-02; 8:45 am]

BILLING CODE 4910-15-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

[CC Docket No. 95-116; FCC 02-16]

#### Telephone Number Portability, Memorandum Opinion and Order on Reconsideration and Order on Application for Review

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) addresses issues raised in petitions for reconsideration and clarification of the Commission's *Third Report and Order* on long-term number portability (LNP) and affirms the Common Carrier Bureau's *Cost Classification Order*. The document clarifies and affirms matters related to the recovery of carrier costs for LNP, which were decided in two prior *Orders*.

**DATES:** The rules adopted herein shall be effective July 15, 2002, except for § 52.33(a)(3), which contains information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Margaret Dailey (202) 418-2396, fax (202) 418-1567, or [mdailey@fcc.gov](mailto:mdailey@fcc.gov). The address is: Pricing Policy Division, Wireline Competition Bureau, Federal

Communications Commission, The Portals, 445 12th Street, SW, Suite 5-A207, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration and Order on Application for Review in CC Docket No. 95-116, FCC No. 02-16, in the matter of Telephone Number Portability, adopted January 23, 2002, and released February 15, 2002. The full text of this item 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. 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](mailto:qualexint@aol.com)

#### Synopsis of the Order on Reconsideration and Order on Application for Review

Section 251(b)(2) of the Communications Act of 1934, as amended (the Act), seeks to remove one barrier to competition by requiring all local exchange carriers (LECs) "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." On May 5, 1998, the Commission adopted the *Third Report and Order* in this docket, implementing section 251(e)(2) of the Act with regard to the costs of providing long-term number portability (LNP). In the *Third Report and Order*, 63 FR 35150, June 29, 1998, the Commission concluded that incumbent LECs may recover their carrier-specific costs directly related to providing LNP on a competitively neutral basis, through two federal charges: (1) A monthly number-portability charge applicable to end users; and (2) a LNP query-service charge, applicable to carriers on whose behalf the LEC performs queries. On December 14, 1998, pursuant to authority delegated to it in the *Third Report and Order*, the Common Carrier Bureau issued the *Cost Classification Order*, 64 FR 2493, Jan. 14, 1999, which specifically addressed issues related to the determination of costs eligible for cost recovery, the apportionment of costs between portability and non-portability services, and apportionment between end-user charges and query service charges. The Order on Reconsideration and Order on Application for Review (Order) responds to three types of issues raised

in petitions for reconsideration and clarification and applications for review.

First, it clarifies numerous points made in the *Third Report and Order*. Specifically, it clarifies that: (1) The LNP administrator may assess shared costs on all eligible telecommunications carriers, not just carriers with existing LNP contracts; (2) incumbent LECs must allocate their shared costs between the query service and end-user charges; (3) carriers may not recover LNP costs from other carriers through interconnection charges or resale prices; (4) an incumbent LEC may assess the LNP end-user charge on resellers and purchasers of switching ports as long as it provides LNP functionality; (5) commercial mobile radio service providers are co-carriers, not end users, and, therefore, are not subject to an end-user charge; (6) carriers who offer Feature Group A access lines may assess an end-user surcharge on such lines; (7) small and rural incumbent LECs that do not yet provide LNP functionality but provide Extended Area Service (EAS) may recover their N minus one (N-1) query and LNP Administration costs through end-user charges; (8) incumbent LECs may not begin billing carriers for N-1 queries until a number has been ported from an NXX; and, (9) after the five-year recovery period for implementation costs of LNP through the end-user charge, any remaining costs will be treated as normal network costs.

Second, it affirms several issues decided in the *Third Report and Order* and the *Cost Classification Order*. Specifically, it affirms that: (1) The Commission has exclusive jurisdiction over the distribution and recovery of costs associated with intrastate and interstate number portability; (2) carriers not subject to rate-of-return regulation or price caps may recover their carrier-specific costs in any lawful manner consistent with their obligations under the Communications Act; (3) Centrex lines may be assessed one end-user LNP charge per line and a private branch exchange (PBX) trunk may be charged nine end-user LNP charges per PBX trunk; (4) Plexar may be assessed one LNP charge per line; (5) incumbent LECs may impose an end-user charge in service areas where the switch is number-portability-capable; (6) price cap LECs and rate-of-return LECs should treat the query services charge as a new service within the meaning of § 61.38 of the Commission's rules; (7) carriers may only recover carrier-specific costs directly related to the provision of LNP; (8) carriers must distinguish clearly

costs incurred for narrowly defined portability functions from costs incurred to adapt their systems to implement LNP; (9) costs carriers incur as an incidental consequence of LNP are ordinary costs of doing business and represent general network upgrades; and (10) costs that do not meet the two-part cost recovery test may not be recovered through LNP cost recovery mechanisms. It also affirms (11) the adoption of the end-user revenue allocator but permits national and multi-region carriers to allocate, among the seven LNP regions identified in the Telecommunications Reporting Worksheet their end-user revenue, based upon the percentage of subscribers served in each region, upon certification that they are unable to precisely divide their traffic and resulting end-user revenue; (12) the rules adopted in the *Third Report and Order* concerning leveled charges; and (13) the two-part cost recovery test.

Third, it denies certain requests concerning cost recovery. Specifically, it denies requests that certain costs associated with LNP be calculated based on avoided costs and TELRIC.

#### Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), there will not be a significant economic impact on a substantial number of small business entities resulting from this Order on Reconsideration and Order on Application for Review. All clarifications are of a minor, procedural nature except one clarification that will result in a positive net impact on small entities. Small and rural incumbent LECs that do not yet provide LNP functionality but do provide service under EAS arrangements may recover their N-1 query and LNP administration costs through end-user charges. Because this will allow small and rural incumbent LECs to recover their costs, it will have a *de minimis* impact on the affected small entities.

#### Paperwork Reduction Analysis

The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement of OMB approval in the **Federal Register**.

The specific requirements that are subject to OMB approval are § 52.33(a)(3) and the requirement that

carriers electing to report end-user revenue based upon percentage of 2 subscribers served in each LNP region must file a certification that they are unable to report based upon actual end-user revenue in each LNP region.

#### Ordering Clauses

Accordingly, *It is ordered* that, pursuant to sections 1, 2, 4(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332, this Memorandum Opinion and Order on Reconsideration and Order on Application for Review ("Order") and the revisions to part 52 of the Commission's rules, 47 CFR part 52, are hereby *adopted*. The rules adopted herein shall be effective July 15, 2002, except for § 52.33(a)(3), which contains information collection requirements that have not been approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

*It is further ordered* that, pursuant to sections 1, 2, 4(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332, the Petitions for Reconsideration and/or Clarification and the Applications for Review *are granted* to the extent indicated herein and otherwise *are denied*.

*It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 52

Communications common carriers, Cost recovery, Number portability, Telephone.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 52 as follows:

#### PART 52—NUMBERING

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

**Authority:** Secs 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4,

201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Section 52.33 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, and (a)(1)(ii), and by adding new paragraph (a)(3), to read as follows:

#### § 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.

(a) Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number-portability charge, as specified in paragraph (a)(1) of this section, a number portability query-service charge, as specified in paragraph (a)(2) of this section, and a monthly number-portability query/administration charge, as specified in paragraph (a)(3) of this section.

(1) The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than 5 years after the incumbent local exchange carrier's monthly number-portability charge takes effect.

\* \* \* \* \*

(ii) An incumbent local exchange carrier may assess on carriers that purchase the incumbent local exchange carrier's switching ports as unbundled network elements under section 251 of the Communications Act, and/or Feature Group A access lines, and resellers of the incumbent local exchange carrier's local service, the same charges as described in paragraph (a)(1)(i) of this section, as if the incumbent local exchange carrier were serving those carriers' end users.

\* \* \* \* \*

(3) An incumbent local exchange carrier serving an area outside the 100 largest metropolitan statistical areas that is not number-portability capable but that participates in an extended area service calling plan with any one of the 100 largest metropolitan statistical areas or with an adjacent number portability-capable local exchange carrier may assess each end user it serves one monthly number-portability query/administration charge per line to recover the costs of queries, as specified in paragraph (a)(2) of this section, and carrier-specific costs directly related to the carrier's allocated share of the regional local number portability administrator's costs, except that per-

line monthly number-portability query/administration charges shall be assigned as specified in paragraph (a)(1) of this section with respect to monthly number-portability charges.

(i) Such incumbent local exchange carriers may assess a separate monthly number-portability charge as specified in paragraph (a)(1) of this section but such charge may recover only the costs incurred to implement number portability functionality and shall not include costs recovered through the monthly number-portability query/administration charge.

(ii) The monthly number-portability query/administration charge may end no later than five years after the incumbent local exchange carrier's monthly number-portability query/administration charge takes effect. The monthly number-portability query/administration charge may be collected over a different five-year period than the monthly number-portability charge. These five-year periods may run either consecutively or concurrently, in whole or in part.

\* \* \* \* \*

[FR Doc. 02-14775 Filed 6-12-02; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 060702A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) Length Overall Using Pot Gear in the Bering Sea and Aleutian Islands

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) length overall (LOA) using pot gear in the Bering Sea and Aleutian Islands management area

(BSAI). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using hook-and-line or pot gear in this area.

Pursuant to 50 CFR 679.20(a)(7)(i)(C)(5)(i), Pacific cod catch by catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line gear presently accrues to the allocation for catcher vessels using hook-and-line gear specified at 50 CFR 679.20(a)(7)(i)(C)(1)(ii).

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), June 11, 2002, until 2400 hrs, A.l.t., September 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 2002 Pacific cod TAC allocated to catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 1,314 metric tons (mt) as 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).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using pot gear in the BSAI. Directed fishing for Pacific cod by vessels 60 ft (18.3 m) LOA and greater using pot gear was closed on March 16, 2002, when catch amounts reached the A season allowance of Pacific cod

specified for these vessels. Pursuant to 50 CFR 679.20(a)(7)(i)(C)(4)(ii), at that time the allowance of Pacific cod for catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or pot gear became available to catch vessels less than 60 ft (18.3 m) LOA using pot gear. On September 1, 2002, the directed fishery for Pacific cod again opens for vessels using pot gear, which will include catcher vessels less than 60 ft (18.3 m) LOA. Pursuant to 50 CFR 679.20(a)(7)(i)(C)(5)(i), Pacific cod catch by catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line gear presently accrues to the allocation for catcher vessels using hook-and-line gear specified at 50 CFR 679.20(a)(7)(i)(C)(1)(ii).

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 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)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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: June 10, 2002.

**John H. Dunnigan,**

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

[FR Doc. 02-14957 Filed 6-10-02; 2:40 pm]

BILLING CODE 3510-22-S

# Proposed Rules

Federal Register

Vol. 67, No. 114

Thursday, June 13, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

[Docket No. PRM-50-77]

#### Performance Technology; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Performance Technology. The petition has been docketed by the NRC and has been assigned Docket No. PRM-50-77. The petitioner is requesting that certain general design criteria in the NRC regulations governing domestic licensing of production and utilization facilities be amended to increase emergency diesel generator start times, enhance operator training, and delete the requirement that offsite electrical power is assumed disconnected from the nuclear unit switchyard during postulated accidents. The petitioner believes that its proposed amendments would increase safety at licensed nuclear facilities.

**DATES:** Submit comments by August 27, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (<http://ruleforum.llnl.gov>). At this site, you may view the petition for

rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: [CAG@nrc.gov](mailto:CAG@nrc.gov)).

Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7163 or Toll-Free: 1-800-368-5642 or E-mail: [MTL@NRC.Gov](mailto:MTL@NRC.Gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The NRC has received a petition for rulemaking dated May 2, 2002, submitted by Performance Technology (petitioner) requesting that certain general design criteria at 10 CFR part 50, appendix A, be amended to increase short-term equipment response times of emergency diesel generators that it believes are inappropriate and detrimental to safety. The petitioner also believes that training nuclear power plant operators for accidents it believes are not realistic is detrimental to safety.

The petitioner further recommends that the requirement that offsite electrical power is assumed disconnected from the nuclear unit switchyard during postulated accidents be deleted, and that this requirement be retained only for anticipated operational occurrences. Specifically, the petitioner is proposing amendments to Criterion 17, "Electric power systems" and conforming amendments to Criterion 35, "Emergency core cooling," Criterion 38, "Containment heat removal," Criterion 41, "Containment atmosphere cleanup," and Criterion 44, "Cooling water."

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM-50-77. The NRC is soliciting public comment on the petition for rulemaking.

#### Discussion of the Petition

The petitioner believes that some short-term equipment response times are inappropriate and detrimental to safety and, in addition to its May 2, 2002, letter that accompanies this petition for rulemaking, cites a October 7, 1999, letter to the NRC where the petitioner raised concerns about the 10-second emergency diesel generator start time. The petitioner has also attached a report on the Tenth ASME International Conference on Nuclear Engineering (ICONE 10) entitled, "Are We Forgetting the Lessons from the Accident at Three Mile Island Unit 2, March 1979-A Case Study." The ICONE 10 report describes a Licensee Event Report from the Monticello facility that the petitioner cites as indicating that one of the assumptions of the design basis accident analyses that is detrimental to safety is the requirement to assume a postulated accident coincident with the loss of offsite power. The petitioner contends that this requirement was placed in the regulations to try to capture the worst possible accident scenario so that lesser accidents do not need to be considered. The petitioner believes that its proposed changes will eliminate the requirement for coincident postulated accidents and the loss of offsite power.

The petitioner's proposed changes to 10 CFR part 50, appendix A, Criterion 17 and conforming changes to Criterion 35, Criterion 38, Criterion 41 and Criterion 44 are as follows:

*Proposed Criterion 17—Electric Power Systems*

An offsite electric power system and an onsite electrical power system shall be provided to permit functioning of structures, systems, and components important to safety.

The safety function for the offsite electric power system shall be to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the reactor core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

Electric power from the transmission network to the onsite electric distribution system shall be supplied by two physically independent circuits (not necessarily on separate rights of way) designed and located so as to minimize to the extent practical the likelihood of their simultaneous failure under operating and postulated accident and environmental conditions. A switchyard common to both circuits is acceptable. Each of these offsite circuits shall be designed to be available in sufficient time following a loss of the other offsite electric power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded.

The safety function for the onsite electric power system (assuming the offsite electric power system is not functioning) shall be to provide sufficient capacity and capability to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded and the reactor is cooled and containment integrity and other vital functions are maintained in the event of anticipated operational occurrences.

The onsite electric power supplies, including the onsite batteries, the onsite electric ac power source, and the onsite electric distribution system, shall have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure.

Provisions shall be included to minimize the probability of losing electric power from any of the remaining supplies as a result of, or coincident with, the loss of power generated by the nuclear power plant, the loss of power from the transmission network, or the loss of power from the onsite electric power supplies.

*Proposed Criterion 35—Emergency Core Planning*

A system to provide abundant emergency core cooling shall be provided. The system safety function shall be to transfer heat from the reactor core following any loss of reactor coolant at a rate such that fuel and clad damage that could interfere with continued effective reactor core cooling is prevented.

Suitable redundancy in components and feature, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that the system safety function can be accomplished assuming a single failure. The offsite and onsite electrical power systems available to assure this system safety function shall be as described in Criterion 17.

*Proposed Criterion 38—Containment Heat Removal*

A system to remove heat from the reactor containment shall be provided. The system safety function shall be to reduce rapidly, consistent with the functioning of other associated systems, the containment pressure and temperature following any loss-of-coolant accident and maintain them at acceptably low levels.

Suitable redundancy in components and feature, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that the system safety function can be accomplished assuming a single failure. The offsite and onsite electrical power systems available to assure this system safety function shall be as described in Criterion 17.

*Proposed Criterion 41—Containment Atmosphere Cleanup*

As necessary, systems to control fission products, hydrogen, oxygen, and other substances which may be released into the reactor containment shall be provided, consistent with the functioning of other associated systems, to assure that reactor containment integrity is maintained for accidents where there is a high probability that fission products may be present in the reactor containment.

Suitable redundancy in components and feature, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that the system safety function can be accomplished assuming a single failure. The offsite and onsite electrical power systems available to assure this system

safety function shall be as described in Criterion 17.

*Proposed Criterion 44—Cooling Water*

A system to transfer heat from structures, systems, and components important to safety, to an ultimate heat sink shall be provided. The system safety function shall be to transfer the combined heat load of these structures, systems and components under normal operating and accident conditions.

Suitable redundancy in components and feature, and suitable interconnections, leak detection, isolation, and containment capabilities shall be provided to assure that the system safety function can be accomplished assuming a single failure. The offsite and onsite electrical power systems available to assure this system safety function shall be as described in Criterion 17.

**The Petitioner's Conclusions**

The petitioner concludes that the NRC requirements specified in certain general design criteria at 10 CFR part 50, appendix A, should be amended to increase short-term equipment response times of emergency diesel generators at nuclear power facilities, enhance operating training to eliminate training for accidents that it believes are not realistic, and delete the requirement that offsite electrical power is assumed disconnected from the nuclear unit switchyard during postulated accidents while retaining this requirement during anticipated operational occurrences. The petitioner requests that the criteria at 10 CFR part 50, appendix A, be amended as detailed in its petition for rulemaking.

Dated at Rockville, Maryland, this 6th day of June, 2002.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 02-14906 Filed 6-12-02; 8:45 am]

BILLING CODE 7590-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 99-NE-48-AD]

RIN 2120-AA64

**Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM).

**SUMMARY:** This action revises an earlier proposed airworthiness directive (AD), applicable to certain General Electric Aircraft Engines (GEAE) CT7 series turboprop engines, that would have required initial and repetitive inspections and replacement of possibly improperly hardened PGB input pinions for certain serial number (SN) propeller gearboxes (PGB's). This action revises the proposed rule by eliminating the requirement for a one-time removal of possibly improperly hardened PGB input pinions, proposes a requirement to replace certain left-hand and right-hand idler gears at time of overhaul of PGB's, and proposes the replacement of certain SN PGB's before accumulating 2,000 flight hours. This proposal is prompted by an on-going investigation that concluded that low-time PGB removals are due to accelerated wear of the PGB idler gears, rather than improperly hardened PGB input pinions. The actions specified by the proposed AD are intended to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxilliary feathering system from fully feathering the propeller on certain PGB's.

**DATES:** Comments must be received by August 12, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-48-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594-3140, fax (781) 594-4805. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine

and Propeller Directorate, 12 New England Executive Park; telephone (781) 238-7146, fax (781) 238-7199.

**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 should 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.

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 99-NE-48-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-48-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

**Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD, applicable to General Electric Aircraft Engines (GEAE) CT7 series turboprop engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 4, 2000 (65 FR 25892). That NPRM proposed initial and repetitive inspections of the PGB oil filter impending bypass button (IBB) for extension.

If the PGB oil filter IBB was extended, the proposed AD would have required follow-on inspections, maintenance, and if necessary, replacement of the

PGB with a serviceable PGB. In addition, that proposed AD would have required, at the next return of the PGB to a CT7 turboprop overhaul facility after the effective date of the proposed AD, replacing possibly improperly hardened PGB input pinions with PGB input pinions manufactured with the proper hardening process. That proposed AD was prompted by reports of improperly hardened propeller gearbox (PGB) input pinions installed on General Electric Aircraft Engines (GEAE) CT7 series turboprop engines.

Since the issuance of that proposed AD, the FAA has determined that low-time PGB removals are not related to improperly hardened PGB input pinions. Analyses by the manufacturer and fleet operating experience have shown that improperly hardened PGB input pinions do not create an unsafe condition. It has been determined that low-time PGB removals are caused by accelerated wear of the PGB idler gears. The accelerated wear is caused by nonconforming gear surface conditions, which subject the gears to premature distress. This condition has been linked to the original manufacturer of a specific population of PGB gears. This condition, if not corrected, could result in separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure. For PGB's that are mated to Hamilton Standard propellers, separation of an idler gear that results in PGB internal bulkhead damage could possibly prohibit the auxilliary feathering system from fully feathering the propeller.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Manufacturer's Service Bulletins (SB's)**

The FAA has reviewed and approved the technical contents of GEAE CT7 Turboprop Service Bulletin CT7-TP S/B 72-0453, dated July 27, 2001, that describes procedures for inspections of the PGB oil filter impending bypass button (IBB) for extension, and if the oil filter IBB is extended, follow-on inspections, maintenance, and replacement actions. This SB also identifies PGB's by SN that require inspection. The FAA has also reviewed and approved the technical contents of GEAE CT7 Turboprop Service Bulletin CT7-TP S/B 72-0452, dated July 27, 2001, that requires replacement of certain SN's of left-hand and right-hand idler gears with serviceable gears. This SB also identifies affected PGB's by SN.

### FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GEAE CT7 series turboprop engines of the same type design, the proposed AD would require:

- Initial inspection of the PGB oil filter IBB for extension within 50 hours time-in-service (TIS) after the effective date of this AD and,
- If the PGB oil filter IBB is extended, follow-on inspections, maintenance, and replacement actions.
- Repetitive inspections of the PGB oil filter IBB before the first flight of each operational day.
- Replacing certain left-hand and right-hand idler gears with serviceable gears at the next return of the PGB to a CT7 turboprop overhaul facility.
- Replacing certain PGB's that are mated to a Hamilton Standard propeller before accumulating 2,000 engine flight hours.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

### Economic Analysis

There are approximately 150 engines of the affected design installed on airplanes of US registry that would be affected by this proposed AD. The FAA estimates that each IBB inspection would take approximately 0.25 work hours per engine, and the average labor rate is \$60 per work hour. Inspection and replacement of idler gears would take approximately four work hours per engine at time of PGB overhaul. Replacement cost for idler gears per PGB is estimated to be \$140,670. Replacement of a PGB would take approximately 48 hours. Therefore, the total cost on US operators would be approximately \$21,138,750.

### Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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:

**General Electric Aircraft Engines:** Docket No. 99-NE-48-AD.

#### Applicability

General Electric Aircraft Engines (GEAE) CT7 series turboprop engines, with propeller gearboxes (PGB's) identified by serial number (SN) in Table 1 of GEAE CT7 Turboprop Service Bulletin CT7-TP S/B 72-0452, dated July 27, 2001. These engines are installed on but not limited to SAAB 340 series airplanes.

**Note 1:** This AD applies to each engine 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 engines 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 (f) 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

Compliance with this AD is required as indicated, unless already done.

To prevent separation of PGB left-hand and right-hand idler gears, which could result in

uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxilliary feathering system from fully feathering the propeller on certain PGB's, do the following:

(a) Inspect the PGB oil filter impeding bypass button (IBB) for extension in accordance with the following schedule:

(1) Initially inspect within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Thereafter, inspect each operational day.

(b) If the PGB oil filter IBB is extended, replace the oil filter and perform follow-on inspections in accordance with 3.A of the Accomplishment Instructions of GEAE CT7 Turboprop Service Bulletin CT7-TP S/B 72-0453, dated July 27, 2001.

(c) At the next return of the PGB to a CT7 turboprop overhaul facility after the effective date of this AD, replace left-hand and right-hand idler gears in accordance with the Accomplishment Instructions of GEAE CT7 Turboprop Service Bulletin CT7-TP S/B 72-0452, dated July 27, 2001.

(d) If the PGB is mated to a Hamilton Standard propeller and the left-hand and right-hand idler gears have not been replaced in accordance with the Accomplishment Instructions of GEAE CT7 Turboprop Service Bulletin CT7-TP S/B 72-0452, dated July 27, 2001, replace the PGB before accumulating an additional 2,000 engine flight hours after the effective date of this AD.

#### Terminating Action

(e) Replacement of left-hand and right-hand idler gears in accordance with paragraph (c) of this AD, or replacement of the PGB in accordance with paragraph (d) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a) of this AD.

#### Alternative Method of Compliance

(f) 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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

#### Special Flight Permits

(g) Special flight permits may be issued only for an airplane that has not more than one engine with a PGB oil filter IBB extended, to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on June 4, 2002.

#### Francis A. Favara,

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 02-14857 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2001-NE-49-AD]

RIN 2120-AA64

**Airworthiness Directives; CFM International CFM56-5, -5A, and -5B Series Turbofan Engines****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to CFM International CFM56-5, -5A, and -5B series turbofan engines. This proposal would require establishment of an exhaust gas temperature (EGT) baseline and trend monitoring using the System for Analysis of Gas Turbine Engines (SAGE), or equivalent, as an option to EGT harness replacement, and if necessary, replacement of certain serial numbers (SN's) of EGT harnesses and EGT couplings as soon as a slow and continuous EGT drift downward is noticed after the effective date of this proposed AD. This proposal is prompted by reports of erroneous EGT readings. The actions specified by the proposed AD are intended to prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGT's.

**DATES:** Comments must be received by August 12, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-49-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552-2800; fax (513) 552-2816. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel,

12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7152, fax (781) 238-7199.

**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 should 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.

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-NE-49-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-49-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

**Discussion**

The FAA has received several reports of erroneous EGT readings on CFM International CFM56-5, -5A, and -5B series turbofan engines. The manufacturer has determined that the problem is being caused by defects in the EGT harness manufacturing process. EGT harnesses manufactured between September 1998 and July 2000 are suspect for a noncontrolled

contamination element, which affected the harness production on a random basis. This condition, if not corrected, could result in unexpected deterioration of critical rotating engine parts due to higher than desired engine operating EGT's.

**Manufacturer's Service Information**

The FAA has reviewed and approved the technical contents of CFM International service bulletins CFM56-5 S/B 77-0020, dated March 4, 2002, and CFM56-5B S/B 77-0008, dated March 4, 2002, that list affected EGT harnesses and EGT couplings by serial number (SN), and specify applicable engine manual sections for referencing replacement procedures. The actions would be required to be done in accordance with the SB's described previously.

**FAA's Determination of an Unsafe Condition and Proposed Actions**

Since an unsafe condition has been identified that is likely to exist or develop on other CFM International CFM56-5, -5A, and -5B series turbofan engines of the same type design, the proposed AD would require:

- Establishment of an EGT baseline and SAGE trend monitoring, or equivalent, as an option to EGT harness replacement of affected EGT harnesses and EGT couplings, with continuation of parts in-service that repeatedly pass the trend monitoring, or
- Replacement of affected EGT harnesses and EGT couplings not being trend monitored, within 250 hours of operation after the effective date of this AD. This limit is based on manufacturer's analysis.
- Replacement of affected EGT harnesses and EGT couplings as soon as slow and continuous temperature drift downward (i.e. cooler indication) of 10°C or more from baseline is observed, without a corresponding change in other associated engine parameters such as N1 (LPT rotor speed), N2 (HPT rotor speed), and fuel flow.

**Economic Analysis**

There are approximately 886 CFM International CFM56-5, -5A, and -5B series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 193 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately one work hour per engine to do the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$15,645 per engine. Based on these figures, the total cost of

the proposed AD on U.S. operators is estimated to be \$3,031,065. CFMI has indicated that this figure may be reduced depending upon warranty agreements.

### Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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:

**CFM International:** Docket No. 2001-NE-49-AD.

#### Applicability

This airworthiness directive (AD) is applicable to CFM International CFM56-5, -5A, and -5B series turbofan engines. These engines are installed on, but not limited to

Airbus Industrie A318, A319, A320 and A321 airplanes.

**Note 1:** This AD applies to each engine 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 engines 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

Compliance with this AD is required as indicated, unless already done.

To prevent unexpected deterioration of critical rotating engine parts due to higher than desired engine operating exhaust gas temperatures (EGT's), do the following:

(a) For affected EGT harnesses and EGT couplings, listed by serial number (SN) in Tables 1, 2, and 3 of CFM International service bulletin (SB) CFM56-5 S/B 77-0020, dated March 4, 2002, for CFM56-5 and -5A series engines, and SB CFM56-5B S/B 77-0008, dated March 4, 2002, for CFM56-5B series engines, do the following:

(1) Replace EGT harnesses and EGT couplings not being trend monitored, with serviceable parts, within 250 hours of operation after the effective date of this AD, or,

(2) After the effective date of this AD, establish an EGT baseline from the installation of the EGT harnesses and coupling, and perform trend monitoring using the System for Analysis of Gas Turbine Engines (SAGE), or equivalent. Replace EGT harnesses and EGT couplings as soon as slow and continuous temperature drift downward (i.e. cooler indication) of 10°C or more from baseline is observed, without a corresponding change in other associated engine parameters such as N1 (LPT rotor speed), N2 (HPT rotor speed), and fuel flow.

#### 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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

#### Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 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 done.

Issued in Burlington, Massachusetts, on June 5, 2002.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 02-14856 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 01-AGL-21]

### Proposed Modification of Class E Airspace; Zanesville, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class E airspace at Zanesville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 160° helicopter point in space approach, has been developed for Bethesda Hospital, Zanesville, OH. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase the radius of the existing controlled airspace for Zanesville Municipal Airport.

**DATES:** Comments must be received on or before August 6, 2002.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL-7, Rules Docket No. 02-AGL-04, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

#### SUPPLEMENTARY INFORMATION:

#### Background

On Monday, March 11, 2002, the FAA published a direct final rule with request for comment in the **Federal Register** (67 FR 10835). The rule

modified existing Class E airspace at Zanesville Municipal Airport, OH, in order to protect for a point in space approach used by helicopters involved in medical emergencies. It stated that unless adverse comments were received, the rule would become effective on August 8, 2002. Eight (8) comments were received. All eight (8) were considered adverse, thereby requiring the rule to be withdrawn, and this NPRM being issue. The objections centered around issues at Parr Airport and contained the following concerns:

1. Safety concern over IFR helicopter operations. One (1) respondent stated he was concerned about inserting occasional helicopters into a busy G.A. environment.

2. Increased restrictions on the ability to fly during periods of low visibility. Four (4) respondents stated they would have less opportunity to fly or train during marginal weather conditions because of the higher visibility requirements associated with Class E airspace.

3. Impact to local flight school. Three (3) respondents stated business would be lost because of the inability to conduct VFR training during periods of low visibility.

All of these comments were considered and evaluated. They are responded to as follows:

In reference to:

1. Class E airspace is designed to protect aircraft executing instrument approach procedures. The higher visibility requirements for VFR flight in Class E airspace allows for a safer operating environment for IFR aircraft.

2. While not as many aircraft may operate at the same time when visibility is restricted, a special VFR clearance may be obtained, thus allowing for continued flight or training during these periods. Additionally, creating a Class E airspace corridor, or an exclusion for Parr Airport, which was suggested, would not fit design criteria, or provide adequate protection for the approach.

3. Other than having to conduct training under higher visibility requirements (unless a special VFR clearance is requested), the economic impact to the flight school is undefined and beyond the scope of the airspace action.

**Comment Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 01-AGL-21." The postcard will be data/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Zanesville, OH, for Zanesville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is

incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

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

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

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

**AGL OH E5 Zanesville, OH [Revised]**

Zanesville Municipal Airport, OH (Lat. 39°56'40" N., long. 81°53'32" W.) Zanesville VOR/DME (Lat. 39°56'27" N., long. 81°53'33" W.) Zanesville, Bethesda Hospital, OH Point in Space Coordinates

(Lat. 39°59'5" N., long. 82°1'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Zanesville Municipal Airport and within 7 miles east and 4.4 miles west of the Zanesville VOR/DME 220° radial extending from the VOR/DME to 10.5 miles southwest of the VOR/DME, and within 2.4 miles either side of the Zanesville VOR/DME 028° radial extending from the 6.5-mile radius to 7 miles northeast of the VOR/DME, and within a 6-mile radius of the Point in Space serving the Bethesda Hospital.

\* \* \* \* \*

Dated: Issued in Des Plaines, Illinois on May 24, 2002.

**Nancy B. Shelton,**

*Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 02-14985 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-13-M**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-107524-00]

RIN 1545-AY35

#### Guidance Under Section 6050P Regarding Cancellation of Indebtedness

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the information reporting requirement under section 6050P of the Internal Revenue Code (Code) for cancellation of indebtedness. The proposed regulations reflect the enactment of section 6050P(c)(2)(D) by the Ticket to Work and Work Incentives Improvement Act of 1999. Section 6050P(c)(2)(D) requires organizations a significant trade or business of which is the lending of money to report discharges of indebtedness. The proposed regulations also conform the existing regulations to statutory changes made by the Debt Collection Improvement Act of 1996. In addition, under the proposed regulations, if an organization that is required to report under section 6050P (an applicable entity) forms, or avails itself of, some other entity for the principal purpose of holding loans acquired by the applicable entity, then, for purposes of section 6050P, the entity so formed or availed of is treated as having a significant trade or business of lending money. This document also

provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by September 17, 2002. Requests to speak (with outlines of oral comments) at a public hearing scheduled for October 8, 2002, at 10 a.m., must be received by September 17, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-107524-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-107524-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at: [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Donna J. Welch, at (202) 622-4910; concerning submissions and delivery of comments, and the hearing, Treena Garrett, at (202) 622-7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) defining an organization a significant trade or business of which is the lending of money under section 6050P(c)(2)(D). Section 6050P(c)(2)(D) was enacted by section 553(a) of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170, 113 Stat. 1860, 1931 (1999) ("the Act"), effective for discharges of indebtedness occurring after December 31, 1999. Generally, section 6050P(a) requires organizations that are subject to that section (applicable entities) to file returns with the Service and to provide statements to persons whose names are required to be shown on the returns ("payees"), setting forth certain information regarding discharges of indebtedness of \$600 or more. Section 553(a) of the Act amended section 6050P of the Code by expanding the types of entities that are required to report discharges of indebtedness to include any organization "a significant trade or business of which is the lending of money." Notice 2000-22, 2000-16 I.R.B. 902, April 17, 2000, provides that penalties under sections 6721 and 6722

will not be imposed on the lending organizations newly required to report discharges of indebtedness to report discharges of indebtedness occurring before January 1, 2001. In addition, Notice 2001-8, 2001-4 I.R.B. 374, January 22, 2001, extended that suspension of penalties for failures to file information returns for any discharge of indebtedness that occurs prior to the first calendar year beginning at least two months after the date that appropriate guidance is issued.

This document also contains proposed amendments to the Income Tax Regulations (26 CFR part 1) conforming the existing regulations under section 6050P to statutory changes made by the Debt Collection Improvement Act of 1996.

**Explanation of Provisions**

Under section 6050P(c)(2)(D), any organization "a significant trade or business of which is the lending of money" is required to report discharges of indebtedness. These proposed regulations provide guidance on when a trade or business is the lending of money and when that trade or business is significant. In general, the proposed regulations provide that the lending of money is a significant trade or business if money is lent on a regular and continuing basis. The regulations provide three safe harbors under which organizations will not be considered to have a significant trade or business of lending money. The IRS and the Treasury Department believe that these safe harbors satisfy the information reporting objectives of the statute while minimizing the administrative burden on taxpayers.

The first safe harbor applies to organizations that were not required to report under section 6050P in the previous calendar year. Such an organization will be considered not to have a significant trade or business of lending money for the calendar year if its gross income from lending money in the most recent test year (the most recent taxable year ending before July 1 of the previous calendar year) is less than both 15 percent of the organization's gross income and \$5 million.

The second safe harbor applies to organizations that were required to report under section 6050P for the previous calendar year. Such an organization will be considered not to have a significant trade or business of lending money for the calendar year if, for each of the three most recent test years, its gross income from lending money is less than both 10 percent of the organization's gross income and \$3

million. The IRS and the Treasury Department believe that a stricter safe harbor is appropriate for taxpayers that have been subject to section 6050P in a prior year and, therefore, presumably have systems in place to comply with the information reporting requirements of the statute.

The third safe harbor applies to certain newly formed organizations. Except for an entity that is formed or availed of for the principal purpose of holding loans acquired by an applicable entity (as defined in section 6050P), an organization that does not have a test year is considered not to have a significant trade or business of lending money even if the organization lends money on a regular and continuing basis. This safe harbor and the use of a "test year" in determining whether a taxpayer fits within the other safe harbors provides taxpayers with some advance notice (i.e., at least six months) of whether they will need to establish systems to track and report discharges of indebtedness.

In addition to the safe harbors discussed above, the proposed regulations provide a general exception to information reporting for entities whose principal trade or business is the sale of nonfinancial goods or the provision of nonfinancial services. Such entities are not considered to have a significant trade or business of lending money with respect to lending or credit extended in connection with the purchase by customers of those goods and services. This is consistent with the legislative history, which indicates that, in amending section 6050P, Congress was concerned with credit card and finance companies. S. Rpt. No. 201, 106th Cong., 1st Sess. 28 (1999). The IRS and the Treasury Department believe that Congress did not mean to extend the reporting requirement to retailers and other entities who extend credit to customers in connection with the purchase of nonfinancial goods and services. However, consistent with applying the tests under section 6050P on an entity-by-entity basis, this exception is not available to a separate financing subsidiary of such a retailer. In addition, if such a retailer is subject to section 6050P regardless of its accounts receivable, it is required to report discharges of indebtedness of accounts receivable as well as other debt.

The proposed regulations also provide that, for purposes of section 6050P(c)(2)(D), lending money includes acquiring a loan, and gross income arising from that loan is gross income from lending money. Therefore, an organization that buys and holds loans

is treated as an organization that lends money. This is consistent with the temporary regulations under section 6050J (relating to information returns for acquisitions and abandonments of property that is security for indebtedness). See § 1.6050J-1T, Q&A-22.

Finally, the proposed regulations amend § 1.6050P-1 to provide a new rule applicable to all entities subject to section 6050P, not just those newly made subject to section 6050P by the 1999 amendment. The current regulations under section 6050P (§ 1.6050P-1(e)(2)) contain rules respecting the reporting requirements of debtors when indebtedness is owned by more than one creditor. Each creditor that is an applicable entity is required to report with respect to any discharge of indebtedness of \$600 or more allocable to that creditor. For purposes of this rule, indebtedness owned by a partnership is treated as owned by the partners, with the result that reporting may be required of the partners with respect to a cancellation of debt held by the partnership. Rules respecting compliance with this pass-through reporting requirement by holders of interests in certain pass-through securitized indebtedness arrangements and REMICs were reserved. § 1.6050P-1(e)(2)(iii) & (iv). The preamble to those regulations states that penalties will not be imposed for nonreporting by holders of interests in these entities.

Conceivably, an entity that otherwise would be required to report under section 6050P with respect to its debt (for example, an entity that regularly and continuously lends money and does not meet the safe harbors of these proposed regulations), could transfer debt that it originates to a special purpose subsidiary or trust in a single transaction. Through this structure, the originator could possibly avoid application of section 6050P by arguing that the reservation of rules in the regulations for pass-through securitized indebtedness arrangements absolves them of any reporting obligation and that the transferee entity does not meet the requirements of regular and continuous lending activity.

To address the foregoing concern, the amendment to § 1.6050P-1 by the proposed regulations provides that an entity formed or availed of by an applicable entity for the principal purpose of holding loans acquired or originated by the applicable entity is treated as having a significant trade or business of lending money. Accordingly, the transferee entity itself is treated as an applicable entity for purposes of section 6050P (c)(2)(D). If

the entity formed or availed of by the applicable entity is a REMIC or a pass-through securitized indebtedness arrangement as defined in § 1.6050P-1(e)(2)(iii)(B), the REMIC or pass-through securitized indebtedness arrangement will be treated as an applicable entity for purposes of section 6050P(c)(2)(D), despite the reservation in § 1.6050P-1(e)(2)(iii) and (iv) of the application of section 6050P to holders of interests in REMICs and pass-through securitized indebtedness arrangements.

#### Proposed Effective Date

The regulations, as proposed, apply to any discharge of indebtedness occurring in any calendar year beginning at least two months after the date that the final regulations are published in the **Federal Register**. Regardless of when the final regulations are made effective, the rules in these proposed regulations may be relied on for prior taxable periods.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. The information collection referenced in this proposed rule (Form 1099-C) has been previously reviewed and approved by the Office of Management and Budget under OMB Control Number 1545-1424. An agency may not collect or sponsor the collection of information unless it displays a valid OMB Control Number. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 8, 2002, beginning at 10 a.m.

in Room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topic to be discussed and time to be devoted to each topic (preferably a signed original and eight (8) copies) by September 17, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these proposed regulations is Sharon L. Hall, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.6050P-1 and 1.6050P-2 also issued under 26 U.S.C. 6050P. \* \* \*

**Par. 2.** Section 1.6050P-0 is amended as follows:

1. The introductory text is amended by adding the language “and § 1.6050P-2” immediately after the language “§ 1.6050P-1”.

2. The heading for § 1.6050P-1 is amended by removing the word “financial”.

3. The entry for § 1.6050P-1(e)(2)(v) is added.

4. The entries for §§ 1.6050P-1(e)(5) through (e)(8) are redesignated as entries for §§ 1.6050P-1(e)(6) through (e)(9) and a new entry for § 1.6050P-1(e)(5) is added.

5. The entries for § 1.6050P-2 are added.

The additions read as follows:

#### § 1.6050P-0 Table of contents.

\* \* \* \* \*

#### § 1.6050P-1 Information reporting for discharges of indebtedness for certain entities.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(v) No double reporting.

\* \* \* \* \*

(5) Entity formed or availed of to hold indebtedness.

\* \* \* \* \*

#### § 1.6050P-2 Organizations a significant trade or business of which is the lending of money.

(a) In general.

(b) Safe harbors.

(1) Organizations not subject to section 6050P in the previous calendar year.

(2) Safe harbor for organizations that were subject to section 6050P in the previous calendar year.

(3) No test year.

(c) Seller financing.

(d) Gross income from lending of money.

(e) Acquisition of indebtedness by subsequent holder.

(f) Test year.

(g) Predecessor organization.

(h) Examples.

(i) Effective date.

**Par. 3.** Section 1.6050P-1 is amended as follows:

1. The heading for § 1.6050P-1 is amended by removing the word “financial”.

2. Paragraphs (a)(1), (b)(2)(i)(F), (c), (e)(2)(i), (e)(3), (e)(7), (f)(1) introductory text, (f)(1)(ii) and (f)(2) are amended by removing the word “financial”.

3. The first sentence of paragraph (c) is amended by adding “and section 1.6050P-2” immediately after the word “section”.

4. Paragraph (e)(2)(v) is added.

5. Paragraph (e)(4) is amended by removing “6050P(c)(1)(A)” each time it appears and adding “6050P(c)(2)(A)” in its place and by removing “6050P(c)(1)(C)” and adding “6050P(c)(2)(C)” in its place.

6. Paragraphs (e)(5) through (e)(8) are redesignated as paragraphs (e)(6)

through (e)(9) and a new paragraph (e)(5) is added.

7. Paragraph (e)(7)(i), as redesignated, is amended by removing “(e)(6)” where it appears and adding “(e)(7)” and paragraph (e)(7)(ii), as redesignated, is amended by removing “(e)(6)(i)” where it appears and adding “(e)(7)(i)” in its place.

8. Paragraph (h)(1) is amended by adding “and except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring in any calendar year beginning at least two months after the date that the final regulations are published in the **Federal Register**.”, immediately after the language “1994”.

The additions read as follows:

#### § 1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(v) *No double reporting.* If multiple creditors are considered to hold interests in an indebtedness under paragraph (e)(2) of this section, and an entity is required to report a discharge of that indebtedness under paragraph (e)(5) of this section, then such multiple creditors are not required to report the discharge of indebtedness.

\* \* \* \* \*

(5) *Entity formed or availed of to hold indebtedness.* Notwithstanding § 1.6050P-2(b)(3), if an entity (the transferee entity) is formed or availed of by an applicable entity (within the meaning of section 6050P(c)(1)) for the principal purpose of holding indebtedness acquired (including originated) by the applicable entity, then, for purposes of section 6050P(c)(2)(D), the transferee entity has a significant trade or business of lending money.

\* \* \* \* \*

**Par. 4.** A new § 1.6050P-2 is added as follows:

#### § 1.6050P-2 Organization a significant trade or business of which is the lending of money.

(a) *In general.* For purposes of section 6050P(c)(2)(D), the lending of money is a significant trade or business of an organization in a calendar year if the organization lends money on a regular and continuing basis during the calendar year.

(b) *Safe harbors—(1) Organizations not subject to section 6050P in the previous calendar year.* For an organization that was not required to report under section 6050P in the previous calendar year, the lending of

money will not be treated as a significant trade or business for the calendar year in which the lending occurs if gross income from lending money in the organization's most recent test year (as defined in paragraph (f) of this section) is both less than \$5 million and less than 15 percent of the organization's gross income for that test year.

(2) *Organizations that were subject to section 6050P in the previous calendar year.* For an organization that was required to report under section 6050P for the previous calendar year, the lending of money will not be treated as a significant trade or business for the calendar year in which the lending occurs if gross income from lending money in each of the organization's three most recent test years is both less than \$3 million and less than 10 percent of the organization's gross income for that test year.

(3) *No test year.* The lending of money will not be treated as a significant trade or business for an organization for the calendar year in which the lending occurs if the organization does not have a test year for that calendar year.

(c) *Seller financing.* If the principal trade or business of an organization is selling nonfinancial goods or providing nonfinancial services and if the organization extends credit to the purchasers of those goods or services in order to finance the purchases, then, for purposes of section 6050P(c)(2)(D), these extensions of credit are not a significant trade or business of lending money.

(d) *Gross income from lending of money.* For purposes of this section, gross income from lending of money includes income from interest, fees, penalties, merchant discount, interchange and gains arising from the sale of an indebtedness.

(e) *Acquisition of indebtedness by subsequent holder.* For purposes of this section, lending money includes acquiring an indebtedness, and gross income arising from such an acquired indebtedness is treated as gross income from lending money, without regard to whether the indebtedness was originated by either an applicable entity or a related party.

(f) *Test year.* For any calendar year, a test year is a taxable year of the organization that ends before July 1 of the previous calendar year.

(g) *Predecessor organization.* If an organization acquires substantially all of the property that was used in a trade or business of some other organization (the predecessor) (including when two or more corporations are parties to a merger agreement under which the

surviving corporation becomes the owner of all the assets and assumes all the liabilities of the absorbed corporations(s)) or was used in a separate unit of the predecessor, then whether the organization at issue qualifies for one of the safe harbors in paragraph (b) of this section is determined by also taking into account the test years, reporting obligations, and gross income of the predecessor.

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

*Example 1.* Finance Company A, a calendar year taxpayer, was formed in Year 1 as a non-bank subsidiary of Manufacturing Company and has no predecessor. A lends money to purchasers of Manufacturing Company's products on a regular and continuing basis to finance the purchase of those products. A's gross income from interest in Year 1 is \$4.7 million. A's gross income from fees and penalties related to the lending activity in Year 1 is \$.5 million. Section 6050P does not require A to report discharges of indebtedness occurring in Years 1 or 2, because A has no test year for those years. Notwithstanding that A lends money in those years on a regular and continuing basis, under paragraph (b)(3) of this section, A does not have a significant trade or business of lending money in those years for purposes of section 6050P(c)(2)(D). However, for Year 3, A's test year is Year 1. A's gross income from lending in Year 1 is not less than \$5 million for purposes of the applicable safe harbor of paragraph (b)(1) of this section. Because A lends money on a regular and continuing basis and does not meet the applicable safe harbor, section 6050P requires A to report discharges of indebtedness occurring in Year 3.

*Example 2.* The facts are the same as in Example 1, except that A is a division of Manufacturing Company, rather than a separate subsidiary. Manufacturing Company's principal activity is the manufacture and sale of non-financial products, and other than financing the purchase of those products Manufacturing Company does not extend credit or otherwise lend money. Accordingly, under paragraph (c) of this section, that financing activity is not a significant trade or business of lending money for purposes of section 6050P(c)(2)(D), and section 6050P does not require Manufacturing Company to report discharges of indebtedness.

*Example 3.* Company B, a calendar year taxpayer, is formed in Year 1. B has no predecessor and a part of its activities consists of the lending of money. B packages and sells part of the indebtedness it originates and holds the remainder. B is engaged in these activities on a regular and continuing basis. For Year 1, B's gross income from sales of the indebtedness, combined with interest income, fees, and penalties related to the lending activity is only \$4.8 million, but it is 16% of B's gross income in Year 1. Because B lends money on a regular and continuing basis and does not meet the applicable safe harbor of paragraph

(b)(1) of this section, section 6050P requires B to report discharges of indebtedness occurring in Year 3. B is not required to report discharges of indebtedness in years 1 and 2 because B has no test year for years 1 and 2.

*Example 4.* The facts are the same as in Example 3. In addition, in each of Years 2, 3, and 4, B's gross income from sales of the indebtedness combined with interest income, fees, and penalties related to the lending activity is less than both \$3 million and 10% of B's gross income. Because B was required to report under section 6050P for Year 3, the applicable safe harbor for Year 4 is paragraph (b)(2) of this section, which is satisfied only if B's gross income from lending activities for each of the three most recent test years is less than both \$3 million and 10% of B's gross income. For Year 4, even though B has only two test years, B's gross income in one of those test years, Year 1, causes B to fail to meet this safe harbor. Accordingly, B is required to report discharges of indebtedness under section 6050P in Year 4. For Year 5, B's three most recent test years are Years 1, 2, and 3. However, B's gross income from lending activities in Year 1 is not less than \$3 million and 10% of B's gross income. Accordingly, section 6050P requires B to report discharges of indebtedness in Year 5. For Year 6, B satisfies the applicable safe harbor requirements of paragraph (b)(2) for each of the three most recent test years (Years 2, 3, and 4). Therefore, section 6050P does not require B to report discharges of indebtedness in Year 6. Because B is not required to report for Year 6, the applicable safe harbor for Year 7 is the one contained in paragraph (b)(1) of this section, and thus the only relevant test year is year 5.

(i) *Effective date.* This section is effective for discharges of indebtedness occurring in any calendar year beginning at least two months after the date that the final regulations are published in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02-14825 Filed 6-12-02; 8:45 am]

**BILLING CODE 4830-01-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-1281, MB Docket No. 02-131, RM-10440]

#### Digital Television Broadcast Service; Hammond, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

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**SUMMARY:** The Commission requests comments on a petition filed by KB Prime Media LLC, an applicant for a new station to operate on channel 62 at Hammond, Louisiana, proposing the

substitution of DTV channel 42 for channel 62 at Hammond. DTV Channel 42 can be allotted to Hammond at reference coordinates 29-58-57 N. and 89-57-09 W. with a power of 1000, a height above average terrain HAAT of 308 meters.

**DATES:** Comments must be filed on or before July 29, 2002, and reply comments on or before August 13, 2002.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See *Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Shaw Pittman, LLP, 2300 N Street, NW., Washington, DC 20037-1128 (Counsel for KB Prime Media LLC).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02-131, adopted May 29, 2002, and released June 5, 2002. The full text of this document is available for public inspection and copying during regular 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](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* 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

Digital television broadcasting, Television.

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.

##### § 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Louisiana is amended by removing Hammond, channel 62+.

##### § 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Louisiana is amended by adding Hammond, DTV channel 42.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02-14998 Filed 6-12-02; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH94

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U. S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Blackburn's sphinx moth (*Manduca blackburni*), pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 40,240 hectares (99,433 acres) on the Hawaiian Islands of Maui, Hawaii, Molokai, and Kahoolawe are proposed for designation as critical habitat for Blackburn's sphinx moth.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries described in this proposal after taking into consideration the comments or any new information received during the comment period, and such information may lead to a final regulation that differs from this proposal.

**DATES:** We will accept comments until the close of business on August 12, 2002. Requests for a public hearing must be received by July 29, 2002.

**ADDRESSES:** If you wish to comment, send your comments and other materials on this proposed rule to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850. You may also hand-deliver written comments to our Pacific Islands Fish and Wildlife Office at the address given above. You may view the comments and materials that we receive, as well as supporting documentation used in the preparation of this proposed rule, by appointment,

during normal business hours at our Pacific Islands Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone 808/541-3441; facsimile 808/541-3470).

**SUPPLEMENTARY INFORMATION:**

**Species Description**

Blackburn's sphinx moth (moth) (*Manduca blackburni*) is one of Hawaii's largest native insects, with a wingspan of up to 12 centimeters (cm) (5 inches (in)). Like other sphinx moths in the family Sphingidae, it has long, narrow forewings, and a thick, spindle-shaped body tapered at both ends. It is grayish brown in color, with black bands across the apical (top) margins of the hind wings, and five orange spots along each side of the abdomen. The larva is a typical, large "hornworm" caterpillar, with a spine-like process on the dorsal (upper) surface of the eighth abdominal segment. Caterpillars occur in two color forms, a bright green or a grayish form. This variation in color does not appear until the fifth instar (the fifth stage between molts) (Van Gelder and Conant 1998). Both color forms have scattered white speckles throughout the dorsum (back), with the lateral (side) margin of each segment bearing a horizontal white stripe, and segments four to seven bearing diagonal stripes on the lateral margins (Betsy Gagné, Hawaii Department of Land and Natural Resources, pers. comm. 1998; Zimmerman 1958).

The moth is closely related to the tomato hornworm (*Manduca quinquemaculata*) and has been confused with this species. The moth was described by Butler (1880) as *Protoparce blackburni*, and named in honor of the Reverend Thomas Blackburn who collected the first specimens. It was later believed to be the same species as the tomato hornworm (*Sphinx celeus* Hubner = *Sphinx quinquemaculatus* Hawthorn) by Meyrick (1899), and then treated as a subspecies (Rothschild and Jordan 1903, as cited by Riotte 1986) and placed in the genus *Phlegethontius* (Zimmerman 1958). Riotte (1986) demonstrated Blackburn's sphinx moth is a distinct taxon in the genus *Manduca*, native to the Hawaiian Islands, and reinstated it as a full species, *Manduca blackburni*.

**Bio-Geographical Overview**

The Hawaiian archipelago includes large volcanic islands as well as the numerous shoals and atolls of the northwestern Hawaiian Islands. The

islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). It is widely accepted that the native flora and fauna of the Hawaiian Islands arrived by wind and ocean currents, as passengers on or inside other organisms, or as in the case of some fauna, on their own power, to evolve over the course of millions of years into one of most highly speciated and diverse natural environments found anywhere in the world (Wagner and Funk 1995). Below, we provide brief geographical descriptions of the Hawaiian Islands discussed in this proposed rule.

**Hawaii**

The island of Hawaii is the largest, highest, and youngest of the eight major islands, and it has an area of 10,458 square kilometers (km<sup>2</sup>) (4,038 square miles (mi<sup>2</sup>)). It was formed by five, interconnected shield volcanoes (Hualalai, Mauna Kea, Mauna Loa, Kilauea, and Kohala Mountains). The Kohala Mountains, at the northeastern portion of the island, are the oldest and reach an elevation of about 1,344 m (4,408 ft) above sea level. Mauna Kea volcano rises to 4,204 m (13,792 ft) (Department of Geography 1998) and is inter-connected with Mauna Loa by an extensive saddle. Hualalai volcano, located on the western side of the island, rises to an elevation of 2,520 m (8,269 ft). The two active volcanoes on the island, Mauna Loa and Kilauea, have elevations of 4,168 m (13,674 ft) and 1,247 m (4,093 ft), respectively.

Hawaii lies within the trade wind belt (Mueller-Dombois *et al.* 1985), and moisture derived from the Pacific Ocean is carried to the island by north-easterly trade winds. Heavy rains fall when moist air is driven upward by windward mountain slopes (Wagner *et al.* 1999). Considerable moisture reaches the lower leeward slopes of the saddle, but these slopes dry out rapidly as elevation increases. Thus, the leeward and saddle areas of Mauna Kea and Mauna Loa tend to be dry.

**Maui**

Maui, the second largest island in Hawaii at 1,888 km<sup>2</sup> (729 mi<sup>2</sup>) area, was formed by the eruptions of two large shield volcanoes, the older West Maui volcano on the west side, and the larger, but much younger, Haleakala volcano to the east. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 1,764 m (5,788 ft) elevation, which has an average rainfall of 1,020

cm (400 in) per year, making it the second wettest spot in Hawaii (Department of Geography 1998). East Maui's Haleakala Mountain, reaching 3,055 m (10,023 ft) in elevation, has retained its classic shield shape with the most recent eruptions occurring in the last 220 years on the southeastern slopes. Rainfall on the slopes of Haleakala is extremely variable, with its windward (northeastern) slope receiving the most precipitation.

Geologically, Maui is part of the four-island complex comprising Maui, Molokai, Lanai, and Kahoolawe, known collectively as Maui Nui. During the last Ice Age about 12,000 years ago when sea levels were about 160 m (525 ft) below their present level, it is possible the four islands were connected by a broad lowland plain (Department of Geography 1998). This land bridge may have allowed the movement and interaction of the islands' flora and fauna and contributed to the close relationships of their biota of present (Hobby 1993).

**Kahoolawe**

The island of Kahoolawe comprises some 117 km<sup>2</sup> (45 mi<sup>2</sup>). Located in the lee of Haleakala, the island lies approximately 11 kilometers (km) (6.7 miles (mi)) from East Maui. The highest point is the rim of an extinct volcano at 450 m (1,477 ft) above sea level (Department of Geography 1998). The estimated annual precipitation is approximately 50 cm (20 in), with most of it falling from November through March. In addition to the low precipitation, Kahoolawe has the highest mean wind velocity of the Hawaiian Islands (Department of Geography 1998).

Cattle from an early cattle industry and feral goats (*Capra hircus*) largely denuded the island beginning in the 1800s. Kahoolawe was later utilized as a military bombing target from 1941 through the 1980s. Current restoration work and erosion control have been hampered by an ongoing program to safely locate and dispose of unexploded ordnance on the island.

**Molokai**

The island of Molokai, the fifth largest in the Hawaiian Islands chain, encompasses an area of about 689 km<sup>2</sup> (266 mi<sup>2</sup>) (Department of Geography 1998). Three shield volcanoes make up most of the land mass of Molokai: West Molokai Mountain, East Molokai Mountain, and a volcano which formed Kalaupapa Peninsula (Department of Geography 1998).

The East Molokai Mountains rise 1,515 m (4,970 ft) above sea level and comprises roughly 50 percent of the island's area (Department of Geography 1998). Topographically, the windward side of East Molokai differs from the leeward side. Precipitous cliffs line the northern windward coast and deep inaccessible valleys dissect the coastal area. The annual rainfall on the windward side ranges from 190 to 380 cm (75 to 150 in) or more, distributed throughout the year. The soils are poorly drained and high in organic matter. Much of the native vegetation on the northern part of East Molokai is intact because of its relative inaccessibility to humans and nonnative animals, although feral ungulates have begun to access some of these areas in recent years (Department of Geography 1998).

### Blackburn's Sphinx Moth Biology and Status

Very few specimens of the moth have been seen since 1940, and after a concerted effort by staff at the Bishop Museum to relocate this species in the late 1970s, it was considered to be extinct (Gagné and Howarth 1985). In 1984, a single population was rediscovered on Maui (Riotte 1986), and subsequently, populations on two other islands were rediscovered. Currently it is known only from populations on Maui, Kahoolawe, and Hawaii. Moth population numbers are known to be small based upon past sampling results, however, no reasonably accurate estimate of population sizes have been determinable at this point due to the adult moths' wide-ranging behavior and its overall rarity (A. Medeiros, U.S. Geological Survey-Biological Resource Division, pers. comm. 1998; Van Gelder and Conant 1998). Before humans arrived, dry and mesic shrubland and forest covered about 823,283 hectares (2,034,369 acres) on all the main islands (Hawaii Natural Heritage Program (HHP) 2000), and it is likely the moth inhabited much of that area (Riotte 1986). Reports by early naturalists indicate the species was once widespread and abundant, at least during European settlement on nearly all the main Hawaiian islands (Riotte 1986).

The moth has been recorded from the islands of Kauai, Kahoolawe, Oahu, Molokai, Maui, and Hawaii, and has been observed from sea level to 1,525 m (5,000 ft) elevation. Most historical records were from coastal or lowland dry forest habitats in areas receiving less than 127 cm (50 in) annual rainfall. On the island of Kauai, the moth was recorded only from the coastal area of

Nawiliwili. Populations were known from Honolulu, Honouliuli, and Makua on leeward Oahu, and Kamalo, Mapulehu, and Keopu on Molokai. On Hawaii, it was known from Hilo, Pahala, Kalaoa, Kona, and Hamakua. It appears this moth was historically most common on Maui, where it was recorded from Kahului, Spreckelsville, Makena, Wailuku, Kula, Lahaina, and West Maui.

Larvae of the moth feed on plants in the nightshade family (Solanaceae). The natural host plants are native trees within the genus *Nothoecstrum* (aiea) (Riotte 1986), on which the larvae consume leaves, stems, flowers, and buds (B. Gagné, pers. comm. 1994). However, many of the host plants recorded for this species are not native to the Hawaiian Islands, and include *Nicotiana tabacum* (commercial tobacco), *Nicotiana glauca* (tree tobacco), *Solanum melongena* (eggplant), *Lycopersicon esculentum* (tomato), and possibly *Datura stramonium* (Jimson weed) (Riotte 1986). Sphingid moths are known to exploit nutritious but low-density, low-apparency host plants such as vines and sapling trees (Kitching and Cadiou 2000). Development from egg to adult can take as little as 56 days (Williams 1947), but pupae may remain in a state of torpor (inactivity) in the soil for up to a year (B. Gagné, pers. comm., 1994; Williams 1931). Adult moths have been found throughout the year (Riotte 1986). Adult moths feed on nectar, including that from *Ipomoea indica* (D. Hopper, *in litt.*, 2000, 2002). During Van Gelder and Conant's captive-rearing study (1998), adult moth feeding was not observed and captive-reared adult moths lived no longer than 12 days. In general, sphingids are known to live longer than most moths because of their ability to feed and take in water from a variety of sources, rather than relying only upon stored fat reserves. Because they live longer than most moths, female sphingid moths have less time pressure to mate and lay eggs, and often will take more time in locating the best host plants for egg laying (Kitching and Cadiou 2000).

### Blackburn's Sphinx Moth Habitat and Range

Plant species composition in the moth's habitat varies considerably depending on location and elevation, but some of the most common native plants in areas where the moth occur are *Diospyros sandwicensis* trees, *Rauwolfia sandwicensis* trees, *Reynoldsia sandwicensis* trees, *Pouteria sandwicensis* trees, *Dodonaea viscosa* shrubs, *Erythrina sandwicensis*, and

*Myoporum sandwicense* shrubs (Cabin *et al.* 2000; Roderick and Gillespie 1997; Van Gelder and Conant 1998; Wagner *et al.* 1999; Wood 2001a, b).

The largest populations of Blackburn's sphinx moths, on Maui and Hawaii, are associated with trees in the genus *Nothoecstrum* (Van Gelder and Conant 1998). For example, the large stand of *Nothoecstrum* trees within the Kanaio Natural Area Reserve (NAR), Maui, is likely the largest in the State (Medeiros *et al.* 1993), and may explain why the moth occurs with such regularity in the Kanaio area (A. Medeiros, pers. comm., 1994). *Nothoecstrum* is a genus of four species endemic to the Hawaiian Islands (Symon 1999). *Nothoecstrum* species currently occur on Kauai, Oahu, Molokai, Lanai, Hawaii, and Maui. One species, *N. longifolium* primarily occurs in wet forests, but can occur in mesic forests as well. Three species, *N. latifolium*, *N. breviflorum*, and *N. peltatum*, occur in dry to mesic forests, the habitat in which the moth has been most frequently recorded. Moth larvae have been documented feeding on two *Nothoecstrum* species, *N. latifolium* and *N. breviflorum*; it is likely that *N. peltatum* and *N. longifolium* are suitable host plants for larval moths as well. This is supported not only by the fact that they are closely related to known larval hosts, but also because there are past historical records of the moth occurring on the islands of Kauai and Oahu, where *N. latifolium* is not abundant and *N. breviflorum* does not occur. Furthermore, the species is known to feed on a variety of native and non-native Solanaceae.

On Molokai, moth habitat includes vegetation consisting primarily of mixed-species, mesic and dry forest communities composed of native and introduced plants (HHP 2000). Although Molokai is not known to currently contain a moth population, past moth sightings on Molokai have been reported and the island does contain native *Nothoecstrum* larval host plants, including *N. longifolium* and *N. latifolium*, as well as adult host plants and restorable, manageable areas associated with these existing host plants (Wood 2001a). Because of its proximity to Maui (historically, home to the most persistent and largest population) and the fact that Molokai has in the past and presently supports large stands of *N. latifolium*, many researchers believe the moth could re-establish itself on the island and become a viable population(s) in the future (F. Howarth, Bishop Museum, pers. comm. 2001).

The endangered larval host plant, *Nothoecstrum breviflorum*, as well as adult host plants occur in the areas on Hawaii Island supporting populations of the moth (M. Bruegmann, Service, pers. comm., 1998) and there are many recorded associations of eggs, larvae, and adult moths with this plant species. This tree species is primarily threatened by habitat conversion associated with development; competition from nonnative species such as *Schinus terebinthifolius* (Christmas berry), *Pennisetum setaceum* (fountain grass), *Lantana camara* (lantana), and *Leucaena leucocephala* (koa haole); browsing by cattle; fire; random environmental events such as prolonged drought; and reduced reproductive potential due to the small number of existing individuals (59 FR 10325).

Although *Nothoecstrum* species are not currently reported from Kahoolawe, there were very few surveys of this island prior to the intense ranching activities, which began in the middle of the last century, and the subsequent use of the island as a weapons range for 50 years. Prior to their removal, goats also played a major role in the destruction of vegetation on Kahoolawe (Cuddihy and Stone 1990). It is likely the reappearance of some vegetation as a result of the removal of the goats and the cessation of military bombing activities has allowed the moth to inhabit the island. On Kahoolawe, moth larvae feed on the nonnative *Nicotiana glauca*, which appears to adequately support production and growth of the larval stage during non-drought years. However, the native *Nothoecstrum* are more stable and drought-resistant than the *Nicotiana glauca*, which dies back significantly during especially dry years (A. Medeiros, pers. comm., 2001). Therefore, it appears likely that long-term survival of the moth on Kahoolawe will require the planting of *Nothoecstrum latifolium* (A. Medeiros, pers. comm., 1998).

### Threats to the Conservation of Blackburn's Sphinx Moth

#### Habitat Loss and Degradation

Dry to mesic forest habitats in Hawaii have been severely degraded due to past and present land management practices including ranching, the impacts of introduced plants and animals, wildfire, and agricultural development (Cuddihy and Stone 1990). Due to these factors, *Nothoecstrum peltatum* on Kauai and *N. breviflorum* on Hawaii are now federally listed as endangered species (59 FR 9327; 59 FR 10325). Although all *Nothoecstrum* species are not presently listed as endangered or threatened, the

entire genus is declining and considered uncommon (HHP 2000; Medeiros *et al.* 1993). For example, while *N. latifolium* presently occurs at moderate densities at Kanaio NAR (HHP 1993), there has been a complete lack of seedling survival (Medeiros *et al.* 1993) and the stand is being degraded by goats (Medeiros *et al.* 1993; F.G. Howarth, Bishop Museum, pers. comm., 1994; S. Montgomery, Bishop Museum, pers. comm., 1994). Goats have played a major role in the destruction of dryland and mesic forests throughout the Hawaiian Islands (Stone 1985; van Riper and van Riper 1982).

Before humans arrived, dry to mesic shrub land and forest covered about 823,283 ha (2,034,369 ac) on all the main islands (HHP 2000), and it is likely Blackburn's sphinx moth inhabited much of that area (Riotte 1986). Reports by early naturalists indicate the species was once widespread and abundant on nearly all the main Hawaiian Islands during European settlement (Riotte 1986). Because the moth was once so widespread and sphinx moths are known to be strong fliers, we believe it is likely inter-island dispersal of the species occurred to some degree prior to the loss of much of its historical habitat. Currently, the areas of dry to mesic shrub and forest habitats below 1,525 m (5,000 ft) that are or could potentially be suitable for the Blackburn's sphinx moth are approximately 148,588 ha (367,161 ac). Thus it appears the moth's range has declined on the order of 82 percent since humans arrived in Hawaii 1,600 years ago (HHP 2000; Kirch 1982).

#### Localized Extirpation

In addition to, or perhaps because of, habitat loss and fragmentation, Blackburn's sphinx moths are also susceptible to seasonal variations and weather fluctuations affecting their quality and quantity of available habitat and food. For example, during times of drought, it is expected nectar availability for adult moths will decrease. During times of decreased nectar availability, life spans of individuals may not be affected, but studies with butterflies have shown marked decreases in reproductive capacity for many species (Center for Conservation Biology Update 1994). In another study, Janzen (1984) reported that host plant availability directly affected sphingid reproductive activity. In fact, for some lepidopteran (butterflies and moths) species, if nectar intake is cut in half, reproduction is also cut approximately in half. Such resource stress may occur on any time scale, ranging from a few days to an entire season, and a pattern of

continuous long-term adult feeding stress could affect the future viability of a population (Center for Conservation Biology Update 1994).

Often, habitat suitability for herbivorous insects is determined by factors other than host plant occurrence or density. Microclimatic conditions (Thomas 1991; Solbreck 1995) and predator pressure (Roland 1993; Roland and Taylor 1995; Walde 1995) are two such widely reported factors. In a study of moth population structure, habitat patch size and the level of sun exposure were shown to affect species occupancy, while patch size and the distance from the ocean coast were reported to affect moth density (Forare and Solbreck 1997). Moth populations in small habitat patches were more likely to become extinct (Forare and Solbreck 1997).

#### Nonnative Arthropods

The geographic isolation of the Hawaiian Islands restricted the number of original successful colonizing arthropods and resulted in the development of an unusual fauna. Only 15 percent of the known insect families are represented by the native insects of Hawaii (Howarth 1990). Some groups that often dominate continental arthropod faunas, such as social Hymenoptera (group-nesting ants, bees, and wasps), are entirely absent from the native Hawaiian fauna. Accidental introductions from commercial shipping and air cargo to Hawaii has now resulted in the establishment of over 2,500 species of alien arthropods (Howarth 1990; Howarth *et al.* 1994), with a continuing establishment rate of 10 to 20 new species per year (Nishida 1997). In addition to the accidental establishment of nonnative species, private individuals and government agencies began importing and releasing nonnative predators and parasites for biological control of pests as early as 1865. This resulted in the introduction of 243 nonnative species between 1890 and 1985, in some cases with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988, Lai 1988). Alien arthropods, whether purposefully introduced or accidental, pose a serious threat to Hawaii's native insects, through direct predation, parasitism, and competition for food or space (Howarth and Medeiros 1989; Howarth and Ramsay 1991).

#### Ants

Ants are not a natural component of Hawaii's arthropod fauna, and native species evolved in the absence of predation pressure from ants. Ants can

be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993). Because they are often generalist feeders, ants may affect prey populations independent of prey density, and may locate and destroy isolated individuals and populations (Nafus 1993a). At least 36 species of ants have become established in the Hawaiian Islands, and three particularly aggressive species have severely affected the native insect fauna (Zimmerman 1948).

For example, in areas where the big-headed ant (*Pheidole megacephala*) is present, native insects, including most moths, have been eliminated (Gagné 1979; Gillespie and Reimer 1993; Perkins 1913). The big-headed ant generally does not occur at elevations higher than 600 m (2,000 ft), and is also restricted by rainfall, rarely being found in particularly dry (less than 35 to 50 cm (15 to 20 in) annually) or wet (more than 250 cm (100 in) annually) areas (Reimer *et al.* 1990). The big-headed ant is also known to be a predator of eggs and caterpillars of native Lepidoptera, and can completely exterminate populations (Zimmerman 1958). This ant occurs on all the major Hawaiian Islands, including those currently inhabited by Blackburn's sphinx moth and is a direct threat to these populations (Medeiros *et al.* 1993; Nishida 1997; N. Reimer, pers. comm., 2001).

Several additional ant species threaten the conservation of Blackburn's sphinx moth. The Argentine ant (*Linepithema humilis*) has been reported from several islands including Maui, Kahoolawe, and Hawaii (A. Asquith, Service, pers. comm., 1998; A. Medeiros, pers. comm. 1998; Nishida 1997). The long-legged ant (*Anoplolepis longipes*) is reported from several islands including Hawaii and Maui (Hardy 1979). At least two species of fire ants, *Solenopsis geminata* and *Solenopsis papuana*, are also important threats (Gillespie and Reimer 1993; Reagan 1986) and occur on many of the major islands (Nishida 1997; Reimer *et al.* 1990). *Ochetellus glaber*, a recently reported ant introduction, occurs on Maui, Hawaii, and Kahoolawe (A. Medeiros, pers. comm., 1998; Nishida 1997; N. Reimer, pers. comm., 2001).

#### Parasitic Wasps

Hawaii also has a limited fauna of native Hymenoptera wasp species, with only two native species in the family Braconidae (Beardsley 1961), neither of which are known to parasitize Blackburn's sphinx moth. In contrast,

other species of Braconidae are common predators (parasitoids) on the larvae of the tobacco hornworm and the tomato hornworm in North America (Gilmore 1938). There are now at least 74 nonnative species, in 41 genera, of braconid wasps established in Hawaii, of which at least 35 species were purposefully introduced as biological control agents (Nishida 1997). Most species of alien braconid and ichneumonid wasps that parasitize moths are not host-specific, but attack the caterpillars or pupae of a variety of moths (Funasaki *et al.* 1988; Zimmerman 1948, 1978) and have become the dominant larval parasitoids even in intact, high-elevation, native forest areas of the Hawaiian Islands (Howarth *et al.* 1994; Zimmerman 1948). These wasps lay their eggs within the eggs or caterpillars of Lepidoptera. Upon hatching, the wasp larvae consume internal tissues, eventually killing the host. At least one species established in Hawaii, *Hyposoter exiguae*, is known to attack the tobacco hornworm and the related tomato hornworm in North America (Carlson 1979). This wasp is recorded from all of the main islands except Kahoolawe and Lanai (Nishida 1997) and is a recorded parasitoid of the lawn armyworm (*Spodoptera maurita*) on tree tobacco on Maui (Swezey 1927). Because of the rarity of Blackburn's sphinx moths, no documentation exists of alien braconid and ichneumonid wasps parasitizing the species. However, given the abundance and the breadth of available hosts of these wasps, they are considered significant threats to the moth (Gagné and Howarth 1985; Howarth 1983; Howarth *et al.* 1994; F. Howarth, pers. comm., 1994).

Small wasps in the family Trichogrammatidae parasitize insect eggs, with numerous adults sometimes developing within a single host egg. The taxonomy of this group is confusing, and it is unclear if Hawaii has any native species (Nishida 1997, J. Beardsley, University of Hawaii, pers. comm., 1994). Several alien species are established in Hawaii (Nishida 1997), including *Trichogramma minutum*, which is known to attack the sweet potato hornworm in Hawaii (Fullaway and Krauss 1945). In 1929, the wasp *Trichogramma chilonis* was purposefully introduced into Hawaii as a biological control agent for the Asiatic rice borer (*Chilo suppressalis*) (Funasaki *et al.* 1988). This wasp parasitizes the eggs of a variety of Lepidoptera in Hawaii, including sphinx moths (Funasaki *et al.* 1988). Williams (1947) found 70 percent of the eggs of

Blackburn's sphinx moth to be parasitized by a *Trichogramma* wasp that was probably *T. chilonis*. Over 80 percent of the eggs of the alien grasswebworm (*Herpetogramma licarsisalis*) in Hawaii are parasitized by these wasps (Davis 1969). In Guam, *Trichogramma chilonis* effectively limits populations of the sweet potato hornworm (Nafus and Schreiner 1986), and the sweet potato hornworm is considered under complete biological control by this wasp in Hawaii (Lai 1988). While this wasp probably affects Blackburn's sphinx moth in a density-dependent manner (Nafus 1993a), and theoretically is unlikely to directly cause extinction of a population or the species, the availability of more abundant, alternate hosts (any other lepidopteran eggs) may allow for the extirpation of Blackburn's sphinx moth by this or other egg parasites as part of a broader host base (Howarth 1991; Nafus 1993b; Tothill *et al.* 1930).

#### Parasitic Flies

Hawaii has no native parasitic flies in the family Tachinidae (Nishida 1997). Two species of tachinid flies, *Lespesia archippivora* and *Chaetogaedia monticola*, were purposefully introduced to Hawaii for control of army worms (Funasaki *et al.* 1988; Nishida 1997). These flies lay their eggs externally on caterpillars, and upon hatching, the larvae burrow into the host, attach to the inside surface of the cuticle, and consume the soft tissues (Etcheagaray and Nishida 1975b). In North America, *C. monticola* is known to attack at least 36 species of Lepidoptera in eight families, including sphinx moths; *L. archippivora* is known to attack over 60 species of Lepidoptera in 13 families, including sphinx moths (Arnaud 1978). These species are on record as parasites of a variety of Lepidoptera in Hawaii and are believed to depress populations of at least two native species of moths (Lai 1988). Over 40 percent of the caterpillars of the monarch butterfly (*Danaus plexippus*) on Oahu are parasitized by *Lespesia archippivora* (Etcheagaray and Nishida 1975a) and the introduction of a related species to Fiji resulted in the extinction of a native moth there (Howarth 1991; Tothill *et al.* 1930). Both of these species occur on Maui and Hawaii (Nishida 1997) and are direct threats to the Blackburn's sphinx moth.

Based on the findings discussed above, nonnative predatory and parasitic insects are considered important factors contributing to the reduction in range and abundance of the Blackburn's sphinx moth, and in combination with habitat loss and

fragmentation, are a serious threat to its continued existence. Some of these nonnative species were intentionally introduced by the State of Hawaii's Department of Agriculture or other agricultural agencies (Funasaki *et al.* 1988) and importations and

augmentations of lepidopteran parasitoids continues. Although the State of Hawaii requires new introductions be reviewed before release (Hawaii State Department of Agriculture (HDOA) 1994), post-release biology and host range cannot be predicted from

laboratory studies (Gonzalez and Gilstrap 1992; Roderick 1992) and the purposeful release or augmentation of any lepidopteran predator or parasitoid is a potential threat to the conservation of the Blackburn's sphinx moth (Gagné and Howarth 1985; Simberloff 1992).

TABLE 1.—SOME OF THE POTENTIAL NONNATIVE INSECT PREDATORS AND PARASITES OF BLACKBURN'S SPHINX MOTH

Order/family	Genus/species	Major island(s) on which the species has been reported	Major island(s) on which the species has not been reported
Diptera Tachinidae .....	<i>Chaetogaedia monticola</i> .....	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Diptera Tachinidae .....	<i>Lespesia archippivora</i> .....	Hawaii, Kauai, Maui, Molokai, Oahu.	Kahoolawe, Lanai.
Hymenoptera Formicidae .....	<i>Anoplolepis longipes</i> (long-legged ant).	Hawaii, Kauai, Maui, Oahu .....	Kahoolawe, Lanai, Molokai.
Hymenoptera Formicidae .....	<i>Linepithema humilis</i> (Argentine ant).	Hawaii, Kahoolawe, Kauai, Lanai, Maui.	Molokai, Oahu.
Hymenoptera Formicidae .....	<i>Ochetellus glaber</i> .....	Hawaii, Kahoolawe, Kauai, Maui, Oahu.	Lanai, Molokai.
Hymenoptera Formicidae .....	<i>Pheidole megacephala</i> (big-headed ant).	Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Oahu.	
Hymenoptera Formicidae .....	<i>Solenopsis geminita</i> (fire ant species).	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Hymenoptera Formicidae .....	<i>Solenopsis papuana</i> (fire ant species).	Hawaii, Kauai, Lanai, Maui, Molokai, Oahu.	Kahoolawe.
Hymenoptera Ichneumonidae .....	<i>Hyposeter exiguae</i> .....	Hawaii, Kauai, Maui, Molokai, Oahu.	Kahoolawe, Lanai.
Hymenoptera Trichogrammatidae ..	<i>Trichogramma chilonis</i> .....	Kauai, Oahu .....	Hawaii, Maui, Kahoolawe, Lanai, Molokai.
Hymenoptera Trichogrammatidae ..	<i>Trichogramma minutum</i> .....	Hawaii, Lanai, Molokai, Oahu .....	Kauai, Kahoolawe, Maui.

As Table 1 above indicates, the assemblage of potential alien predators and parasites on each island may differ. Furthermore, the arthropod community may differ from area to area even on the same island based upon elevation, temperature, prevailing wind pattern, precipitation, or other factors (Nishida 1997). Conserving and/or restoring moth populations in multiple locations should decrease the likelihood that the effect of any single alien parasite or predator or combined pressure of such species could result in the diminished vigor or extinction of the moth.

Due to the threats discussed above, we do not believe the existing habitats containing Blackburn's sphinx moth populations are sufficient to ensure the long-term survival of the species. A diverse set of habitats and climates within its former range is necessary to remove the long-term risk of range-wide extinction of the species. Threats to the moth identified in the final listing rule (65 FR 4770) include: vandalism and collection, predation/parasitism by alien arthropods, and habitat alteration and loss from nonnative plant and ungulate invasion. Considering the rarity of the moth, small population size is also believed to be a factor that threatens the long-term survival of the species since random population fluctuations and catastrophic events are more likely to

result in the extirpation of local populations. Wildfire and feral ungulate pressure on the moth's habitat and the direct pressure of alien predators and parasites are important factors currently reducing the moth's range and abundance and threatening the species' continued existence (Funasaki *et al.* 1988).

**Previous Federal Action**

An initial comprehensive Notice of Review for Invertebrate Animals was published in the **Federal Register** on May 22, 1984 (49 FR 21664). In this notice, we identified Blackburn's sphinx moth as a category 3A taxon. Category 3A taxa were those for which we had persuasive evidence of extinction. We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). Although Blackburn's sphinx moth had been rediscovered by 1985, in the 1989 Notice of Review, this taxon was again identified as category 3A. In the next Notice of Review on November 15, 1994 (59 FR 58982), this species was reclassified as a category 1 candidate for listing. Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. Beginning with our February 28, 1996, Notice of Review (61 FR 7596), we

discontinued the designation of multiple categories of candidates, and only those taxa meeting the definition of former category 1 candidates are now considered candidates for listing purposes. In the February 28, 1996, Notice of Review, we identified Blackburn's sphinx moth as a candidate species (61 FR 7596). A proposed rule to list Blackburn's sphinx moth as endangered was published on April 2, 1997 (62 FR 15640). In the September 19, 1997, Notice of Review (62 FR 49398), this species was included as proposed for endangered status.

In the proposed listing rule, we indicated designation of critical habitat for the moth was not prudent because we believed a critical habitat designation would not provide any additional benefit beyond that provided through listing as endangered.

A final listing rule, listing the Blackburn's sphinx moth as endangered, was published in the **Federal Register** on February 1, 2000 (65 FR 4770). In that final rule, we determined that critical habitat designation for the moth would be prudent, and we also indicated that we were not able to develop a proposed critical habitat designation for the species at that time due to budgetary and workload constraints.

On June 2, 2000, we were ordered by the U.S. District Court for the District of Hawaii (in *Conservation Council for Hawaii v. Babbitt*, Civil No. 99-00603 SOM/BMK) to publish the final critical habitat designation for Blackburn's sphinx moth by February 1, 2002. The plaintiffs and the Service have entered into a consent decree stating that we will jointly seek an extension of this deadline (*Center for Biological Diversity, et al. v. Norton*, Civ. No. 01-2063 (JR) (D.D.C.); October 2, 2001). This proposed rule is in response to these requirements.

On January 5, 2001, we mailed pre-proposal notification letters to 45 interested parties informing them that the Service was in the process of designating critical habitat for the Blackburn's sphinx moth and requesting from them information on management of lands that currently or recently (within the past 25 years) supported the Blackburn's sphinx moth. The letters contained a fact sheet describing the Blackburn's sphinx moth and critical habitat and a questionnaire designed to gather information about land management practices, which we requested be returned to us by February 1, 2001. We received 18 responses to our interested parties mailing. Additionally, we met with several researchers and land managers to obtain more specific information on management activities and suitability of certain habitat areas for the Blackburn's sphinx moth. The responses to our notification letters and meetings included information on current land management activities, detailed management plans, new locality information for adult and larval moths, and new locality information for the Blackburn's sphinx moth's host plants.

### 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 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 species 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 consultation on Federal actions likely to affect 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 which do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas 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 containing the physical and biological features essential for 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 or help to avoid accidental damage to such areas.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and, thus, must base our designations on the best information available we have at that time.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. We will not speculate about what areas

might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), identifies criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, because of the information available to us at the time of designation, 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 conservation 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) of the Act, and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the take prohibitions of section 9 of the Act, 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 could still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

#### Methods

To identify and map areas essential to the conservation of the Blackburn's sphinx moth, we evaluated areas that contain dry and mesic habitats as well as data on known moth occurrence. The best scientific information available was analyzed, including peer-reviewed scientific publications; unpublished reports by researchers; the rule listing the species (65 FR 4770); the Blackburn's sphinx moth Recovery Outline (Service 2000a); the Hawaii Natural Heritage Program (NHP) database; field trip reports in our Pacific Islands Fish and Wildlife Office files; and responses to our moth critical habitat outreach package mailed to Federal, State, private land managers, and other interested parties.

Information that we received in response to our pre-proposal outreach efforts was very helpful in developing this proposed critical habitat designation. Researchers at the Bishop Museum provided new information about the moth's range and the potential effects of nonnative predators and parasites. The Hawaii Division of Forestry of Wildlife provided new information about the biology and distribution of the host plants, new moth observation records, and information on the management activities for State lands. The State Natural Area Reserve Commission provided new information about the moth's biology and information on

management activities. The Kahoolawe Island Reserve Commission provided new information on the moth's range, as well as management activities for the management and restoration of Kahoolawe. Researchers with the Biological Resource Division of the U.S. Geological Survey, the National Tropical Botanical Garden, and the Hawaii Natural Heritage Program provided information concerning the distribution of the moth and its host plants. Additional information was received from the Hawaii Army National Guard (HIARNG) and the Hawaii Department of Agriculture (HDOA).

The Blackburn's sphinx moth is short-lived, extremely mobile, and rare; hence population densities are not easily determined (Janzen 1984; A. Medeiros, pers comm., 1998; Roderick and Gillespie 1997; Van Gelder and Conant 1998). Even if the threats responsible for the decline of the moth were controlled, the persistence of existing populations is hampered by the small number of extant populations and the small number of individuals in known populations. This circumstance makes the moth more vulnerable to extinction due to a variety of natural processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and ability to cope with environmental change (IUCN 1994; Lande 1988). Small populations are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio and to catastrophes such as hurricanes (Lande 1988). We believe the existing Blackburn's sphinx moth populations on Kahoolawe, Hawaii, and Maui are insufficient to ensure the long-term survival of the species. Re-establishing the species to a diverse set of habitats and climates within its former range is necessary to remove the long-term risk of range-wide extinction of the species due to catastrophic events and the numerous direct threats to the species and its habitat (Service 1997).

Janzen (1984) described the characteristics of tropical sphingid moths found in a Costa Rican National Park. In general, adult sphingids are nocturnal or crepuscular (dusk-flying) and regularly drink with a long proboscis from many kinds of sphingophilous flowers while hovering in front of them. Sphingophilus flowers are characterized by lightly-colored, tubular corollas, evening anthesis (opening), and nocturnal nectar and

scent production (Haber and Frankie 1989). Fecundity was unknown, but estimated in the hundreds if the female can feed freely.

Particularly helpful in understanding the conservation needs of sphingids is Janzen's description of the adult moth biological characteristics, including that they have large latitudinal ranges, feed heavily over a long period of time and extensively at spatially particulate resources relatively fixed in location (i.e., they feed on specific resources spread throughout the landscape), live for weeks to months, lay few eggs per night, probably oviposit (deposit eggs) on many host plant individuals and repeatedly visit many of them, have less synchronous eclosion (emergence from the pupa) during the rainy season than other moths, migrate, and are highly mobile, repeatedly returning to the same food plants. In another study of sphingids, adults were reported to travel greater distances to pollinate and visit flowers than those distances traveled by other insect pollinators or even hummingbirds (Linhart and Mendenhall 1977).

Sphingid caterpillars are known to feed heavily over a long time period and eat limited types of foliage, typically plants rich in toxic small molecules (e.g., in the family Solanaceae). They also have less synchronous eclosion (emergence from the pupa) than other moths. Since sphingids search widely for local good conditions, Janzen concluded that isolated habitats may have difficulty supporting sphingid populations (i.e., connectivity between habitat areas is necessary to support wide-ranging sphingid species).

Ehrlich and Murphy (1987) noted populations of herbivorous insects such as lepidopterans are often regulated by environmental factors, such as weather conditions, and thus small populations can be particularly at risk of extinction. Ehrlich and Murphy identified a number of principles important for the conservation of herbivorous insects. First, in most cases, a series of diverse demographic units will typically be needed to conserve a species. Second, where possible, corridors among the sites should be established to promote re-colonizations in areas where the species once occurred. Lastly, they noted that when populations are very sensitive to environmental changes and limited information is available on the species population biology, it is easy to underestimate the conservation needs of such insects.

Murphy *et al.* (1990) also noted that reviews of butterfly population ecology demonstrate that environmental factors play important roles in determining

butterfly population dynamics. They stated that most documented population extinctions have resulted from habitat deterioration combined with extreme weather events. Decreases in the quality or abundance of larval host plants and adult nectar sources are caused by changes in plant community composition, particularly changes associated with succession, disturbance, and grazing regimes. But, because many butterfly species are especially sensitive to thermal conditions, habitat changes which disrupt microclimatic regimes can cause habitat deterioration without elimination of plant resources. Ehrlich and Murphy (1987) noted several patterns within typical butterfly populations: a number of subpopulations within a given species metapopulation are often extirpated and later re-colonized; and a given species may not be present in many of its habitat remnants, including within those containing the highest host plant diversity.

Section 3(5)(A)(i) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. Although our knowledge of the moth's historical range is incomplete, we believe the existing natural habitats needed to support viable populations of the moth are too small, isolated, and seriously threatened to ensure its long-term protection or conservation, particularly in light of the foraging needs of adult sphingid moths (Janzen 1984) and the apparent wide-ranging Blackburn's sphinx moth foraging habits (HHP 2000; F. Duvall, pers. comm., 2001; B. Gagné, pers. comm., 2001; D. Hopper, *in litt.*, 2000, 2002). Long-term conservation of the species will require the protection and subsequent restoration of additional and larger areas of dry and mesic habitat that includes the larval and adult primary constituent elements at different elevational and rainfall gradients to improve the likelihood of successful larval development and adult moth foraging (A. Medeiros, pers. comm., 1998; Roderick and Gillespie 1997; Van Gelder and Conant 1998). The long-term persistence of the existing populations would improve if they could be increased in size and if the connectivity among the populations was enhanced, thus promoting dispersal of individuals across intervening lands, and conserving and restoring moth populations in multiple locations would decrease the likelihood that the effect of any single alien parasite or predator or

combined pressure of such species could result in the diminished vigor or extinction of the moth.

Molokai is an example of essential habitat because it provides for the expansion of the species' range and for improved connectivity of the different populations. While the proposed unit on this island is not known to currently harbor a moth population, preserving this habitat is important because some threats to the species are absent there (Table 1 shows several of the potential moth predators and parasites are not reported on this island). Likewise, because of Molokai's distance from islands currently inhabited by the moth, we believe proposed critical habitat on this island will be extremely important for the species' conservation as it would help to protect the species from extinction by catastrophic events, which could impact other more closely grouped populations (*e.g.*, those on the Maui or on the island of Hawaii). For these reasons, we find that inclusion of an area such as on Molokai, identified as containing the primary constituent elements is essential to the conservation of the species even if it does not currently contain known moth populations.

The critical habitat unit approach in this proposed rule addresses the numerous risks to the long-term survival and conservation of Blackburn's sphinx moth by employing two widely recognized and scientifically accepted methods for promoting viable populations of imperiled species—(1) Creation or maintenance of multiple populations to reduce the threat of a single or series of catastrophic events extirpating the species; 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 (Meffe and Carroll 1996; Service 1997; Tear *et al.* 1995).

In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Blackburn's sphinx moth. By maintaining viable populations in the proposed critical habitat units, the threats represented by a fluctuating environment are reduced and the species has a greater likelihood of achieving long-term survival and conservation. Conversely, loss of a Blackburn's sphinx moth critical habitat unit will result in an appreciable increase in the risk that the species may not recover and survive.

Due to the species' presently reduced range, the Blackburn's sphinx moth is now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat and food. Furthermore, the moth is now more susceptible to direct pressure from numerous nonnative insect predators and parasites. For these reasons and the reasons discussed above, those areas currently occupied would be inadequate to ensure the conservation of the species, and we have proposed to designate eight units on four islands.

We are developing a draft recovery plan for this species. The overall objective of this recovery plan will be to ensure the species' long-term conservation and identify research necessary so the moth can be reclassified to threatened and ultimately removed from the lists of endangered and threatened species. Because a recovery plan for the moth has not yet been completed, in making this determination we evaluated the remaining potential habitat, the biological and life history characteristics of the moth, and the best available scientific information on conservation planning to obtain what we currently believe will be required to ensure viable populations of this species. However, if after completing the recovery planning process, should our understanding of what areas support essential features for the conservation of the moth change, to the extent our resources and other duties will allow, we would revise any existing critical habitat designation accordingly.

#### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we must consider those physical and biological features essential to the conservation of the species, and which may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; and sites for breeding, reproduction, or egg laying. To the extent possible, these biological and physical elements, also known as primary constituent elements are, to be described with the critical habitat designation.

The primary constituent elements for the Blackburn's sphinx moth include specific habitat components identified as essential for the primary biological needs of foraging, sheltering, maturation, dispersal, breeding, and egg

laying, and are organized by life cycle stage. The primary constituent elements required by the Blackburn's sphinx moth larvae for foraging, sheltering, maturation, and dispersal are the two documented host plant species within the endemic *Nothocestrum* genus (*N. latifolium* and *N. breviflorum*) and the dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation which currently support or historically have supported these plants. The primary constituent elements required by Blackburn's sphinx moth adults for foraging, sheltering, dispersal, breeding, and egg production are native, nectar-supplying plants, including but not limited to *Ipomoea indica* (and other species within the genus *Ipomoea*), *Capparis sandwichiensis*, and *Plumbago zeylanica* and the dry to mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation which currently support or historically have supported these plants.

Both the larval and adult food plants are found in undeveloped areas supporting mesic and dry habitats, typically receiving less than 250 cm (100 in) of rain per year and are located between the elevations of sea level and 1,525 m (5,000 ft). Vegetative communities in these areas include native plants, and in some instances, introduced plant species (A. Medeiros, pers. comm., 1998; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

Although Blackburn's sphinx moth larvae feed on the nonnative *Nicotiana glauca*, we do not consider this plant to be a primary constituent element for the designation of critical habitat. As previously discussed, the native *Nothocestrum* species are more stable and persistent components of dry to mesic forest habitats than the *Nicotiana glauca*. *Nicotiana glauca* is a short-lived species that may disappear from areas during prolonged drought (A. Medeiros, pers. comm., 1998) or during successional changes in the plant community (F. Howarth, pers. comm., 2001; Symon 1999). Many studies have shown that insects, and particularly lepidopteran larvae, consume more food when the food has a relatively high water content (Murugan and George 1992). Relative consumption rate and growth have been reported to decrease for many sphingids (closely related to the Blackburn's sphinx moth) when raised on host plants or diets with a relatively low water content (Murugan and George 1992). *Nicotiana glauca*'s

vulnerability to drought conditions suggests that its water content frequently may not be suitable for optimal growth of Blackburn's sphinx moth larvae.

The restoration of native host species for the moth and other endangered species may also require the control or elimination of nonnative vegetation. Additionally, unlike the *Nothocestrum* species, *Nicotiana glauca* is more likely to occur in habitats less suitable due to their occupation by alien insect predators (D. Hopper, Service, *in litt.*, 2000, 2002; Symon 1999). Therefore, in comparison with *Nicotiana glauca*, the native *Nothocestrum* species better fulfill the primary biological needs of the moth larvae. For all of these reasons, we are not considering *Nicotiana glauca* as a primary constituent element for the designation of critical habitat at this time.

#### Criteria Used To Identify Critical Habitat

We used several criteria to identify and select lands proposed for designation as critical habitat. We began with all areas that we believe are currently occupied by the moth. We then added other unoccupied lands containing the primary constituent elements that are needed for conservation of the species. As discussed in the Methods section, in deciding which unoccupied areas were needed for conservation we based our decision on the amount of available habitat remaining that could potentially support the moth, the biology of the moth, and information gained from the conservation of other herbivorous insects. We gave preference to lands that—(a) are known to contain largely intact assemblages of the host plant communities, and (b) form contiguous, relatively large areas of suitable habitat.

Regular flight distances of sphingids in Central America may be greater than 10 km (6.2 mi) (Janzen 1984), and given the large size and strong flight capabilities of the Blackburn's sphinx moth, the species is believed to use large areas of habitat. Therefore, moth population linkages will likely be enhanced if designated habitat occurs in large contiguous blocks or within a matrix of undeveloped habitat (McIntyre and Barrett 1992; A. Medeiros, pers. comm., 1998; S. Montgomery, pers. comm., 2001; Roderick and Gillespie 1997; Van Gelder and Conant 1998). To the extent possible with the limited potential habitat remaining, we have attempted to account for the wide-ranging behavior of the moth. Since the Blackburn's sphinx moth is believed to be a strong flier and is able to move

many kilometers from one area to another, areas of larval or adult presence and feeding may be separated from similar habitat areas and still serve important functions in maintaining moth populations.

Some small habitat areas are also suitable for Blackburn's sphinx moth larvae (e.g., Unit 3 and Units 5a and 5b discussed below) and are critical for the conservation of the moth since such habitats may facilitate adult moth dispersal and promote genetic exchange between populations located on different islands. These areas also provide nectar resources and sheltering opportunities required by the adult moth. As discussed earlier, small, geographically isolated populations may be subject to decreased viability caused by inbreeding depression, reductions in effective population size due to random variation in sex ratio, and limited capacity to evolve in response to environmental change (Soulé 1987).

Blackburn's sphinx moth populations fluctuate from year to year and season to season, apparently correlated with environmental and climatic variation. The moth is likely sensitive to thermal conditions and habitat changes which disrupt its micro-climatic requirements. Therefore, proposed critical habitat boundaries include dry and mesic habitats containing the primary constituent elements along wide elevational gradients to better ensure adult moth foraging needs up and downslope within its range. Furthermore, the boundaries include elevational gradients to better ensure larval host plant availability during periods of drought. The growth rates of larvae for many closely related sphingid species are reported to decrease when their host plants lack suitable water content. In fact, suitable host plant water content can improve the later fecundity of the adult stage (Murugan and George 1992). It is believed numerous habitat elevations, containing the various primary constituent elements, are necessary for successful conservation of the species (Ehrlich and Murphy 1987; Murphy and Weiss 1988; Murphy *et al.* 1990; Shaffer 1987) to minimize the effects of annual localized drought conditions throughout different areas of the species' host plant range (Murugan and George 1992).

Many sphingid studies have shown that air temperature restricts adult feeding activity above a certain temperature (usually 30 degrees Celsius) (Herrera 1992). This highlights the importance of protecting sufficiently large habitat areas throughout the Blackburn's sphinx moth range to ensure nectar resource availability as

temperatures change within the habitat range seasonally, during the night, and along elevational gradients. Increasing the potential for adult dispersal will help to alleviate many threats, thus, habitat which provides the primary constituent elements associated with adult dispersal and feeding is essential to the conservation of the Blackburn's sphinx moth.

Critical habitat is proposed on those Hawaiian Islands where the Blackburn's sphinx moth's primary constituent elements considered essential for the conservation of the species are known to occur. This will allow the species the ability to persist and re-colonize areas where it has become extirpated due to catastrophic events or demographic stochasticity (randomness) (Shaffer 1987). For example, on the island of Kauai in 1992, Hurricane Iniki blew over large areas of native forest leaving open areas where nonnative plants became established and created paths for further invasion of nonnative animals, both of which have been identified as threats to the survival of the moth.

Small habitats tend to support small populations, which frequently are extirpated by events that are part of normal environmental variation. The continued existence of such satellite populations requires the presence of one or more large reservoir populations, which may provide colonists to smaller, outlying habitat patches (Ehrlich and Murphy 1987). Based on recent field observations of the moth, we believe the species likely occurs within two regional populations on separate islands, one centered in the Kanaio area of leeward East Maui (Unit 1—see Proposed Critical Habitat Designation, below), and one centered near Puuwaawaa (Unit 6) of Hawaii Island, north of Kailua-Kona (F. Howarth, pers. comm., 2001; A. Medeiros, pers. comm., 1998). Both of these two areas contain populations of the moth regarded as probable source areas or "reservoirs" (Murphy *et al.* 1990) for dispersing or colonizing moth adults. We are also proposing areas (*e.g.*, Auwahi Forest and portions of Ulupalukua Ranch, both within Unit 1; and Unit 4 on Kahoolawe) that are large, mixed-quality habitat patches containing the primary constituent elements and located within several kilometers of the two potential reservoir populations. Because of their current occupancy and their proximity to larger populations, it appears likely that they will be the areas most rapidly re-colonized by the moth after potential extirpations.

The designation of small habitat areas close to the two large reservoir areas is

also proposed to promote genetic variability in the moth population, contributing to the long-term persistence and conservation of the species. These areas will serve as stepping stones or corridors for dispersing adult moths or as overflow habitat during particularly fecund years, which could be very important to the integrity of moth populations. For example, adult moths observed at Ahihi-Kinau NAR (Unit 1) on Maui may have originated from larval host plants located in the Kanaio NAR (also Unit 1), or moths seen in Kailua-Kona (Units 5-A and 5-B) from Puuwaawaa (Unit 6). The Blackburn's sphinx moth populations inhabiting these smaller habitat areas appear to be taking advantage of lower elevation adult native host plants and nonnative host plants such as tree tobacco upon which the larval stage is completed successfully. In addition, these small habitat areas may be able to support persistent moth populations independent of the reservoir areas, significantly contributing to conservation of the species.

Natural areas of suitable native, dry to mesic habitat containing at least one *Nothocestrum* plant adjacent or near other *Nothocestrum* populations are included in the proposed critical habitat units. We have included suitable habitat without *Nothocestrum* larval host plants, provided it contained the adult primary constituent elements, including but not limited to *Ipomoea* species, *Capparis sandwichiana*, or *Plumbago zeylanica*. This is especially true for areas lying between or adjacent to large populations of *Nothocestrum* species and which could serve as a flight corridor or "stepping stone" to other larger host plant habitat areas. An area may also serve as a stepping stone when it contains adult native host plants thereby providing foraging opportunities for adults. Areas with larval nonnative host plants (*e.g.*, Unit 3 on Maui and Unit 4 on Kahoolawe) may also serve as areas for population expansion during especially wet years when the nonnative larval host plants experience rapid growth. Natural areas of primarily native vegetation containing the larval or adult stage primary constituent elements and where habitat could support a moth population and increase the potential for conservation are also proposed to be designated as critical habitat. The designation and protection of a unit not known to currently contain a moth population (*i.e.*, the unit on Molokai), but which contains the PCE's and lacks some of the serious threats to the

species, (see Table 1) will enhance population expansion and connectivity, thereby improving the likelihood of the species' conservation.

The areas we are proposing to designate as critical habitat provide some or all of the known primary constituent elements for this species. These areas are on the islands of Hawaii, Kahoolawe, Maui, and Molokai between the elevations of sea level to 1,525 m (5,000 ft) within dry to mesic shrub lands or forests containing one or more populations of the adult host plants, or one or more populations of *Nothocestrum latifolium* or *N. breviflorum*. Proposed critical habitat boundaries include aggregations of native host plant habitat for both larvae and adults, and encompass the areas and flight corridors believed necessary to sustain moth populations.

In summary, the long-term survival and recovery of the Blackburn's sphinx moth requires the designation of eight critical habitat units on four of the main Hawaiian Islands. One of these habitat units is currently not known to be occupied by the Blackburn's sphinx moth. To recover the species, it will be necessary to conserve suitable habitat in this unoccupied unit, which in turn will allow for the establishment of an additional Blackburn's sphinx moth population(s) through natural recruitment or managed re-introductions. Establishment of this additional moth population(s) will increase the likelihood that the species will survive and recover in the face of normal and random events (*e.g.*, hurricanes, fire, alien species introductions, etc.) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacy and Taper 1992).

The lack of scientific data on Blackburn's sphinx moth life history makes it impossible for us to develop a quantitative model (*e.g.*, population viability analysis (NRC 1995)) to identify the optimal number, size, and location of critical habitat units (Bessinger and Westphal 1998; Ginzburg *et al.* 1990; Kariava and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, we are only able to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of the Blackburn's sphinx moth's long-term survival and recovery. Therefore, we used the best available information, including scientific opinion and professional judgement of non-Service scientists, to identify as critical habitat a reasonable number of additional units. Conservation of more than eight units could further increase the probability

that the species will survive and recover; however, establishing and conserving viable moth populations on a total of eight discrete units on four islands will provide the species with a reasonable expectation of persistence

and eventual recovery, even with the high potential that one or more of these subpopulations will be temporarily lost as a result of normal or random adverse events (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

**Proposed Critical Habitat Designation**

The approximate area encompassing the proposed designation of critical habitat by island and landownership is shown in Table 2.

TABLE 2.—APPROXIMATE PROPOSED CRITICAL HABITAT FOR THE BLACKBURN’S SPHINX MOTH IN HECTARES (ha) (ACRES (ac)) BY ISLAND AND LAND OWNERSHIP (AREA ESTIMATES REFLECT CRITICAL HABITAT UNIT BOUNDARIES, NOT PRIMARY CONSTITUENT ELEMENTS WITHIN)

Critical habitat unit	Island	State	Federal	Private	Total
1. Ahihi-Kinau NAR—Ulupalakua— Auwahi—Kanaio Maui Meta Unit.	Maui	11,504 ha	1 ha	4,161 ha	15,216 ha
		27,316 ac	2 ac	10,281 ac	37,599 ac
2. Puu O Kali Unit	Maui	1,791 ha	0 ha	959 ha	2,750 ha
		4,425 ac	0 ac	2,369 ac	6,794 ac
3. Kanaha Pond—Spreckelsville Unit	Maui	213 ha	0 ha	13 ha	226 ha
		527 ac	0 ac	31 ac	559 ac
4. Upper Kahoolawe Unit	Kahoolawe	1,878 ha	0 ha	0 ha	1,878 ha
		4,641 ac	0 ac	0 ac	4,641 ac
5—A. Kailua-Kona Unit A	Hawaii	6 ha	0 ha	119 ha	125 ha
		15 ac	0 ac	294 ac	309 ac
5—B. Kailua-Kona Unit B	Hawaii	105 ha	0 ha	0 ha	105 ha
		258 ac	0 ac	0 ac	258 ac
6. Puuwaawaa—Hualalai Meta Unit	Hawaii	12,847 ha	0 ha	5,264 ha	18,111 ha
		31,746 ac	0 ac	13,007 ac	44,753 ac
7. Kamoko Flats—Puukolekole Unit	Molokai	551 ha	0 ha	1,278 ha	1,829 ha
		1,362 ac	0 ac	3,158 ac	4,520 ac
Total		28,445 ha	1 ha	11,794 ha	40,240 ha
		70,290 ac	2 ac	29,140 ac	99,433 ac

The areas we are proposing to designate as critical habitat currently provide some or all of the habitat components necessary to meet the primary biological needs of the Blackburn’s sphinx moth. Lands designated are under Federal, private, and State ownership. Lands proposed as critical habitat have been divided into eight critical habitat units.

We are proposing to designate critical habitat on lands considered essential to the conservation of the moth. Conserving the moth includes the need to re-establish historic and possibly, extirpated populations of Blackburn’s sphinx moth to areas within one of the critical habitat units, which represent a range of habitat and climate conditions within the moth’s former range. Re-establishing the species to a diverse set of habitats and climates containing the primary constituent elements is necessary to reduce the long-term risk of range-wide extinction of the species (Service 1997).

A brief description of each unit, and reasons for proposing to designate it as critical habitat are presented below.

*Unit 1: Ahihi-Kinau NAR—Ulupalakua—Auwahi—Kanaio Unit (Maui)*

Unit 1 consists of approximately 15,216 ha (37,599 ac) encompassing portions of the leeward slope of

Haleakala. The unit is bounded on the northeast by the 1,525 m (5,000 ft) elevation contour of Haleakala Volcano, to the south by the ocean, to the east by the dry coast and slopes toward Kaupo Gap, and on the west by the Haleakala Southwest Ridge. Natural features within the unit include widely spread, remnant dry forest communities, rocky coastline, numerous cindercones, and some of the most recent lava flows on Maui. Vegetation consists primarily of mixed-species mesic, and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrub land (HHP 1993).

This unit contains what is probably the largest, extant moth population or meta-population. This unit is essential to the species’ conservation because it contains native (*Nothocestrum latifolium*) and other nectar-supplying plants for adult moths. In addition to providing essential habitat for the Maui meta-population, areas within this unit provides temporary (ephemeral) habitat for migrating Blackburn’s sphinx moths.

*Unit 2: Puu O Kali Unit (Maui)*

Unit 2 consists of approximately 2,750 ha (6,794 ac) encompassing portions of the leeward slope of Haleakala, and adjacent portions of the upper, southeast isthmus. The unit is bounded on the north and to the south

by pasture lands, to the east by the lower slopes of Haleakala below the area of Kula, and on the west by the coastal town of Kihei. Natural features within the unit include widely spread, remnant dry forest communities, rugged aa lava flows, and numerous cindercones including the highly visible, Puu O Kali. Vegetation consists primarily of mixed-species mesic, and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrub land (HHP 1993). This unit is essential to the species’ conservation because it contains native nectar-supplying plants for adult, and areas within this unit provide temporary (ephemeral) habitat for migrating Blackburn’s sphinx moths.

*Unit 3: Kanaha Pond—Spreckelsville Unit (Maui)*

Unit 3 consists of approximately 226 ha (559 ac) encompassing portions of the Kahului coastland and the Kanaha Pond State Sanctuary on Maui. It is bounded on the south by the Kahului Airport, on the north by the ocean, on the east by sugarcane fields, and to the west by the town of Kahului. Natural features within the unit include Kanaha Pond and remnant coastal dune communities. Vegetation consists primarily of mixed-species, dry coastal shrub land communities composed of native and introduced plants, including

nonnative larval host plants (HHP 2000).

Although devoid of naturally occurring *Nothoestrum* spp., the unit contains adult moth primary constituent elements, and recent observations of both larvae and adults have been documented in the Kanaha-Spreckelsville area. This unit is also considered essential to the species' conservation because evidence indicates that it provides refuge for moths dispersing to other larger areas. Because it is a State Wildlife Sanctuary, the Kanaha Pond portion of this unit is currently managed to benefit resident native species and should benefit the moth and its host plants to some extent (F. Duvall, DoFAW, *in litt.* 2001). Although this area is lower in elevation than areas containing *Nothoestrum* and associated species, the persistent occurrence of Blackburn's sphinx moth in this area suggests this site plays an important role in moth population dynamics.

*Unit 4: Upper Kahoolawe Unit (Kahoolawe)*

Unit 4 consists of approximately 1,878 ha (4,641 ac), encompassing portions of the upper elevational contour of Kahoolawe, approximately above 305 m (1,000 ft) in elevation. Kahoolawe is located approximately 11 km (6.7 mi) south of Maui Island and is approximately 11,655 ha (28,800 ac) in total land area. Natural features within the unit include the main caldera, Lua Makika, and Puu Moaulaiki. Vegetation within the proposed unit consists primarily of mixed-species, mesic and dry grass and shrubland communities composed of primarily introduced plants and some native plant species (HHP 2000).

This unit contains a large moth population, which may or may not be part of the larger Maui populations. No native *Nothoestrum* species currently occur, but introduced tree tobacco is very common as are numerous native adult host plants as described by the primary constituent elements. Currently, the entire island is devoid of unglates and is managed for control of fire and nonnative species to some degree. Because the unit harbors adult native host plants and is in close proximity to the large Maui moth population, this unit is essential for Blackburn's sphinx moth conservation and would improve dispersal and migration corridors and thus expand population recruitment potential. (P. Higashino, pers. comm., 2001).

*Unit 5-A and Unit 5-B: Kailua-Kona Unit (Hawaii)*

Units 5-A and 5-B consists of approximately 230 ha (567 ac) encompassing portions of rugged lowland forest within the boundary of the Kailua-Kona township on the island of Hawaii. They are bounded on the south by Kailua-Kona town, on the north by rugged lava flows, to the west by coastal nonnative plant communities, and to the east by residential housing areas. Natural features within the units include rugged lava flows. Vegetation consists primarily of mixed-species mesic, and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 2000). These units contains the endangered larval host plant, *N. breviflorum*. Adult and larval moth sightings have been documented within these units. In addition to providing habitat for this moth population, lands proposed for designation in Units 5-A and 5-B will provide refugia for moths migrating to other areas of existing suitable host plant habitat.

*Unit 6: Puuwaawaa—Hualalai Meta-Unit (Hawaii)*

Unit 6 consists of approximately 18,111 ha (44,753 ac) encompassing portions of the flows and northwest slopes of the Hualalai volcano on the island of Hawaii. It is bounded on the south by the Kailua-Kona region and large expanses of barren lava flows, on the north by Parker Ranch and large expanses of nonnative grass lands, to the east by upper slopes of Hualalai volcano, and to the west by lava flows and coastland. Natural features within the unit include the Puuwaawaa cindercone and significant stands of native, dry forest including large numbers of *Nothoestrum breviflorum* host plants (Perry 2001). Vegetation consists primarily of mixed-species mesic, and dry forest communities composed of native and introduced plants, with smaller amounts of dry coastal shrubland (HHP 2000).

Frequent and persistent observations of both moth larvae and adults throughout this unit indicate that this unit contains the largest population of Blackburn's sphinx moth on the island of Hawaii. In addition to providing habitat for this population, proposed lands in Unit 6 provide refugia for migrating moths to other areas of existing suitable host plant habitat. As previously discussed, given the large size and strong flight capabilities of the Blackburn's sphinx moth, support for moth population linkages requires

habitat in large contiguous blocks or within a matrix of undeveloped habitat (McIntyre and Barrett 1992; A. Medeiros, pers. comm., 1998; S. Montgomery, pers. comm., 2001; Roderick and Gillespie 1997; Van Gelder and Conant 1998).

*Unit 7: Kamoko Flats—Puukolekole Unit (Molokai)*

Unit 7 consists of approximately 1,829 ha (4,520 ac) encompassing portions of the higher, yet drier portions of east Molokai. It is bounded on the north by wet forests, to the south by drier coastland, to the east by rugged, dry gullies and valleys, and to the west by dry to mesic, lowland forest. Natural features within the unit include numerous forested ridges and gullies. Vegetation consists primarily of mixed-species mesic, and dry forest communities composed of native and introduced plants (HHP 2000).

This unit is part of the historical range of the moth. This unit is not known to currently contain a moth population, but it does contain native *Nothoestrum* host plants, including *N. longifolium* and *N. latifolium* (Wood 2001a) as well as adult native host plants. Because the Molokai unit contains both larval and adult native host plants and is in close proximity to the large Maui population, this unit is essential for Blackburn's sphinx moth conservation because it would allow the species to expand into an area formerly part of its historical range and in very close proximity to its current range on the island of Maui. Furthermore, it may facilitate dispersal and provide a flight corridor for moths eventually migrating to the island of Oahu, also part of its historical range.

Due to its proximity to the island of Maui where the current and presumed highest historical concentration of Blackburn's sphinx moth occurred and because this unit contains dry and mesic habitats which are known, both currently and historically, to support the larval and adult native host plants, researchers believe Blackburn's sphinx moth will re-establish itself on this unit over time. (F. Howarth, pers. comm., 2001). Furthermore, this unit lacks some of the serious potential threats to the moth (see Table 1). Conserving and restoring moth populations in multiple locations will decrease the likelihood that the effect of any single alien parasite or predator or combined pressure of such species and other threats could result in the diminished vigor or extinction of the moth. Including this unit within the designation will also reduce the possibility of the species' extinction from catastrophic events impacting the

existing populations on other islands. Designating Blackburn's sphinx moth critical habitat within this area on Molokai is complementary to existing and planned management activities of the landowners. The proposed critical habitat unit lies within a larger, existing, conservation area to be managed for watershed conservation and the conservation of endangered and rare species. The landowners, State and Federal resource agencies, and local citizens groups are involved with these planned natural resource management activities on Molokai.

*Application of the Section 3(5)(A) Criteria Regarding Special Management Considerations or Protection*

Pursuant to the definition of critical habitat in section 3 of the Act, any area so designated must also require "special management considerations or protections." Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of Blackburn's sphinx moth and do not require special management or protection, such areas would not be included in a critical habitat designation because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

We used the following three guidelines to determine if a plan provides adequate management or protection—(1) A current plan specifying the management actions must be complete and provide sufficient 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. In determining if management strategies are likely to be implemented, we considered whether: (1) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (2) there is a timely schedule for implementation; (3) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (4) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the

management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands. In determining whether an action is likely to be effective, we considered whether: (1) The plan specifically addresses the management needs, including reduction of threats to the species; (2) such actions have been successful in the past; (3) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (4) adaptive management principles have been incorporated into the plan.

Based on information provided to us by land owners and managers to date, we find that no areas are adequately managed and protected to address the threats to Blackburn's sphinx moth. Several areas, especially within Units 1, 2, 4, 6, and 7 are covered under current management plans and are being managed in a manner that meets some of the conservation needs of Blackburn's sphinx moth including fire and ungulate management. However, we find that in none of these areas does the present management adequately address the needs of the species by reducing all of the primary threats to this species including the loss of host plant fecundity. Furthermore, all of the plans lack a timely schedule for implementation; a high probability of funding source(s) or other resources necessary to implement the necessary actions; and sufficient landowner/management authority or long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

**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 it 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 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 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 a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Section 7 of the Act and its implementing regulations require Federal agencies to consult with us if a proposed action may affect a listed species or its critical habitat (16 U.S.C. 1536; 50 CFR 402.14(a)). If after consultation, we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request re-initiation of consultation with us on actions for

which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Blackburn's sphinx moth or its critical habitat will require section 7 consultation. Activities on non-Federal lands requiring a permit from a Federal agency, such as a permit from the U. S. Army Corps of Engineers under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly 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 may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Removing, thinning, or destroying Blackburn's sphinx moth habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., wood cutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.).

(2) Appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of invasive plant species, forest fragmentation, overgrazing, augmentation of feral ungulate populations, water diversion or impoundment, groundwater pumping, or other activities that alter water quality or quantity to an extent that they affect vegetation structure) and activities that increase the risk of fire.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. Thus, actions which may already require consultation include, but are not limited to:

(1) Development on private or State lands requiring funding or authorization from other Federal agencies, such as the

Department of Housing and Urban Development;

(2) Military training or similar activities of the U.S. Department of Defense (Army, Navy, and National Guard) on State-owned lands (e.g., Kanaio Training Area);

(3) Construction of communication sites licensed by the Federal Communications Commission;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(6) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, Natural Resources Conservation Service), Department of Defense, Department of Transportation, Department of Energy, Department of the Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Environmental Protection Agency, or any other Federal agency.

Upon publication of this proposed rule, Federal agencies would also be required to confer with the Service on effects to critical habitat if such actions may destroy or adversely modify proposed critical habitat. Upon publication of a final rule designating critical habitat, Federal agencies would need to include consideration of effects to critical habitat in consultations on these actions.

If you have questions regarding whether specific activities would 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 wildlife and plants and inquiries about prohibitions and permits should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

#### *Economic Analysis*

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an analysis of the economic

impacts of designating these areas as critical habitat prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**.

#### **Public Comments Solicited**

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any proposed area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Any areas on the islands of Maui, Hawaii, Kahoolawe, Molokai, or the other main Hawaiian Islands not included in this proposed designation that may be considered essential to the species' conservation and recovery and should be included in the final designation;

(3) Specific information on the number and distribution of the Blackburn's sphinx moth and what habitat is essential to the conservation of this species and why;

(4) Whether lands within proposed critical habitat are currently being managed to address conservation needs of the Blackburn's sphinx moth;

(5) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(6) Military training or similar activities of the U.S. Department of Defense (Army, Navy, and National Guard) on State-owned lands (e.g., Kanaio Training Area);

(7) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(8) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and,

(9) Economic and other values associated with designating critical habitat for the Blackburn's sphinx moth, such as those derived from non-consumptive uses (e.g., hiking, camping, eco-tourism, enhanced watershed

protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

If we receive information that any of the areas proposed as critical habitat are currently being managed to address the conservation needs of the Blackburn's sphinx moth and provide adequate management and protection, we would remove such areas from the final rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act. If you wish to comment, you may submit your comments and materials concerning this proposal by either of the following methods:

1. You may submit written comments and information to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850.

2. You may hand-deliver written comments to our Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, Hawaii.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. 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 Pacific Islands Fish and Wildlife Office in Honolulu.

#### 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 proposed rule during preparation of a final rule-making. 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 jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may e-mail comments to: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been 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 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 comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded from critical habitat designation pursuant to section 4 of the Act, we do not believe this rule will 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, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

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 or permitted by a Federal agency. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Section 7 also requires Federal agencies to consult with us if a proposed action may affect a listed species or its critical habitat. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range of the species to have any 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 may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (required under section 4 of the Act: see the "Exclusions Under Section 4(b)(2)" section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) We do not believe this rule would create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Blackburn's sphinx moth since its listing in February 2000 (65 FR 4770). We will evaluate any additional impact through our economic analysis. Because of the potential for impacts on other Federal agencies' activities, we will continue to review this proposed action

for any inconsistencies with other Federal agencies' actions.

(c) We do not believe this rule, if made final, would materially 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 will evaluate any additional impacts through an economic analysis.

(d) OMB has determined that this rule raises 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 to require Federal agencies to provide a statement of the factual basis for certifying that 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 for the reasons described below. However, should the economic analyses prepared pursuant to section 4(b)(2) of the ESA indicate otherwise, we will revisit this determination at that time.

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 some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. 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 the Blackburn's sphinx moth. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, 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, Blackburn's sphinx moth has only been listed since February 2000, and there have been only five informal consultations involving the species. Therefore, the requirement to reinitiate consultations for ongoing projects is not anticipated to affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Blackburn's sphinx moth has been listed only a relatively short time and there have been no activities with Federal involvement in these areas during this time. There is a history of only five informal consultations based on the listing of this species to date. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the areas proposed as critical habitat will be due to the critical habitat designation.

One of the proposed designation is partially on Federal lands. All of the eight units are partially or entirely on lands owned and managed by the State of Hawaii, which is not a small entity for purposes of this analysis. This includes units within the Ahihi-Kinau NAR, Kanaio NAR, Kanaha State Bird Sanctuary, or the Kahoolawe Island Reserve. All of these land areas are primarily managed for conservation of natural resources, including threatened and endangered species. On State lands, activities with no Federal involvement would not be affected by the critical habitat designation.

Six of the eight units of the proposed designation are partially on privately-owned land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Other than some agriculture and ranching, no activities of an economic nature currently occur on the private lands in the area encompassed by this proposed designation. Furthermore, many of these areas are within a State Conservation District and have a very limited range of allowable activities that could occur there under the State Conservation District Use permitting program. Because of the Conservation District zoning, and because many of the sites are so remote and inaccessible that off-road vehicular transport or hiking is normally required for access, new commercial or additional agricultural development is unlikely even at a small scale. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally

involved in funding municipal projects, are unlikely to be involved in projects in these areas. Informal consultation under section 7 of the Act between us and another Federal agency has occurred a total of five times, specifically on the island of Kahoolawe and entirely involved the Department of the Navy.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

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. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have only a minimal consultation history for Blackburn's sphinx moth, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with native Hawaiian arthropods in Hawaii. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species and predators, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents. 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 this designation.

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. The entire designation involves eight sites partially or entirely on State lands, one site partially on Federal land, and six sites partially on privately owned lands, all of which are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, many of the private lands are within a State Agricultural District where few commercial activities are undertaken, or within a State Conservation District where no commercial activities are undertaken at those locations and, therefore, are not likely to require any Federal authorization. In these areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a small subset of the area proposed. The most likely Federal involvement would be through a habitat restoration or conservation activity for this species or another federally listed endangered or threatened species.

Because of the rugged terrain and extreme remoteness of most of the proposed designation areas, we anticipate that projects involving Federal agencies will be infrequent. 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. We are certifying that the proposed designation of critical habitat for Blackburn's sphinx moth 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 analyses of this proposed rule indicate that there may be significant economic impacts on a substantial number of small entities, we will revisit this determination.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) We believe this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, 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 will not produce a Federal mandate 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 Blackburn’s sphinx moth 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.

*Executive Order 13211*

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. 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.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Blackburn’s sphinx moth would have little incremental impact on State and local governments and their activities. 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 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 Department of the Interior’s

Office of the Solicitor has determined that this 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 designate critical habitat in accordance with the provisions of the Act. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized. The proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of Blackburn’s sphinx moth.

*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 the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

*National Environmental Policy Act*

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule 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 the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. The proposed designation of critical habitat for Blackburn’s sphinx moth does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

**References Cited**

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

**Authors**

The primary authors of this document are Mike Richardson and Dave Hopper, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

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

**Proposed Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

2. In § 17.11(h) revise the entry for “Moth, Blackburn’s Sphinx” under “INSECTS” to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
INSECTS							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Moth, Blackburn's sphinx.	* <i>Manduca blackburni</i> .	* U.S.A. (HI) .....	* NA .....	* E	* 682	* 17.95(i) .....	* NA
* 	* 	* 	* 	* 	* 	* 	* 

3. Amend § 17.95(i) by adding critical habitat for the Blackburn's sphinx moth (*Manduca blackburni*) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*  
(i) Insects.  
\* \* \* \* \*

**Blackburn's Sphinx Moth (*Manduca blackburni*)**

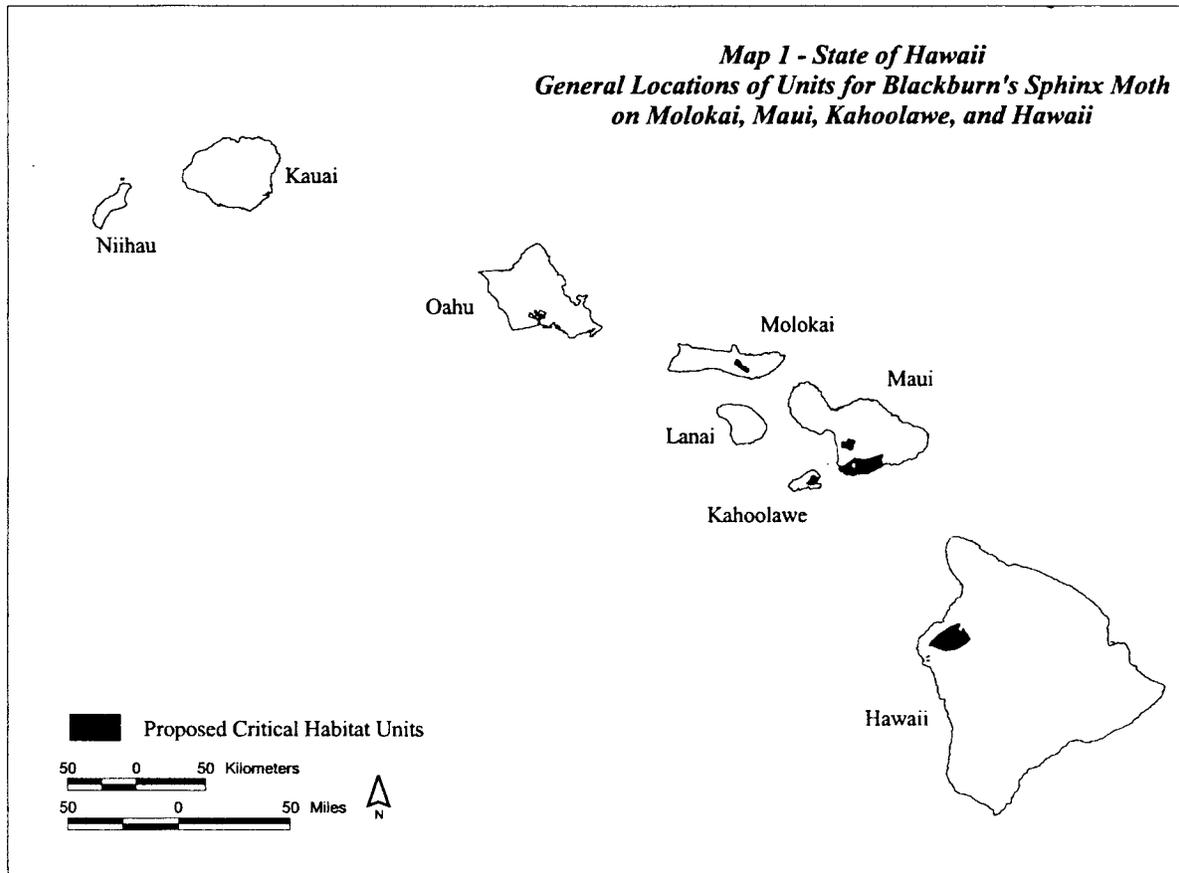
(1) Critical habitat units are depicted for the islands of Maui, Kahoolawe, Hawaii, and Molokai on the maps below.

(2) Found within these areas are the primary constituent elements of critical habitat for Blackburn's sphinx moth that includes specific habitat components

identified as essential for the primary biological needs of foraging, sheltering, maturation, dispersal, breeding, and egg laying. The primary constituent elements required by Blackburn's sphinx moth larvae for foraging and maturation are the two identified larval host plant species within the endemic *Nothocestrum* genus (*Nothocestrum breviflorum* and *Nothocestrum latifolium*) and the dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation that currently support or historically have supported these plants. The primary constituent elements required by Blackburn's sphinx moth adults for foraging, sheltering, dispersal, breeding, and egg production are native, nectar-

supplying plants, including but not limited to *Ipomoea* spp., *Capparis sandwichiana*, and *Plumbago zeylanica* and the dry and mesic habitats between the elevations of sea level and 1,525 m (5,000 ft) and receiving between 25 and 250 cm (10 and 100 in) of annual precipitation that currently support or historically have supported these plants.

(3) Critical habitat does not include existing man-made features and structures within the boundaries of the mapped units, such as houses, offices, warehouses, stores, or any other buildings, roads, aqueducts, antennas, towers, water tanks, agricultural fields, paved areas, residential lawns, gardens, parking lots, cemeteries, and any other urban landscaped areas or man-made structures.



(4) Critical Habitat Unit 1: Island of Maui, Ahihi-Kinau NAR—Ulupalakua—Auwahi—Kanaio Meta Unit (15,217 ha; 37,603 ac).

(i) Unit consists of eighteen boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): coastline. 766711, 2282647; 766747, 2282662; 767710, 2282266; 769673, 2283077; 771466, 2284436; 774373, 2286248; 774750, 2286890; 775222, 2286928; 775776, 2286374; 776595, 2286552; 777581, 2286456; 779622, 2286089; 782827, 2286695;

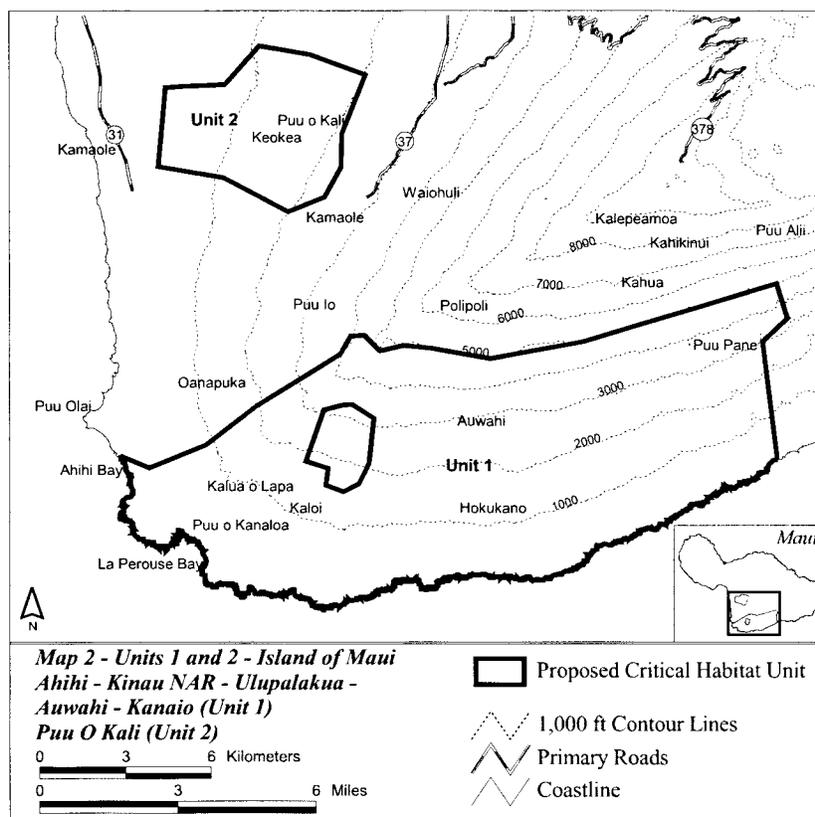
789629, 2288724; 790001, 2287513; 789133, 2286682; 789642, 2282642; 789689, 2282548. coastline.

(ii) Excluding one area (502 ha; 1,241 ac) with eleven boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 774448, 2284474; 774807, 2284493; 775562, 2284002; 775392, 2282436; 775203, 2282020; 775033, 2281700; 774505, 2281416; 773882, 2281643; 773957, 2282247; 773165, 2282492; 773806, 2284304.

(5) *Critical Habitat Unit 2*: Island of Maui, Puu O Kali Unit (2,750 ha; 6,794 ac)

(i) Unit consists of twelve boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 768031, 2292836; 768276, 2295610; 768897, 2295644; 770362, 2295705; 771540, 2297064; 773291, 2296777; 775265, 2296040; 774448, 2294006; 774392, 2292779; 773825, 2291760; 772557, 2291243; 770315, 2292439.

(ii) Units 1 and 2 map follows:



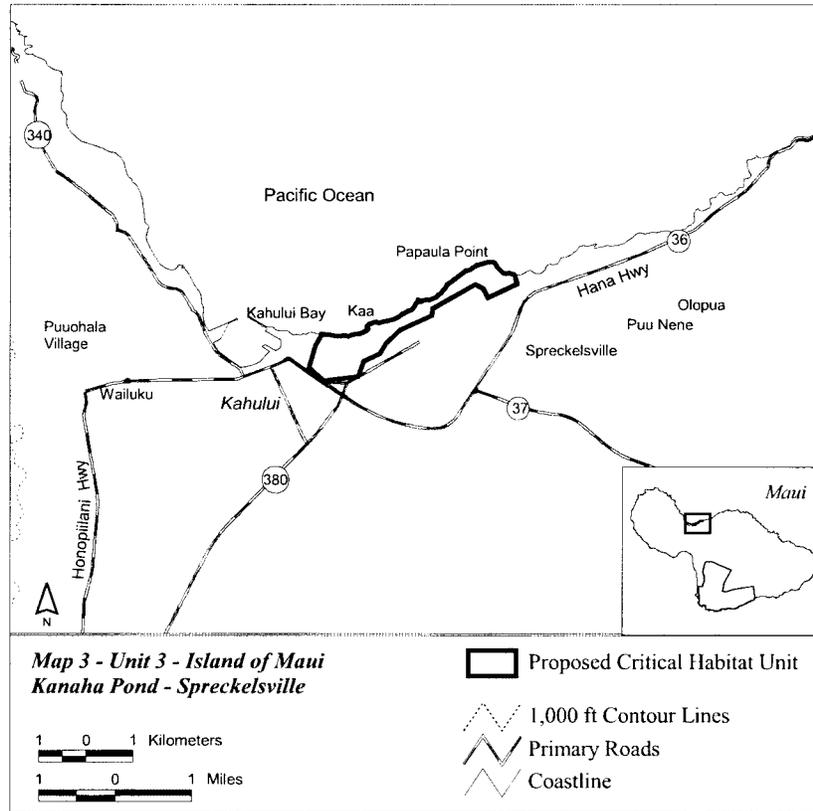
(6) *Critical Habitat Unit 3*: Island of Maui, Kanaha Pond—Spreckelsville Unit (226 ha; 559 ac).

(i) Unit consists of 32 boundary points connecting to the coastline with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): coastline; 768327, 2314328; 768382,

2314137; 767760, 2313845; 767663, 2314040; 767504, 2314125; 766602, 2313625; 766566, 2313467; 765920, 2313174; 765615, 2312894; 765481, 2312662; 765152, 2312516; 765017, 2312187; 764298, 2312089; 763994, 2312370; 764115, 2312821; 764262, 2313077; 768327, 2314328; 768382, 2314137; 767760, 2313845; 767663,

2314040; 767504, 2314125; 766602, 2313625; 766566, 2313467; 765920, 2313174; 765615, 2312894; 765481, 2312662; 765152, 2312516; 765017, 2312187; 764298, 2312089; 763994, 2312370; 764115, 2312821; 764262, 2313077; coastline.

(ii) Unit 3 map follows:



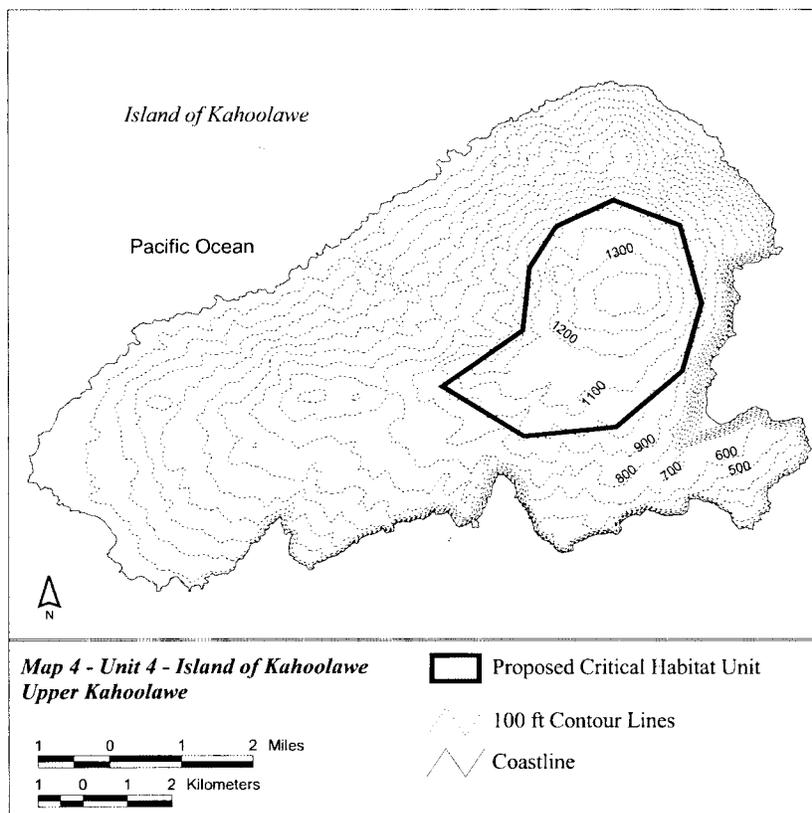
(7) *Critical Habitat Unit 4*: Island of Kahoolawe, Upper Kahoolawe Unit (1,878 ha; 4,641 ac).

(i) Unit consists of 11 boundary points with the following coordinates in UTM

Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 751626, 2276907; 752925, 2277513; 754425, 2276936; 754916, 2275176; 754483, 2273646; 752982,

2272377; 750905, 2272175; 749058, 2273300; 750876, 2274570; 751020, 2275984; 751626, 2276907.

(ii) Unit 4 map follows:



(8) *Critical Habitat Unit 5-A*: Island of Hawaii, Kailua-Kona Unit 5-A (125 ha; 309 ac).

(i) Unit consists of twelve boundary points with the following coordinates in UTM Zone 5 with the units in meters using North American Datum of 1983 (NAD83): 183939, 2179538; 184520, 2179963; 185151, 2180448; 185315, 2180573; 185691, 2180671; 185857, 2180468; 185894, 2179969; 185820, 2179858; 185434, 2179678; 185248, 2179574; 184128, 2179413; 183981, 2179367.

(9) *Critical Habitat Unit 5-B*: Island of Hawaii, Kailua-Kona Unit 5-B (105 ha; 258 ac).

(i) Unit consists of eleven boundary points with the following coordinates in UTM Zone 5 with the units in meters

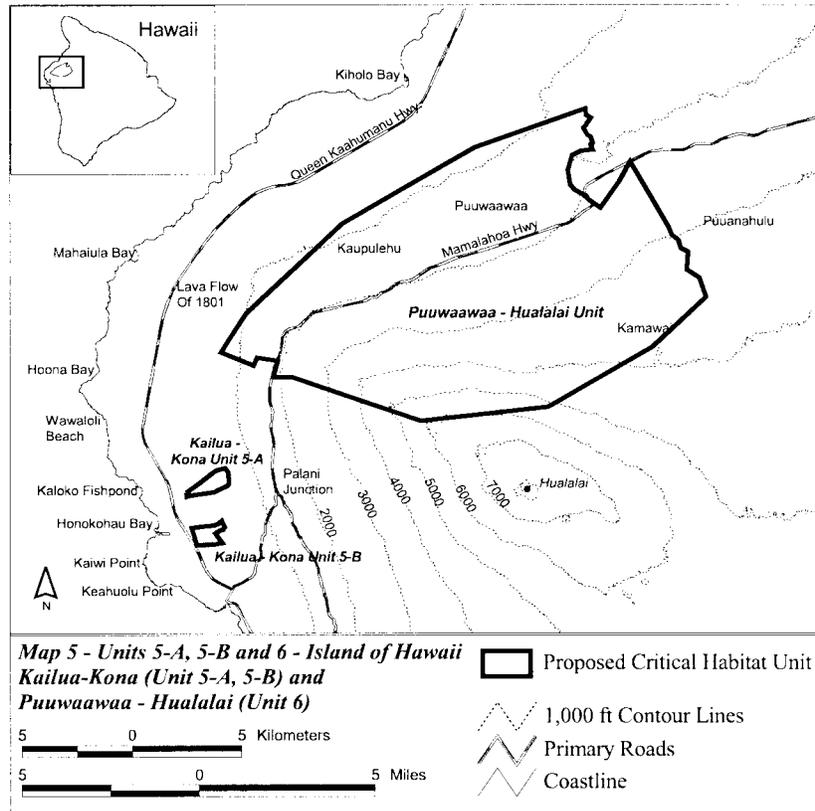
using North American Datum of 1983 (NAD83): 185735, 2177873; 185487, 2177806; 185264, 2177683; 185592, 2177229; 185290, 2177181; 184428, 2177141; 184179, 2177926; 184567, 2177983; 185170, 2178035; 185410, 2178129; 185570, 2178249.

(10) *Critical Habitat Unit 6*: Island of Hawaii, Puuwaawaa-Hualalai Unit (18,111 ha; 44753 ac).

(i) Unit consists of forty-two boundary points with the following coordinates in UTM Zone 5 with the units in meters using North American Datum of 1983 (NAD83): 197118, 2195356; 202108, 2197143; 202133, 2196862; 202349, 2196713; 202177, 2196459; 202117, 2196355; 202013, 2196242; 202195, 2195935; 202342, 2195847; 202416,

2195563; 202342, 2195466; 202422, 2195266; 201923, 2195212; 201490, 2194988; 201289, 2194293; 201423, 2193644; 201610, 2193412; 201976, 2193196; 202259, 2192949; 202797, 2192583; 203648, 2193808; 204126, 2194708; 205894, 2191689; 206044, 2191339; 206344, 2191105; 206443, 2190759; 206778, 2190572; 206728, 2189754; 207295, 2189387; 207595, 2188520; 205155, 2186232; 200424, 2183478; 194641, 2182859; 188871, 2184829; 187928, 2184862; 188121, 2185610; 187173, 2185749; 187029, 2185392; 185530, 2185978; 185844, 2186480; 186693, 2187771; 191074, 2191859.

(ii) Unit 5-A, Unit 5-B, and Unit 6 map follows:



**Map 5 - Units 5-A, 5-B and 6 - Island of Hawaii**  
**Kailua-Kona (Unit 5-A, 5-B) and**  
**Puuwaawaa - Hualalai (Unit 6)**

- Proposed Critical Habitat Unit
- 1,000 ft Contour Lines
- Primary Roads
- Coastline

5 0 5 Kilometers  
 5 0 5 Miles

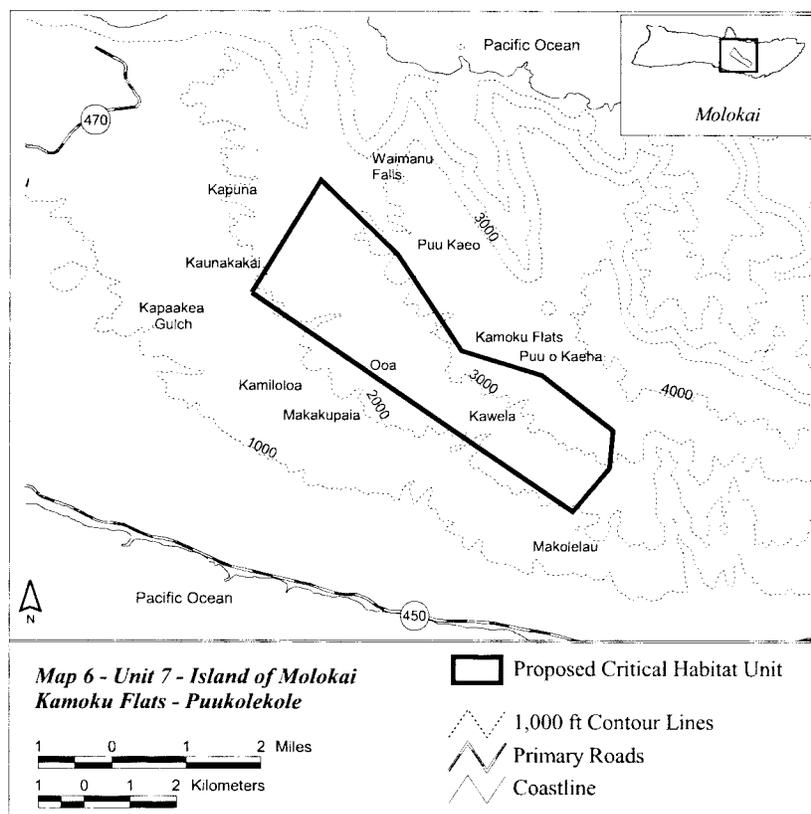
(11) *Critical Habitat Unit 7*: Island of Molokai, Kamoko Flats—Puukolekole Unit (1,829 ha; 4,520 ac).

(i) Unit consists of nine boundary points with the following coordinates in

UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 710484, 2337505; 711990, 2339952; 713666, 2338327; 715057,

2336242; 716822, 2335699; 718354, 2334492; 718279, 2333663; 717488, 2332722; 710484, 2337505.

(ii) Unit 7 map follows:



\* \* \* \* \*

Dated: May 17, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-14683 Filed 6-12-02; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### **Endangered and Threatened Wildlife and Plants; Review of Species That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Recycled Petitions; Annual Description of Progress on Listing Actions**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of review.

**SUMMARY:** In this candidate notice of review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of

1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to the species.

We request additional status information that may be available for the identified candidate species and information on species that we should include as candidates in future updates of this list. We will consider this information in preparing listing documents and future revisions to the notice of review. This information will help us in monitoring changes in the status of candidate species and in conserving candidate species.

We announce the availability of Candidate and Listing Priority Assignment Forms (candidate forms) for each candidate species. These documents describe the status and threats that we evaluated in order to assign a listing priority number to each species. We also announce our findings on recycled petitions and describe our progress in revising the Lists of

Endangered and Threatened Wildlife and Plants during the period October 30, 2001 to May 30, 2002.

**DATES:** We will accept comments on the candidate notice of review at any time.

**ADDRESSES:** Submit your comments regarding a particular species to the Regional Director of the Region identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species. You may submit comments of a more general nature to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (703/358-2171). Written comments and materials received in response to this notice will be available for public inspection by appointment at the Division of Conservation and Classification (for comments of a general nature only) or at the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION**.

Information regarding the range, status, and habitat needs of and listing priority assignment for a particular species is available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION**, at the Division of Conservation and Classification, Arlington, Virginia (see address above), or on our internet

website (<http://www.endangered.fws.gov>).

**FOR FURTHER INFORMATION CONTACT:** The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chris Nolin, Chief, Division of Conservation and Classification (703/358-2171).

**SUPPLEMENTARY INFORMATION:**

**Candidate Notice of Review**

*Background*

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher-priority listing actions. We maintain this list for a variety of reasons, including: to notify the public that these species are facing threat to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to solicit input from interested parties to identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to solicit information needed to prioritize the order in which we will propose species for listing.

Table 1 of this notice includes 260 species that we regard as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists), as well as 39 species for which we have published proposed rules to list as threatened or endangered species, most of which we identified as candidates in the October 30, 2001, Candidate Notice of Review (66 FR 54808). We encourage consideration of these species in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500-1508) and in local and statewide land use planning. Table 2 of this notice contains eight species we identified as candidates or as proposed species in the October 30, 2001, Candidate Notice of

Review that we now no longer consider candidates. This includes six species we listed as threatened or endangered since October 30, 2001, and two species we removed as candidates through this notice. The Regional Offices identified as having lead responsibility for the particular species will continually revise and update the information on candidate species. We intend to publish an updated combined notice of review for animals and plants, including our findings on recycled petitions and a description of our progress on listing actions, annually in the **Federal Register**.

*Previous Notices of Review*

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94-51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. A new comprehensive notice of review for native plants, which took into account the earlier Smithsonian report and other accumulated information, superseded the 1975 notice on December 15, 1980 (45 FR 82479). On November 28, 1983 (48 FR 53640), a supplemental plant notice of review noted changes in the status of various species. We published complete updates of the plant notice on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), September 30, 1993 (58 FR 51144), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57534), and October 30, 2001 (66 FR 54808). On January 8, 2001 (66 FR 1295), we published our recycled petition finding for one plant species that had an outstanding warranted but precluded finding.

Previous animal notices of review included a number of the animal species in the accompanying Table 1. We published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). We published an initial comprehensive review for invertebrate animals on May 22, 1984 (49 FR 21664). We published a combined animal notice of review on January 6, 1989 (54 FR 554), and with minor corrections on August 10, 1989 (54 FR 32833). We again published

comprehensive animal notices on November 21, 1991 (56 FR 58804), November 15, 1994 (59 FR 58982), and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57534), and October 30, 2001 (66 FR 54808). On January 8, 2001 (66 FR 1295), we published our recycled petition findings for 25 animal species that had outstanding warranted but precluded findings as well as notice of 1 candidate removal. This revised notice supersedes all previous animal, plant, and combined notices of review.

*Current Notice of Review*

We gather data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those species that we currently regard as candidates for addition to the Lists. These species include, by definition, biological species; subspecies of fish, wildlife, or plants; and distinct population segments (DPSs) of vertebrate animals. In issuing this compilation, we rely on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies (such as the Forest Service and the Bureau of Land Management), knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 are arranged alphabetically by common names under the major group headings for animals first, then alphabetically by names of genera, species, and relevant subspecies and varieties for plants. Animals are grouped by class or order. Plants are subdivided into three groups: flowering plants, conifers and cycads, and ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an equals sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics) followed by "sp." or "ssp." We incorporate standardized common names in these notices as they become available. We sorted plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all species that we regard as candidates for listing and all species

proposed for listing under the Act. We emphasize that we are not proposing these candidate species for listing by this notice, but we anticipate developing and publishing proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

Species in Table 1 of this notice are assigned to several status categories, noted in the "Category" column at the left side of the table. We explain the codes for the category status column of species in Table 1 below:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register** (exclusive of species for which we have withdrawn or finalized the proposed rule).

PT—Species proposed for listing as threatened.

C—*Candidates*: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher priority listing actions. This category includes species for which we made a "warranted but precluded" 12-month finding on a petition to list. We made new findings on all petitions for which we previously made "warranted but precluded" findings. We identify the species for which we made a continued "warranted but precluded" finding on a recycled petition by the code "C\*" in the category column (see Findings on Recycled Petitions section for additional information).

The column labeled "Priority" indicates the listing priority number (LPN) for each candidate species that we use to determine the most appropriate use of our available resources, with low numbers having the highest priority. We assign this number based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** on September 21, 1983 (48 FR 43098).

The third column identifies the Regional Office to which you should direct comments or questions (see addresses at the end of the **SUPPLEMENTARY INFORMATION** section). We provided the comments received in response to the 1999 notice of review to the Region having lead responsibility for

each candidate species mentioned in the comment. We will likewise consider all information provided in response to this notice of review in deciding whether to propose species for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the species, which is maintained at the appropriate Regional Office.

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are species we included either as proposed species or as candidates in the 2001 notice of review. Since the 2001 CNOR, we added six of these species to the Lists of Endangered and Threatened Wildlife and Plants. We removed the other two species from candidate status for the reasons as indicated by the codes. The first column indicates the present status of the species, using the following codes:

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list because currently available information does not support a proposed listing.

Rp—Species we removed from the candidate list because we have withdrawn the proposed listing.

The second column indicates why we no longer regard the species as a candidate or proposed species using the following codes:

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuing candidate status, or issuing a proposed or final listing. The reduction in threats could be due, in part, or entirely, to actions taken under a conservation agreement.

F—Species whose range no longer includes a U.S. territory.

I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M—Species we mistakenly included as candidates or proposed species in the last notice of review.

N—Species that are not listable entities based on the Act's definition of "species" and current taxonomic understanding.

X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historic range include information as previously described for Table 1.

### Summary

Since publication of the 2001 notice of review, we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species and to reevaluate the relative listing priority assignment of each species. We also evaluated whether we should emergency list any of these species, particularly species with high priorities (*i.e.*, species with LPNs of 1, 2, or 3). We undertook this effort to ensure we focus conservation efforts on those species at greatest risk. As of May 30, 2002, 7 plants and 27 animals are proposed for endangered status; 5 animals are proposed for threatened status (one is proposed due to similarity in appearance); and 141 plant and 119 animal candidates are awaiting preparation of proposed rules (see Table 1). Table 2 includes 8 species that we previously classified as either proposed for listing or candidates that we no longer classify in those categories.

### Summary of New Candidates

Below we present brief summaries of new candidates. Complete information, including references, can be found in the candidate forms. You may obtain a copy of these forms from the Regional office that has the lead for the species or from our internet website (<http://endangered.fws.gov>).

#### Amphibians

Relict leopard frog (*Rana onca*)—The relict leopard frog is a medium-sized brownish grey frog in the family Ranidae. Considered extinct since the 1950s, the species was rediscovered in 1991. Its current distribution is limited to 5 sites within 2 general areas in Nevada, although historical records exist at more than 12 sites along the Virgin and Colorado Rivers in Utah, Nevada, and Arizona. Since its rediscovery, 2 of the 5 sites have been extirpated. Primary threats include decreased water availability due to dam construction for power management, conversion of wetland habitat to agriculture and urbanization, introduction of predatory game fishes,

and habitat degradation through recreational use. Currently, State and local regulations have been insufficient to protect the relict leopard frog and its habitat. We have determined that, although the threats are of high magnitude, they are nonimminent; therefore, we assigned a listing priority number of 5 to this species.

Austin blind salamander (*Eurycea waterlooensis*)—The Austin blind salamander is a small aquatic salamander approximately 6.4 centimeters (cm) (2.5 inches (in)) in length. The species lacks external eyes, has permanent external gills, a narrow head, and an extended snout. The Austin blind salamander is known from three spring outlets in Travis County, Texas. The species is believed to spend most of its life cycle underground, living in the Edwards Aquifer. Primary threats include degradation of water quality and quantity due to urbanization. Water quality data reflect a long-term trend of water quality degradation within Austin blind salamander habitat over the past 25 years. Currently no State or Federal regulations provide protection for this salamander. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

California tiger salamander, Sonoma County DPS (*Ambystoma californiense*)—The California tiger salamander is a large, stocky, terrestrial salamander with a broad, rounded snout and is restricted to grasslands and lower foothill regions of California. The Sonoma County population of the California tiger salamander is presumed to have historically occurred in suitable habitat throughout the Santa Rosa Plain in Sonoma County in the North Bay Area. The Sonoma County population of the California tiger salamander has been extirpated from much of its historic range and is limited in its remaining habitat. All breeding sites, including those located in preserves, are currently affected by urban impacts (mostly housing developments) within 1 kilometer of the breeding pool location. One breeding site is affected by agricultural impacts such as discing, orchards, and vineyard conversion. Vandalism, collecting, harassment, and killing are serious threats to the species, given the fact that virtually every remaining population is surrounded by or adjacent to residential development. Predation is a significant problem for the Sonoma County California tiger salamander population. Introduced bullfrogs and fish, such as mosquitofish, that feed on the eggs and larvae inhabit many pools that hold water all year. This effectively eliminates the

Sonoma County California tiger salamander from pools that otherwise would be valuable breeding grounds. Domestic dogs and cats from urbanized areas may harm migrating Sonoma County California tiger salamanders. Several other factors may have an adverse impact on the Sonoma County California tiger salamanders including increased traffic. Increased vehicular traffic results in direct mortality, as well as indirect mortality by pollution through car emissions which reduces the number of invertebrates found in pools, a food source for California tiger salamanders. Other contaminants, rodent control, and use of water from breeding ponds for irrigation and flood control may also adversely affect Sonoma County California tiger salamanders. Existing regulations are inadequate to protect the Sonoma County California tiger salamander. For example, protection offered by the Clean Water Act extends only to the pool itself with a small upland buffer. This is insufficient to protect most adult California tiger salamanders, which spend the majority of their life cycle in upland habitats that extend well beyond the upland boundary. Since Sonoma County California tiger salamanders spend up to 80 percent of their life in small mammal burrows in upland habitats surrounding breeding pools, the protection of the pool itself, with concurrent loss of uplands surrounding the pool, would still result in the loss of local Sonoma County California tiger salamanders. The Sonoma County California tiger salamander is a species of special concern under the California Endangered Species Act (CEQA), which requires a full disclosure of the potential environmental impacts of proposed projects. However, protection of listed species through CEQA is dependent upon the discretion of the agency involved in the project, and projects may be approved that cause significant environmental damage, such as destruction of listed endangered species and/or their habitat. Based on imminent threats of a high magnitude, we assigned a listing priority number of 3 to this DPS.

Salado salamander (*Eurycea chisholmensis*)—The Salado salamander is a small aquatic salamander approximately 5 cm (2 in) in length. The species is known from two spring sites fed by the Edwards Aquifer near Salado in Bell County, Texas. Primary threats include degradation of water quality and quantity due to urbanization. Several spills of gasoline and petroleum in the local area have likely resulted in groundwater contamination that affects

the species. Currently no State or Federal regulation provides protection for this salamander. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

#### Fish

Chucky madtom (*Noturus sp.cf. Noturus elegans*)—The chucky madtom is currently restricted to two sites in Little Chucky Creek in Greene County, Tennessee. Preliminary genetic analyses have indicated that the chucky madtom is a unique species; scientists are currently completing a formal description that will result in the taxon becoming a distinct species. Historically, this species was previously collected from Dunn Creek, a stream that is in a different watershed and physiographic province than Little Chucky Creek, so it is likely that the historic range of the chucky madtom encompassed a wider area in the Ridge and Valley and Blue Ridge physiographic provinces in Tennessee than is demonstrated by its current distribution. Since this species is only known to occur in one stream, it is vulnerable to random catastrophic events that may extirpate it. The chucky madtom is a bottom-dwelling species and is susceptible to sedimentation and other pollutants that degrade or eliminate habitat and food sources. The majority of the Little Chucky Creek watershed is privately owned and managed for beef cattle production, tobacco cultivation, and row crops, especially corn and soybeans. Therefore, nonpoint source sediment and agrochemical inputs into Little Chucky Creek from local agricultural and other sources can adversely affect the chucky madtom by altering the physical characteristics of its habitat. Such alterations would impede its ability to feed, seek shelter from predators, and successfully reproduce. The Dunn Creek watershed shares some of these same agricultural pressures, and these will continue to threaten the species if it still occurs there. Additional threats within the Dunn Creek watershed also include residential development and associated new infrastructure (e.g., roads, utilities, etc.) that contribute sediment and other pollutants to the stream or alter riparian areas. Overall, we believe that the potential demographic effects of inbreeding, limited species distribution, and low number of individuals pose the most significant threats to the chucky madtom. Although the chucky madtom was listed as endangered by the State of Tennessee, this listing only requires collectors of this species to have a State collection permit and does not provide

adequate protection to this species. Because the threats to the chunky madtom are of a high magnitude and imminent, we assigned this species a listing priority number of 2.

Grotto sculpin (*Cottus* sp., sp. nov.)—The Grotto sculpin is a small fish within the banded sculpin taxonomic complex that exhibits cave-adapted features, including nearly nonfunctional eyes, reduced skin pigmentation, and smaller optic nerves. The species inhabits pools and riffles within cave systems in two karst (cave) areas in Perry County, Missouri. Only a few thousand individuals are thought to exist. The species is threatened by water quality contamination as a result of point and nonpoint pollution sources. A large die-off of all Grotto sculpins in one of the five known occupied cave systems known to have the species was likely a result of pollution. The species is also threatened by predatory fish that likely prey upon Grotto sculpin, which are known from all locations occupied by the species. Currently no State or Federal regulations provide protection for the Grotto sculpin. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

Rush darter (*Etheostoma phytophilum*)—The rush darter, a medium-sized darter (40 millimeters (mm) (2 in)), is currently known to have one of the most restricted distributions of any vertebrate in Alabama. Historically, rush darters have been found in three distinct watersheds, but currently there are only two known populations. One population is located in Wildcat Branch and Mill Creek in the Clear Creek drainage in Winston County, and the second is located in an unnamed spring run to Beaver Creek and in Penny Springs in the Turkey Creek drainage in Jefferson County. The rush darter is vulnerable to nonpoint source pollution, urbanization, and changes in stream geomorphology due to its localized distribution in parts of two unconnected stream drainages and its apparent low population sizes. The rush darter's range is close to metropolitan Birmingham, Alabama, an area in which all of the activities listed above are occurring, so impacts from these activities on the rush darter and its habitat have occurred and are very likely to continue to occur. The disjunct distribution of the rush darter makes their populations vulnerable to extirpation from catastrophic events, such as toxic spills or changes in flow regimes. Currently no State or Federal regulations provide protection for the rush darter. Based on nonimminent threats of a high magnitude, we assigned

a listing priority number of 5 to this species.

Sharpnose shiner (*Notropis oxyrhynchus*)—The sharpnose shiner is a small, slender minnow, endemic to the Brazos River Basin in Texas. Historically, the sharpnose shiner existed throughout the Brazos River and several of its major tributaries within the watershed. Current information indicates that the population within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable, while the population within the Middle and Lower Brazos River Basins may only exist in remnant areas of suitable habitat, or may be completely extirpated, representing a reduction of approximately 64 percent of its historical range. The most significant threat to the existence of the sharpnose shiner is the present and continued modification of its habitat by reservoir construction, irrigation and water diversion, sedimentation, industrial and municipal discharges, and agricultural activities. The current limited distribution of the sharpnose shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. Other possible threats include toxins released by blooms of golden algae, and sand and gravel operations in the Lower Brazos River. The effects of these last two possible threats may be insignificant, but further information is necessary. State law does not provide protection for the sharpnose shiner. Because these threats are nonimminent but of a high magnitude, we assigned a listing priority number of 5 to this species.

Smalleye shiner (*Notropis buccula*)—The smalleye shiner is a small, pallid minnow endemic to the Brazos River Basin in Texas. The population of smalleye shiners within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable. However, the shiner has not been collected since 1976 downstream from the reservoir, and in all likelihood the species is completely extirpated from this area representing a reduction of approximately 64 percent of its historical range. The most significant threat to the existence of the smalleye shiner is the present and continued modification of its habitat by reservoir construction, irrigation and water diversion, sedimentation, industrial and municipal discharges, and agricultural activities. The current limited distribution of the smalleye shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as introduction

of competitive species or prolonged drought. State law does not provide protection for the smalleye shiner. Because these threats are high but nonimminent, we assigned a listing priority number of 5 to this species.

#### Clams

Altamaha spiny mussel (*Elliptio spinosa*)—The Altamaha spiny mussel is a freshwater mussel endemic to the Altamaha River drainage of southeastern Georgia. Individuals are medium to large in size, greenish-yellow to deep brown in color, and have one to five prominent spines on the shells. Historically known from four rivers, the Altamaha spiny mussel appears to remain in two of these in greatly reduced numbers. The species is threatened throughout its range by sedimentation and contamination of waterways. One population is additionally threatened by the proposed expansion of a nuclear power plant, which may result in habitat alteration from changes in stream channel morphology, and in heat stress to individuals and populations, algal blooms, and oxygen depletion as a result of thermal discharges during low water conditions. We have determined that, although the threats are of high magnitude, they are nonimminent; therefore, we assigned a listing priority number of 5 to this species.

#### Snails

Elongate mud meadows pyrg (*Pyrgulopsis notidicola*)—The elongate mud meadows pyrg is a small freshwater springsnail found only in a 300 meter (984 foot) stretch of a single thermal spring and associated outflow in Humboldt County, Nevada. The primary threat to the species is alteration and degradation of its habitat by recreational users that come to the spring to bathe. Visitor use of this area has increased substantially over the past decade due to increased awareness of the site and the recent designation of it as a national conservation area. Although the land is owned and managed by the Bureau of Land Management, the remote nature of the site has made it difficult to manage visitor use, implement conservation actions, and enforce regulations. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

#### Insects

Dakota skipper (*Hesperia dacotae*)—The Dakota skipper is a small-to mid-sized butterfly that inhabits high-quality tallgrass and mixed grass prairie in Minnesota, North Dakota, South Dakota,

and the provinces of Manitoba and Saskatchewan in Canada. The species appears to have been extirpated from Iowa and Illinois, as well as many sites within States with extant locations. The species is threatened by the large-scale conversion of native prairie to agricultural purposes, as well as fire management, grazing, plant invasion, and fragmentation of habitat leading to local extirpations. Although the species is listed as threatened by the State of Minnesota, this designation lacks the habitat protections needed for long-term conservation. The species is listed as endangered by the province of Manitoba. However, the protections in Manitoba are not sufficient to remove the threats to the species. Due to efforts that have been made to preserve habitat through conservation easements at some of the known locations, the threats to the species are low to moderate and nonimminent. Therefore, we assigned a listing priority number of 11 to the species.

Stephan's riffle beetle (*Heterelmis stephani*)—Stephan's riffle beetle is found only in limited spring environments within the Santa Rita Mountains, Pima County, Arizona. Based on relatively intensive surveys of the surrounding area, the entire range of this species is believed to be confined to Madera Canyon where it lives in shallow streams, rapids, or other comparable water situations. The springs where Stephan's riffle beetle is known to occur no longer exist in their natural condition; all have been boxed, capped, or channeled into pipes. The loss of habitat at the type locality (location where the species was first described) has eliminated what was likely a significant population of this species. In the absence of public education, recreationists that use the springs may unwittingly degrade habitat by introducing chemicals or allowing pets into the springs. Additionally, endemic spring-dependent organisms whose populations exhibit a high degree of geographic isolation, like Stephan's riffle beetle, are extremely susceptible to random extinction resulting from catastrophic natural disasters such as fires, floods, or changes in spring water chemistry. Currently, no State or local government programs exist that address the conservation of rare and imperiled insects such as this beetle. Based on nonimminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

#### Flowering Plants

*Calochortus persistens* (Siskiyou mariposa lily)—*Calochortus persistens* is a narrow endemic that is restricted to

two disjunct ridge tops in the Klamath-Siskiyou Range, on the California-Oregon border. In California, this species is currently found at nine separate sites on approximately 10 hectares (ha) (24.7 acres (ac)) of Klamath National Forest and privately owned lands that stretch for 6 kilometers (km) (3.7 miles (mi)) along the Gunsight-Humbug Ridge. The Oregon population was described in 1998 as five plants in an area of a few square feet, but no plants have been seen at this site for the past 2 years. Major threats include fire suppression resulting in shading; competition by native and nonnative species; increased fuel loading; fragmentation by roads, fire breaks, tree plantations, and radio-tower facilities; maintenance and construction around radio towers and telephone relay stations located on Gunsight Peak and Mahogany Point; and soil disturbance and exotic weed and grass species introduction as a result of heavy recreational use. *Isatis tinctoria* (dyer's woad), a plant thought to prevent *C. persistens* seedling establishment, is now found throughout the California population, affecting 90 percent of the known lily habitat. Forest Service staff and the Klamath-Siskiyou Wildlands Center cite competition with dyer's woad as a significant and chronic threat to the survival of *C. persistens*. Unpublished data show that there has been no successful reproduction of *C. persistens* in the last 5 years. The combination of restricted range, apparent loss of one of two disjunct populations, poor competitive ability, short seed dispersal distance, slow growth rates, extremely low or absent seed production, and competition from exotic plants threaten the continued existence of this species. Due to imminent threats of a high magnitude, we assigned a listing priority number of 2 to this species.

*Ivesia webberi* (Webber ivesia)—*Ivesia webberi* is a low, spreading, perennial herb that occurs very infrequently in Lassen, Plumas, and Sierra Counties in California, and in Douglas and Washoe Counties, Nevada. The 15 currently known occurrences are clustered in seven general locations covering about 75 hectares (ha) (185 acres (ac)). The species occurs in immediate proximity to rapidly growing urban areas in the foothills of the Sierra Nevada and in the western Great Basin near Reno, Nevada. Threats to *I. webberi* generally include urban development, authorized and unauthorized roads, off-road vehicle activities and other dispersed recreation, livestock grazing and trampling, fire and fire suppression

activities including fuels reduction and prescribed fires, and displacement by noxious weeds. Evidence of impacts from these types of uses has been documented at the majority of *I. webberi* populations. The Bureau of Land Management classifies *I. webberi* as a sensitive species; however, no specific management guidelines to ensure the conservation of this species are currently being implemented. *Ivesia webberi* is designated as threatened by the Nevada Native Plant Society, and participants of the 2000 Nevada Rare Plant Workshop recommended that the State of Nevada consider the species for listing as critically endangered under Nevada Revised Statutes (NRS) 527.270 *et seq.* If the species were to be listed under the NRS, permits for the disturbance of habitat or taking of individuals would have to be obtained from the Nevada Division of Forestry. The adequacy of this law depends greatly on informed and cooperative landowners and land managers or some form of deterrent enforcement, which the current NRS do not articulate. This plant is on the California Native Plant Society's (CNPS) 1B list (plants considered rare, threatened, or endangered in California and elsewhere), which meets the definitions under the Native Plant Protection Act and the California Endangered Species Act and is eligible for State listing. Plants on the CNPS 1B list must be fully considered during the environmental documentation process under the California Environmental Quality Act (CEQA). However, CEQA only requires disclosure of a project's impacts on the species; it does not provide protective management for *I. webberi*. Because these threats are high in magnitude but nonimminent, we assigned a listing priority number of 5 to this species.

*Potentilla basaltica* (Soldier Meadows cinquefoil or basalt cinquefoil)—*Potentilla basaltica* is a low-growing, herbaceous perennial known only from Soldier Meadow in Humboldt County, Nevada, and Ash Valley in Lassen County, California. It is restricted to moist meadows and seeps and their margins in alkaline, sandy soils between 1,320 and 1,555 meters (m) (4,330 and 5,100 feet (ft)) elevation. In general, populations of *P. basaltica* are distant from urban centers; however, these areas are popular for recreation and are often affected by livestock grazing. While all of the occurrences of *P. basaltica* are currently presumed extant, all are being severely affected by land uses within and around Ash Valley in California and the Black Rock region in Nevada. Various direct impacts to *P.*

*basaltica* populations and habitat have occurred in past years and continue to affect the species, including channelizing spring outflow for livestock and recreational uses; trampling by livestock; degradation or elimination of habitat for agriculture, livestock grazing, and recreational uses; development of hot springs and camping areas; roads and off-highway vehicle activity; geothermal exploration; and introduction of invasive, nonnative species. The Bureau of Land Management classifies *P. basaltica* as a sensitive species; however, no specific management guidelines to ensure the conservation of this species are currently being implemented. This plant is on the CNPS 1B list (plants considered rare, threatened, or endangered in California and elsewhere), which indicates the plant meets the definitions under the Native Plant Protection Act and the California Endangered Species Act and is eligible for State listing. Plants on the CNPS 1B list must be fully considered during the environmental documentation process under CEQA. However, CEQA only requires disclosure of a project's impacts on the species; it does not provide protective management for *P. basaltica*. *Potentilla basaltica* is not currently listed by the State of Nevada but is considered threatened by the Nevada Native Plant Society. Because the threats to this species are high in magnitude but nonimminent, we assigned it a listing priority number of 5.

#### Summary of Listing Priority Changes in Candidates

##### Birds

Western Sage Grouse, Columbia Basin Distinct Population Segment (*Centrocercus urophasianus phaios*)—We changed the listing priority number from a 9 to a 6 because the threats are now of a high magnitude for the species based on the small and fragmented nature of the population and by a 30 percent decline in abundance of this DPS between 2000 and 2001. While this species exhibits natural fluctuations in population size, the overall population estimate of approximately 700 individuals is the lowest ever recorded. However, there is no apparent direct cause-and-effect between the identified threats and the recent decline. We also have determined that the threats previously considered imminent are no longer imminent. Military training constitutes the primary threat to the southern population, while habitat conversion (primarily loss of Conservation Reserve Program (CRP)

acreage) is the primary threat impacting the northern subpopulation. We have concluded that threats related to military training are not imminent, based on the implementation of the Army's conservation measures, and considerably lower levels of actual training (from planned activities) occurring in Yakima and Kittitas Counties. We have likewise concluded that the threat to the northern population from habitat conversion is also not imminent, because much of the CRP acreage that could have expired was re-signed and increased in 1998 in Douglas County. Thus, threats previously classified as imminent are actually non-imminent in nature.

##### Fish

Arkansas darter (*Etheostoma cragini*)—We changed the listing priority number from a 5 to an 11 because the species appears to be stable throughout much of its range, and the threats to the species from water depletion no longer appear to be of high magnitude.

##### Snails

Chupadera springsnail (*Pyrgulopsis chupaderae*)—We changed the listing priority number from an 8 to a 2 because the threats are now high for the species due to intentional burning in January 2002 of the wetland vegetation at the only known location of the species. Therefore, we are classifying the immediacy of the threats as imminent.

##### Flowering Plants

Florida semaphore cactus (*Consolea (Opuntia) corallicola*)—We changed the listing priority number from a 5 to a 2 because the threats to the species are more imminent than previously known. The species is known from only two sites, one of which was recently discovered. The original population was determined to only contain males, which eliminates the possibility of sexual reproduction at the site and reduces the genetic viability. In addition, the new population is threatened by an introduced moth that has decimated populations of other cactus species within the same genus.

Umtanum desert buckwheat (*Eriogonum codium*)—We changed the listing priority number from a 5 to a 2 because we discovered new information about the lack of reproduction in the species, which increases the imminence of threat of decimation through wildfire and human disturbance.

#### Candidate Removals

##### Insects

Fabulous green sphinx moth (*Tinostoma smargdites*)—Only 17 specimens of this moth have ever been found since it was first discovered in 1895, through 1998, the last survey effort we funded. During the 1998 survey, we hoped to learn the host plant for the moth. However, the completed survey did not provide any additional information on the host plant. Because of this, we have insufficient information on the specific threats to this species. Thus we are removing this species as a candidate, due to the lack of key specific information for this species.

##### Flowering Plants

*Pleomele fernaldii* (Hala pepe)—*Pleomele fernaldii* is being removed since it was mistakenly included as a candidate in the previous candidate notice of review.

#### Petition for a Candidate Species

The Act provides two mechanisms for considering species for listing. First, the Act requires us to identify and propose for listing those species that require listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. Second, the Act provides a mechanism for the public to petition us to add a species to the Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing is warranted (a "90-day finding"). If we make a positive 90-day finding, under section 4(b)(3)(B) we must make one of three possible findings within 12 months of the receipt of the petition (a "12-month finding").

The first possible 12-month finding is that listing is not warranted, in which case we need take no further action on the petition. Second, we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, section 4(b)(5) and (6) govern further procedures, regardless of whether or not we issued the proposal in response to a petition. Third, we may find that listing is "warranted but precluded." Such a finding means that immediate publication of a proposed rule to list the species is precluded by higher priority listing proposals, and that we are making expeditious progress to add and remove species from the Lists, as appropriate.

The standard for making a 12-month warranted but precluded finding on a petition to list a species is identical to our standard for making a species a candidate for listing. Therefore, we add all petitioned species subject to such a finding to the candidate list. Similarly, we can treat all candidates as having been subject to both a positive 90-day finding and a warranted but precluded 12-month finding. This notice constitutes publication of such findings pursuant to section 4(b)(3) for each candidate species listed in Table 1 that is the subject of a subsequent petition to list as threatened or endangered. Under our Petition Management Guidance, made available on July 9, 1996 (61 FR 36075), we consider a petition to list a species already on the candidate list to be a second petition and, therefore, redundant. We do not interpret the petition provisions of the Act to require us to make a duplicative finding. Therefore, we are not making additional 90-day findings or initial 12-month findings on petitions to list species that are already candidates.

Pursuant to section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as recycled petition findings. As discussed below, we will make recycled petition findings for petitions on such species via our Candidate Notices of Review such as this one.

On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 CNOR (64 FR 57534 (Oct. 25, 1999)) did not constitute valid warranted but precluded 12-month petition findings for the Gila chub and Chiracahua leopard frog. *Center for Biological Diversity v. Norton*, 254 F.3d 833 (9th Cir. 2001). In particular, the Court found that inclusion of these species as one line each on the table of candidates in the 1999 CNOR, with no further explanation, did not satisfy the section 4(b)(3)(B)(iii)'s requirement that the Service publish "a description and evaluation of reasons and data on which the finding was based" in the **Federal Register**. The Court found that this one-line statement of candidate status also precluded meaningful judicial review. Moreover, the Court found that candidate status did not guarantee that annual reviews of warranted but precluded petitioned species would take place pursuant to section 4(b)(3)(C)(i). Finally, the Court suggested, but did not decide, that the 1999 CNOR met the

Act's requirements for positive 90-day petition findings.

Although we do not agree with the conclusions of the Ninth Circuit, we have drafted subsequent CNORs (including this one) to address the Court's concerns. We have included below a description of why the listing of every petitioned candidate species is both warranted and precluded at this time. Pursuant to section 4(b)(3)(C)(ii), any party with standing may challenge the merits of one of our petition findings incorporated in this CNOR. The analysis included herein, together with the administrative record for the decision at issue, will provide an adequate basis for a court to review the petition finding. Finally, nothing in this document or any of our policies should be construed as in any way modifying the Act's requirement that we make a new 12-month petition finding for each petitioned candidate within 1 year of the date of publication of this CNOR. If we fail to make any such finding on a timely basis, whether through publication of a new CNOR or some other form of notice, we may be subject to a deadline lawsuit pursuant to section 11(g)(1)(C), as we would be with respect to any other failure to comply with a section 4 deadline.

We reviewed the current status of and threats to the 35 species for which we have found the petitioned action to be warranted but precluded and have incorporated any new information we have gathered since the previous finding. As a result of this review, we made continued warranted but precluded findings on the petitions for all 35 species. For the 30 of these species that are candidates, we maintain them as candidates and identify them by the code "C\*" in the category column on the left side of Table 1. As discussed above, this finding means that the immediate publication of proposed rules to list these species was precluded by our work on the following higher priority listing actions during the period from November 1, 2001, through May 30, 2002: Court orders or settlement agreements to propose critical habitat and/or complete critical habitat determinations for 3 southern California plants, Kneeland Prairie pennycress, purple amole, Santa Cruz tarplant, Oahu elepaio, Newcomb's snail, 76 Kauai and Nihau plants (reproposal), 5 California carbonate plants, Blackburn's sphinx moth, 32 Lanai plants (reproposal), 2 Hawaiian invertebrates, 8 northwest Hawaiian Islands plants, 61 Maui and Kahoolawe plants (reproposal), quino checkerspot butterfly, 46 Molokai plants (reproposal), San Bernardino kangaroo rat, 56 Hawaiian Island plants, 15 vernal

pool species (4 fairy shrimp and 11 plants), 103 Oahu plants, Rio Grande silvery minnow, gulf sturgeon; proposed listings for pygmy rabbit, Carson's wandering skipper, Island fox, 4 southwestern invertebrates (proposed listing with critical habitat), and Tumbling Creek cavesnail; final listing determinations for Buena Vista Lake shrew, showy stickseed, scaleshell mussel, Vermilion darter, Mississippi gopher frog, golden sedge, and desert yellowhead; emergency listings for pygmy rabbit, Carson's wandering skipper, and Tumbling Creek cavesnail; 90-day petition finding for Miami blue butterfly; and 12-month petition finding for Big Cypress fox squirrel and Cape Sable seaside sparrow (for critical habitat).

In addition to identifying petitioned candidate species in Table 1, we also present brief summaries of why these candidates warrant listing. More complete information, including references, are found in the candidate forms. You may obtain a copy of these forms from the Regional office that has the lead for the species or from the Fish and Wildlife Service's internet website: <http://endangered.fws.gov/>.

We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these actions has, for the preceding 7 months been, and will over the next year, be precluded by higher priority listing actions. During the past 7 months, almost all of our listing budget has been needed to take various listing actions to comply with court orders and court-approved settlement agreements. For a list of the listing actions taken over the 7 months, see the discussion of "Progress on Revising the Lists," below.

For the next year, the majority of our remaining listing budget for FY 2002, and our anticipated listing budget for FY 2003 based on the President's requested budget, will be needed to take listing actions to comply with court orders and court-approved settlement agreements. Currently, we will address or complete the following actions: Proposed critical habitat designations for 6 Guam species, Keck's checkermallow, yellow and Baker's larkspur, bull trout (Columbia and Klamath populations), Ventura marsh milkvetch, 9 Texas (Bexar County) invertebrates, southwestern willow flycatcher, cactus ferruginous pygmy owl, Topeka shiner, and Preble's meadow jumping mouse; final critical habitat designations for 81 Kauai and Nihau plants, 2 Hawaiian invertebrates, Blackburn's sphinx moth, Newcomb's snail, 15 vernal pool species (4 fairy shrimp and 11 plants), 55 Maui and

Kahoolawe plants, Rio Grande silvery minnow, 9 Texas (Bexar County) invertebrates, Appalachian elktoe, gulf sturgeon, and Great Plains breeding population of piping plover; 12-month petition findings for Yosemite toad, mountain yellow-legged frog (entire population), and California spotted owl; proposed listing rules for slickspot peppergrass, and Gila chub (with critical habitat); final listing determinations for San Diego ambrosia, mountain yellow-legged frog (southern California population), coastal cutthroat trout, large-flowered meadow foam and Cook's lomatium, and Chiricahua leopard frog.

Issuance of proposed listing rules for most of the candidates even with the highest listing priority numbers (*i.e.*, 1, 2, or 3) will continue to be precluded next year due to completing actions required by court orders and court-approved settlement agreements, as well as the need to comply (or end noncompliance) with the unqualified statutory deadlines for making 12-month petition findings and final listing determinations on proposed rules. In addition to those final determinations required by court orders and settlement agreements, during the next year we will work on final determinations for the following species: Carson's wandering skipper, pygmy rabbit, Scotts Valley polygonum, four southwestern invertebrates, Tumbling Creek cavenail, and mountain plover. In addition to proposed rules required by court orders and settlement agreements, we must work in the next year on proposed rules for at least 2 high-priority species, the Salt Creek tiger beetle and the southwestern Alaska population of the northern sea otter. Moreover, given the recent decision in *Center for Biological Diversity v. Badgeley*, 284 F.3d 1046 (9th Cir. 2002), which held that the Act require that 90-day petition findings be made no later than 12 months after receipt of the petition, regardless of whether it is practicable to do so, we may need to make 90-day findings on most or all of the outstanding petitions prior to issuing proposed rules for the 35 species subject to warranted but precluded findings. If over the next year we can devote any resources to issuing proposed rules for the highest priority candidates without jeopardizing our ability to comply with court orders, court-approved settlement agreements, or unqualified statutory deadlines, we will do so.

Finally, work on proposed rules for candidates with lower priority (*i.e.*, those that have listing priority numbers of 4–12) is also precluded by the need

to issue proposed rules for higher priority species, particularly those facing high-magnitude, imminent threats (*i.e.*, listing priority numbers of 1, 2, or 3). Table 1 shows the listing priority number for each candidate species.

#### Mammals

Black-tailed prairie dog (*Cynomys ludovicianus*)—As described in our February 4, 2000, 12-month finding (65 FR 5476), black-tailed prairie dog populations have been significantly reduced and are subject to several persistent threats. We believe that various threats (especially plague) continue to cause local extirpations that could lead to the species becoming vulnerable in a significant portion of its range. Additionally, the species may have difficulty coping with challenges without the advantage of its historic abundance and wide distribution. Accordingly, the vulnerability of the species to population reductions may be related less to its absolute numbers than to the number of colonies in which it exists, their size, their geospatial relationship, existing barriers to immigration and emigration, and the number and nature of the direct threats to the species. The apparent magnitude of the disease threat may be mitigated to some degree by new information that indicates that limited immune response is possible in some individuals and by new information that a population dynamic may have developed in low-density, isolated populations that may contribute to the persistence of depressed populations. Nevertheless, we conclude that the magnitude of this threat to the black-tailed prairie dog remains moderate due to other influences. Additionally, the threat of disease remains imminent. We have reviewed the 12-month finding that projected likely future black-tailed prairie dog population trends. We conclude that this projection remains generally appropriate despite new information from which we infer that the magnitude of the disease threat to the species may be somewhat less than previously determined. While positive steps to conserve and manage black-tailed prairie dogs have been made by some States and Tribes, more conservation work will be needed by all States, Tribes, and Federal agencies to sufficiently reduce threats to the species. The overall magnitude and immediacy of threats to this species remain unchanged since the 12-month finding was published with a listing priority number of 8.

Sea otter, southwest Alaska DPS (*Enhydra lutris kenyoni*)—The following

summary is based on information contained in our files and the petition received on October 26, 2000. The worldwide population of sea otters in the early 1700s has been estimated at 150,000 to 300,000. Extensive commercial hunting of sea otters in Alaska began following the arrival of Russian explorers in 1741 and continued during the 18th and 19th centuries. By the time sea otters were afforded protection from commercial harvests by international treaty in 1911, the species was nearly extinct throughout its range, and may have numbered only 1,000 to 2,000 individuals. Today three subspecies of sea otter have been identified. The northern sea otter contains two subspecies: *Enhydra lutris kenyoni*, which occurs from the Aleutian Islands to Oregon, and *Enhydra lutris lutris*, which occurs in the Kuril Islands, Kamchatka Peninsula, and Commander Islands in Russia. The third subspecies, *Enhydra lutris nereis*, occurs in California and is known as the southern sea otter. Until recently, southwest Alaska had been considered a stronghold for sea otters. In the mid-1980s, biologists believed that 80 percent of the world population of sea otters occurred in southwest Alaska. Recent aerial surveys document drastic population declines (up to 90%) have occurred throughout this area during the past 10–15 years. Today as few as 9,000 sea otters may remain in the Aleutian Islands. Since April 2000, we have conducted additional aerial surveys along the Alaska Peninsula and the Kodiak Archipelago. Results of these surveys indicate that sea otter populations have declined substantially in these areas as well. The current population estimate for the Kodiak archipelago is roughly 4,000 less than in 1994; a decline of almost 40 percent in only 7 years. In the 2001 CNOR, we designated the northern sea otter in the Aleutian Islands as a candidate. We are revising the candidate form to reflect the most current scientific information regarding population boundaries and status. The geographic extent of the candidate designation now includes the Aleutian Islands, Alaska Peninsula coast, and Kodiak Archipelago. Potential threats include both natural fluctuations and human activities, which may have caused changes in the Bering Sea ecosystem. Subsistence hunting occurs at very low levels and does not appear to be a factor in the decline. While disease, starvation, and contaminants have not been implicated at this time, additional evaluation of these factors is warranted. The

hypothesis that predation by killer whales is causing the sea otter decline should also be further studied. Due to the precipitous and rapid nature of the ongoing population decline, we have assigned the southwest Alaska DPS of *Enhydra lutris kenyoni* a listing priority number of 3. Additionally, we have no indication that the decline has reached an endpoint, and therefore immediate action is needed.

Sheath-tailed bat, American Samoa and Aguijan DPS (*Emballonura semicaudata*)—The following summary is based on information contained in our files, and the petition received on March 3, 1986. Historically the sheath-tailed bat was known from the southern Mariana Islands, Palau, and Western and American Samoa. Populations on the Mariana Islands of Guam and Rota have been extirpated and the Mariana population on Aguijan has been reduced to approximately 10 individuals. A similar drastic decline has occurred in American Samoa where populations of this bat were estimated at over 10,000 in 1976. In 1993, only four bats were recorded. This species resides in caves and is very susceptible to disturbance. The populations in American Samoa and the Mariana Islands are at the extreme limits of the species' range. Roost sites have been rendered unsuitable for bats by human intrusion into caves and the use of some caves as garbage dumps. Typhoons have also damaged some caves by blocking entrances or by flooding coastal caves. The loss of roost sites has severely restricted population size, especially in American Samoa, where few caves exist. In addition, small populations and limited numbers of populations place this distinct population segment at great risk of extinction from inbreeding, random events, and storms. Based on immediate threats of a high magnitude, we assigned the American Samoa and Aguijan DPS of the sheath-tailed bat a listing priority number of 3.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—The following summary is based on information contained in our files and the petition received on January 29, 2001. During the past 30 years, a dramatic population decline of the southern Idaho ground squirrel has occurred. We now believe that the southern Idaho ground squirrel occupies approximately 44 percent of its historical range. Surveys indicate a precipitous decline in the squirrel population since the mid-1980s. In the spring of 2001, scientists conducted surveys to understand on a qualitative level the pattern of spatial distribution and density of southern Idaho ground

squirrel populations, and then to make a population estimate for the species. The survey resulted in an estimate of 2,177 to 4,354 southern Idaho ground squirrels. Scientists attribute the decline to invasive nonnative plants associated with a change in fire frequency, and lack of reclamation or restoration of habitat by various land management agencies and private landowners. There is also an increase in the risk of extinction due to a reduced distribution. Based on our evaluation that these threats pose an imminent risk of a high magnitude, this subspecies warrants a listing priority number of 3.

Washington ground squirrel (*Spermophilus washingtoni*)—The following summary is based on information contained in our files and the petition received on March 2, 2000. Since the designation of the species as a candidate on October 25, 1999, more information has become available regarding the types of soils used by Washington ground squirrels, the effects of agriculture on Washington ground squirrel colonies, the status of the species throughout its range, and the significance of the Oregon population to the species as a whole. The soil types used by the squirrels are distributed sporadically within the species' range, and have been seriously fragmented by human development in the Columbia Basin, particularly conversion to agricultural use. Where agriculture occurs, little evidence of ground squirrel use has been documented, and reports indicate that ongoing agricultural conversion permanently eliminates Washington ground squirrel habitat. The most contiguous, least-disturbed expanse of suitable Washington ground squirrel habitat, and likely the densest distribution of colonies within the range of the species, occurs on the Boeing site and Boardman Bombing Range in Oregon. Substantial threats to the species occur throughout its range, including the remaining populations in Oregon. Even on State-owned lands in Oregon, the loss of known sites is likely. The loss of significant numbers of colonies in Oregon would be detrimental to the continued existence of the Washington ground squirrel. In Washington, recent declines have been precipitous and for unknown reasons. In 2001, entire colonies of ground squirrels have been lost on the Columbia National Wildlife Refuge and Seeps Lake Management Area near Othello, Washington, despite the protected status of the species in the area. Biologists observed significant declines in body mass, and many adult squirrels experienced a complete failure to

reproduce in 2001, likely as a result of starvation. Individuals that lacked sufficient body weight are not likely to survive the 7- to 8-month hibernation period this species experiences. All of these threats have been observed in the past 2 years, are likely to continue, and appreciably reduce the likelihood of survival of many Washington ground squirrel colonies across the range of the species. Based on our current evaluation of threats, we assigned a listing priority number of 2 to this species.

## Birds

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files and the petition received on May 8, 1989. Breeding season surveys on Hawaii, Maui, and Kauai, as well as reports of fledglings picked up on Hawaii and Kauai, confirm that small populations still exist on these Hawaiian islands. Estimates of the total State-wide population could exceed 100 pairs if viable breeding populations exist on Maui and Hawaii. Although small populations do occur on Maui and Hawaii, we have been unable to determine if they are viable; certainly they are not large and they represent a fraction of prehistoric distribution. Predation by introduced species is believed to have played a significant role in reducing storm-petrel numbers and in exterminating colonies in the Pacific and other locations worldwide. Additionally, artificial lights have had a significant negative effect on fledgling young and, to a lesser degree, adults. Artificial lighting of roadways, resorts, ballparks, residences, and other development in lower elevation areas attracts and confuses night-flying, storm-petrel fledglings, resulting in "fall-out" and collisions with buildings and other objects. Currently, the species is not known to be taken or used for commercial, recreational, scientific, or educational purposes. During 1992 surveys on Mauna Loa, Hawaii, several caches of Hawaiian dark-rumped petrel carcasses associated with feral cat predation were recorded in areas where band-rumped storm-petrel vocalizations were recorded. Based on imminent threats of a high magnitude, we assigned this Hawaii DPS of the band-rumped storm-petrel a listing priority number of 3.

Gunnison sage grouse (*Centrocercus minimus*)—The following summary is based on information contained in our files and the petition received on January 25, 2000. The range of the Gunnison sage grouse has been reduced to less than 25 percent of its historic

range. Size of the range and quality of its habitat have been reduced by direct habitat loss, fragmentation, and degradation from building development, road and utility corridors, fences, energy development, conversion of native habitat to hay or other crop fields, alteration or destruction of wetland and riparian areas, inappropriate livestock management, competition for winter range by big game, and creation of large reservoirs. Other factors affecting the Gunnison sage grouse include fire suppression, overgrazing by elk (*Cervus elaphus*) and deer (*Odocoileus hemionus*), drought, disturbance or death by off-highway vehicles, harassment from people and pets, noise that impairs acoustical quality of leks (courtship areas), genetic depression, pesticides, pollution, and competition for habitat from other species. For greater detail as to why listing is warranted, see 65 FR 82310, December 28, 2000. We consider all of these threats to be of high magnitude but nonimminent; therefore, we assigned the Gunnison sage grouse a listing priority of 5.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—The following summary is based on information contained in our files, including information from the petition received on October 5, 1995. Biologists estimate that the occupied range has declined at least 78 percent since 1963 and 92 percent since the 1800s. The most serious threats to the lesser prairie-chicken are loss of habitat from conversion of native rangelands to introduced forages and cultivation, and cumulative habitat degradation caused by severe grazing, fire suppression, herbicides, and structural developments. Many of these threats may exacerbate the normal effects of periodic drought on lesser prairie-chicken populations. In many cases, the remaining suitable habitat has become fragmented by the spatial arrangement of properties affected by these individual threats. We view current and continued habitat fragmentation to be a serious ongoing threat that facilitates the extinction process through several mechanisms: remaining habitat patches may become smaller than necessary to meet the yearlong requirements of individuals and populations; necessary habitat heterogeneity may be lost to large areas of monoculture vegetation and/or homogenous habitat structure; areas between habitat patches may harbor high levels of predators or brood parasites; and the probability of recolonization decreases as the distance between suitable habitat patches

expands. Inadequacy of existing regulatory mechanisms to protect lesser prairie-chicken habitat was cited as a potential threat to the species in the Service's 12-month finding. Most occupied lesser prairie-chicken habitat occurs on private land where States have little authority to protect the species or its habitat, with the exception of setting harvest regulations. While some Federal lands within occupied range have voluntarily accommodated certain needs of the lesser prairie-chicken, the species cannot be sufficiently conserved only on Federal lands to prevent extinction. Although Federal lands comprise only five percent of currently occupied habitat, these tracts are located in areas essential to population recovery and dispersal. As a result, the Service views habitat management considerations on Federal lands within current and historic range with even greater importance. Concern exists that recreational hunting and harassment are potential threats to the species. While the Service does not believe that overutilization through recreational hunting is a primary cause of lesser prairie-chicken decline, we are concerned that small and isolated populations may be vulnerable to local extirpations caused by repeated harvest pressure, especially near fall leks. Similarly, the effects of repeated recreational viewing at leks is unknown. The Service solicits input from all parties who may be knowledgeable about these factors, as well as two potential threats not cited in the 12-month finding; organophosphorus insecticide poisoning and degree of impacts from hybridization with greater prairie-chickens in northern portions of occupied range. Based on all currently available information, we find that ongoing threats to the lesser prairie-chicken, as outlined in the 12-month finding, remain unchanged, and lesser prairie-chickens continue to warrant Federal listing as threatened. We have determined that the overall magnitude of threats to the lesser prairie-chicken throughout its range is moderate, and that the threats are ongoing, thus they are considered imminent. Consequently, a listing priority of 8 remains appropriate for the species. The magnitude of threats to lesser prairie-chickens rests primarily on the quality of existing habitat. At present, all States within occupied range of the lesser prairie-chicken are committing significant resources via personnel, outreach, and habitat improvement incentives to landowners to recover the species. The Service recognizes that measurable increases in populations

often come years after certain habitat improvements occur. Barring additional unforeseen threats such as prolonged drought or development, the species' status is expected to improve in future years. Therefore, we select not to elevate the listing priority of the lesser prairie-chicken based on magnitude of threats at this time. However, the Service is concerned that remaining populations may become increasingly fragmented, and therefore vulnerable to local extinctions. This is particularly true for isolated populations of lesser prairie-chickens in the Permian Basin/western panhandle of Texas and areas south of highway 380 in southeastern New Mexico. The impending loss of these populations is of major concern to us, and efforts to address this possible loss are ongoing. However, the Service believes that, given all currently available information, the net benefits of ongoing conservation activities by the States, Federal agencies, and private groups, combined with the recent increase in both range and numbers in Kansas, exceed the latest negative trends of local populations in the southern periphery of occupied range. Should the current conservation momentum fail to stabilize and increase existing populations throughout significant portions of the remaining range, we must pursue elevating the listing priority of the species.

Yellow-billed cuckoo, western continental U.S. DPS (*Coccyzus americanus*)—The following summary is based on information contained in our files and the petition received on February 9, 1998. Also see our 12-month petition finding (66 FR 38611) published on July 25, 2001. While the cuckoo is still relatively common east of the crest of the Rocky Mountains, biologists estimate that more than 90 percent of the bird's riparian (streamside) habitat in the West has been lost or degraded. These modifications, and the resulting decline in the distribution and abundance of yellow-billed cuckoos throughout the western States, is believed to be due to conversion to agriculture; grazing; habitat degradation by competition from nonnative plants, such as tamarisk; river management, including altered flow and sediment regime; and flood control practices, such as channelization and bank protection. Based on nonimminent threats of a high magnitude, we assigned a listing priority number of 6 to this DPS of yellow-billed cuckoo.

#### Reptiles

Louisiana pine snake (*Pituophis ruthveni*)—The following summary is based on information contained in our

files and the petition received on July 19, 2000. The Louisiana pine snake historically occurred in portions of west-central Louisiana and extreme east-central Texas. Louisiana pine snakes have not been documented in over a decade in some of the best remaining habitat within their historical range. Surveys and results of Louisiana pine snake trapping and radio-telemetry suggest that extensive population declines and local extirpations have occurred during the last 50 to 80 years. The quality of remaining Louisiana pine snake habitat has been degraded due to logging, fire suppression, short-rotation silviculture, and conversion of habitat to other uses such as grazing. Other factors affecting Louisiana pine snakes include low fecundity (reproductive output), which magnifies other threats and increases the likelihood of local extinctions, and vehicular mortality, which may cause significant impacts to the Louisiana pine snake's population numbers and community structure. Due to nonimminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

Cagle's map turtle (*Graptemys caglei*)—The following summary is based on information contained in our files and the petition received on April 26, 1991. Cagle's map turtle occurs in scattered sites in seven counties in Texas on the Guadalupe, San Marcos, and Blanco Rivers. Loss and degradation of riverine habitat from large and/or small impoundments (dams or reservoirs) is the primary threat to Cagle's map turtle. One detrimental effect of impoundment is the loss of riffle and riffle/pool transition areas used by males for foraging. Depending on its size, a dam itself may be a partial or complete barrier to Cagle's map turtle movements and could fragment a population. Construction of smaller impoundments and human activities on the river has likely eliminated or reduced foraging and basking habitats. Cagle's map turtle is also vulnerable to over collecting and target shooting, and current regulations are inadequate to protect this species. Due to nonimminent threats of a high magnitude, we assigned a listing priority number of 5 to this species.

#### *Amphibians*

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—The following summary is based on information contained in our files and the petition received on May 1, 1989. Recent work by researchers in Idaho and Nevada has documented the loss of historically known sites, reduced numbers of individuals within local populations,

and declines in the reproduction of those individuals. Since 1996, extensive surveys throughout southern Idaho and eastern Oregon have led to increases in the number of known Columbia spotted frog sites. However, most of these sites support only small numbers of frogs. Extensive monitoring at 10 of the 46 occupied sites since 1997 indicates a decline in the number of adult Columbia spotted frogs encountered. All known populations in southern Idaho and in eastern Oregon appear to be functionally isolated. Columbia spotted frog habitat degradation and fragmentation is probably a combined result of past and current influences of heavy livestock grazing, spring alterations, agricultural development, urbanization, and mining activities. Based on imminent threats of high magnitude, we assigned a listing priority number of 3 to this DPS of the Columbia spotted frog.

Oregon spotted frog (*Rana pretiosa*)—The following summary is based on information contained in our files and the petition received on May 4, 1989. Based on surveys of historic sites, the Oregon spotted frog is now absent from at least 76 percent of its former range. The species may be absent from as much as 90 percent of its former range because the collections of historic specimens did not adequately reflect its actual geographic and elevational range. Threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, changes in hydrology due to construction of dams and alterations to seasonal flooding, poor water quality, and water contamination. Additional threats to the species are predation by nonnative fish and introduced bullfrogs. Based on these threats, we assigned the Oregon spotted frog a listing priority number of 2. Note, the October 30, 2001, Candidate Notice of Review was incorrect in listing this species as a distinct population segment with a listing priority number of 3. The Oregon spotted frog is a full species, with no DPS designation, and, therefore, has a listing priority number of 2.

California tiger salamander (entire population except Sonoma County and where listed) (*Ambystoma californiense*)—The following summary is based on information contained in our files and the petition received on February 26, 1992. The California tiger salamander has been eliminated from 54 percent of its historic breeding sites and has lost an estimated 65 percent of its habitat. The distribution of the species is now discontinuous and fragmented throughout its range. All of the estimated seven genetic populations of

this species have declined significantly because of urban and agricultural development, and other human-caused factors affecting breeding and upland habitat used for estivation and migration. Existing regulatory mechanisms are inadequate to protect California tiger salamander habitat. Based on nonimminent threats of a high magnitude, we assigned this species a listing priority number of 5.

California tiger salamander, Sonoma County DPS (*Ambystoma californiense*)—See above summary of new candidate species for discussion on why this population warrants listing. The above summary is based on information contained in our files and the petition received on June 13, 2001.

Boreal toad, Southern Rocky Mountains DPS (*Bufo boreas boreas*)—The following summary is based on information contained in our files and the petition received on September 30, 1993. Boreal toads of the Southern Rocky Mountain DPS were once common throughout much of the high elevations in Colorado, in the Snowy and Sierra Madre Ranges of southeast Wyoming, and at three breeding localities at the southern periphery of their range in the San Juan Mountains of New Mexico. In the late 1980s boreal toads were found to be absent from 83 percent of breeding localities in Colorado and 94 percent of breeding localities in Wyoming previously known to contain toads. In 1999, the number of known breeding localities increased from 33 to 50, with 1 in Wyoming, none in New Mexico, and the remaining sites in Colorado. This increase in known breeding localities, however, was likely due to survey efforts rather than expansion of the population. Land use in boreal toad habitat includes recreation, timber harvesting, livestock grazing, and watershed alteration activities. Though declines in toad numbers have not been directly linked to habitat alteration, activities that destroy, modify, or curtail habitat likely contribute to the continued decline in toad numbers. The current and future use of water rights in the Southern Rocky Mountains may impact boreal toads. Increased demands on limited water resources can result in water level drops in reservoirs that toads are using. Transferring rights from one user group to another (e.g., agricultural to municipal) also could reduce toad habitat, particularly if dewatering of reservoir sites resulted from these transfers. Additional threats to the boreal toad include a chytrid fungus, which likely caused the boreal toad to decline in the 1970s and continues to cause declines. Based on

these threats, we assigned this DPS of boreal toad a listing priority number of 3.

#### Fishes

**Gila chub (*Gila intermedia*)**—The following summary is based on information contained in our files and the petition received on June 10, 1998. The Gila chub has been extirpated or reduced in numbers and distribution in the majority of its historical range. Over 70 percent of the Gila chub's habitat has been degraded or destroyed, and much of it is unrecoverable. Of the 15 remaining populations, most are small, isolated, and threatened, and only one population is considered secure. Wetland habitat degradation and loss is a major threat to the Gila chub. Human activities such as groundwater pumping, surface water diversions, impoundments, channelization, improper livestock grazing, vegetation manipulation, agriculture, mining, road building, nonnative species introductions, urbanization, and recreation all contribute to riparian loss and degradation in southern Arizona, thereby threatening this species. Based on imminent threats of a high magnitude, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on October 2, 2001 (*Center for Biological Diversity, et al. v. Norton*, Civ. No. 01–2063 (JR) (D.D.C.)) that will require us to deliver by July 31, 2002, a proposed listing rule with critical habitat to the **Federal Register** for publication.

**Arctic grayling, upper Missouri River DPS (*Thymallus arcticus*)**—The following summary is based on information contained in our files and the petition received on October 2, 1992. Currently, the only self-sustaining remnant of the indigenous fluvial Arctic grayling population exists in the Big Hole River, estimated to represent 5 percent or less of the historic range for this species in Montana and Wyoming. Reestablishment efforts are under way in four streams within the historic range. The Arctic grayling faces threats primarily from a decrease in available habitat as a result of dewatering of streams for irrigation and stock water, ongoing drought conditions, and habitat degradation from dams and reservoirs. Landowners and other interests are implementing actions to ensure adequate water conditions in the Big Hole River. Additionally, predation on or competition with Arctic grayling by

nonnative trout are thought to be factors limiting grayling populations. Due to imminent threats of a low to moderate magnitude, we assigned this DPS of Arctic grayling a listing priority number of 9.

#### Snails

**Chupadera springsnail (*Pyrgulopsis chupaderae*)**—The following summary is based on information contained in our files and the petition received on November 20, 1985. This aquatic species is endemic to Willow Spring on the Willow Spring Ranch (formerly Cienega Ranch) at the south end of the Chupadera Mountains in Socorro County, New Mexico. The Chupadera springsnail has been documented from two hillside groundwater discharges that flow through grazed areas among rhyolitic gravels containing sand, mud, and hydrophytic plants. Regional and local groundwater depletion, springrun dewatering, and riparian habitat degradation represent the principal threats. The survival and recovery of the Chupadera springsnail is contingent upon protection of the riparian corridor immediately adjacent to Willow Spring, and the availability of perennial, oxygenated flowing water within the species' thermal range. Existing regulatory mechanisms are not sufficient to protect this species. New Mexico State law provides limited protection to the Chupadera springsnail, but this law does not provide for habitat protection. Because these threats are imminent and of a high magnitude, we assigned this species a listing priority number of 2. See above Summary of Listing Priority Changes in Candidates for an explanation on why we are changing the priority of this candidate.

**Gila springsnail (*Pyrgulopsis gilae*)**—The following summary is based on information contained in our files and the petition received on November 20, 1985. The Gila springsnail is an aquatic species known from 13 populations in New Mexico. The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats, thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. Sites on both private and Federal lands are subject to uncontrolled recreational use and livestock grazing, thus rendering the long-term survival of the Gila springsnail questionable. Natural events such as drought, forest fire, sedimentation, and flooding; wetland habitat degradation by recreational bathing in thermal springs; and poor watershed management practices such

as overgrazing and inappropriate silviculture, represent the primary threats to the Gila springsnail. Fire suppression and retardant chemicals have potentially deleterious effects on this species. Existing regulatory mechanisms are not sufficient to protect the Gila springsnail. New Mexico State law provides limited protection to the Gila springsnail, but this law does not provide for habitat protection. Based on these nonimminent threats of a low magnitude, we assigned a listing priority number of 11 to this species.

**New Mexico springsnail (*Pyrgulopsis thermalis*)**—The following summary is based on information contained in our files and the petition received on November 20, 1985. The New Mexico springsnail is an aquatic species known from only two separate populations associated with a series of spring-brook systems along the Gila River in the Gila National Forest in Grant County, New Mexico. The long-term persistence of the New Mexico springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats, thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. While the New Mexico springsnail populations may be stable, the sites inhabited by the species are subject to uncontrolled recreational use and livestock grazing. Wetland habitat degradation via recreational use and overgrazing in or near the thermal springs and/or poor watershed management practices represent the primary threats to the New Mexico springsnail. Natural events such as drought, forest fire, sedimentation, and flooding may further imperil populations. Additionally, fire suppression and retardant chemicals have potentially deleterious effects on this species. Existing regulatory mechanisms are also not sufficient to protect the New Mexico springsnail. New Mexico State law provides limited protection to the New Mexico springsnail, but this law does not provide for habitat protection. Based on these nonimminent threats of a low magnitude, we assigned this species a listing priority number of 11.

**Page springsnail (*Pyrgulopsis morrisoni*)**—The following summary is based on information contained in our files and the petition received on April 12, 2002. The Page springsnail is a local endemic, and all extant populations are known to exist only within a complex of springs located within an approximately 1.5 kilometer (.93 miles) area along the west side of Oak Creek around the community of Page Springs,

Yavapai County, Arizona. Many of the springs where the Page springsnail occurs have been subjected to some level of modification to meet domestic, agricultural, ranching, fish hatchery, and recreational needs. Pumping of the regional aquifer in excess of natural recharge could result in elimination of habitat occupied by the Page springsnail. Potential habitat degradation is likely from trespass cattle and the possible modification of spring heads to meet the needs of a commercial water bottling company. Other factors that have contributed to the decline of Page springsnail populations include the use of toxic substances, water quality degradation, and introduction of nonnative molluscs, such as *Corbicula* spp. Arizona Game and Fish Department (AGFD) management plans for the Bubbling Ponds and Page Springs fish hatcheries included commitments to replace lost habitat and to monitor remaining populations of invertebrates such as the Page springsnail. However, habitat restoration has been largely unsuccessful and monitoring has not been implemented. Because these threats are imminent and of a high magnitude, we assigned a listing priority number of 2 to this species.

#### Insects

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*)—The following summary is based on information contained in our files, including information from the petition received on April 21, 1994. The Coral Pink Sand Dunes tiger beetle is known to occur only at Coral Pink Sand Dunes, about 7 miles west of Kanab, Kane County, in south-central Utah. It is restricted mostly to a small part of the approximately 13-kilometer (8-mile) long dune field, situated at an elevation of about 1,820 m (6,000 ft). The subspecies' habitat is being adversely impacted by ongoing recreational off-road vehicle (ORV) use. The ORV activity is destroying and degrading the species' habitat, especially the interdunal swales used by the larval population. Having the greatest abundance of suitable prey species, the interdunal swales are the most biologically productive areas in this ecosystem. The continued survival of the species depends on the preservation of the species and its habitat at its only breeding reproductive site and the probable need to establish or reestablish additional reproductive subpopulations in other suitable habitat sites. The species population is also vulnerable to overcollecting by professional and hobby tiger beetle collectors, although

quantification of this threat is difficult without continuous monitoring of the species population. The State of Utah and the Bureau of Land Management have designated most of the species habitat as a conservation area, where they have placed significant restrictions on ORV use. Their actions have lowered the magnitude of threat to this subspecies. Based on imminent threats of a low to moderate magnitude, we assigned this subspecies a listing priority number of 9.

#### Flowering Plants

Christ's paintbrush (*Castilleja christii*)—The following summary is based on information contained in our files and the petition received on January 2, 2001. *Castilleja christii* is endemic to subalpine meadow and sagebrush habitats in the upper elevations of the Albion Mountains, Cassia County, Idaho. The single population of this species, which covers only 81 ha (200 ac), is restricted to the summit of Mount Harrison. The population appears to be stable, although the species is threatened by a variety of activities including unauthorized ORV use that results in erosion of the plant's habitat and mortality of individual plants. Livestock grazing can adversely affect *C. christii* by trampling and/or consuming plants, which results in reduced reproductive success; grazing occurred in the area where *C. christii* exists during 1999, but not in 2000. In addition, road maintenance activities and trampling by hikers potentially affect this species. Because the threats are of a low to moderate magnitude and nonimminent, we assigned this species a listing priority number of 11.

San Fernando Valley spineflower (*Chorizanthe parryi fernandina*)—The following summary is based on information contained in our files and the petition received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* was thought to be extinct, but its rediscovery was disclosed in the late spring of 1999. The plant currently is known from two disjunct localities. The first locality is in the southeastern portion of Ventura County, on a site approved for development, where it was found and identified by consultants employed by the developer. The second is located in southwestern Los Angeles County on a site with approved development plans. As currently planned, it is likely that construction of proposed development will extirpate the first population in Ventura County. It is unclear how the development in Los Angeles will affect that population. The majority of the historical collections

of this plant from the greater Los Angeles metropolitan area were made from areas where urban, agricultural, and industrial development have replaced native habitats. During the last few decades, numerous field botanists have been unable to locate the species, even where historically recorded, largely due to the alteration and loss of suitable habitat. San Fernando Valley spineflower is also threatened by invasive nonnative plants, including grasses, that potentially fragment suitable habitat; displace it from available habitat; compete for light, water, and nutrients; and reduce survival and establishment. This plant is particularly vulnerable to extinction due to its two isolated populations. Species with few populations and disjunct distributions are vulnerable to naturally occurring, random events. Because of imminent threats of a high magnitude, we assigned a listing priority number of 3 to this plant.

Slick spot peppergrass (*Lepidium papilliferum*)—The following summary is based on information contained in our files and the petition received on April 9, 2001. *Lepidium papilliferum* is an annual or biennial that occurs in sagebrush-steppe habitats at approximately 670 meters (m) (2,200 feet (ft)) to 1,615 m (5,300 ft) elevation in southwestern Idaho. The total amount of currently occupied *L. papilliferum* habitat is less than 31.8 ha (78.4 ac), and the amount of high-quality occupied habitat for this species is less than 1.3 ha (3.3 ac). The documented extirpation rate for this taxon is the highest known of any Idaho rare plant species. This species is threatened by a variety of activities including urbanization, gravel mining, irrigated agriculture, habitat degradation due to cattle and sheep grazing, fire and fire rehabilitation activities, and continued invasion of habitat by nonnative plant species. Because the majority of populations are extremely small and existing habitat is fragmented by agricultural conversion, fire, grazing, roads, and urbanization, local extirpation is a threat to this species. Based on immediate threats of a high magnitude, we assigned this species a listing priority number of 2. Although work on court-ordered section 4 actions have precluded us from issuing a proposed rule to date, despite the fact that this species has a listing priority number of 2, we recently entered into a settlement agreement on March 29, 2002 (*Committee for Idaho's High Desert. v. Badgley*, Civ. No. 01-1641-AS (D.Or.)) that will require us to deliver by July 15,

2002, a proposed listing rule to the **Federal Register** for publication.

White River beardtongue (*Penstemon scariosus albifluvis*)—The following summary is based on information contained in our files and the petition received on October 27, 1983. The White River beardtongue is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. Most of the occupied habitat of the White River beardtongue is within developed and expanding oil and gas fields. Several wells and access roads are within the species' occupied habitat. The location of the species' habitat exposes it to destruction from ORV use, and road, pipeline, and well-site construction in connection with oil and gas development. With such a small population and limited occupied habitat, any destruction, modification, or curtailment of the habitat would have a highly negative impact on the species. Additionally, the species is heavily grazed by wildlife and livestock and is vulnerable to livestock trampling. Currently, no Federal or State laws specifically protect the White River beardtongue. Based on nonimminent threats of a high magnitude, we assigned this subspecies a listing priority number of 6.

Tahoe yellow cress (*Rorippa subumbellata*)—The following summary is based on information contained in our files and the petition received on December 27, 2000. Tahoe yellow cress is a small, perennial herb known only from the shores of Lake Tahoe in California and Nevada. Based on presence/absence information, it has been determined that the Tahoe yellow cress has been extirpated from 10 of 52 historic locations. Tahoe yellow cress occurs in a dynamic environment affected by both natural processes and human activities. Under natural conditions, Tahoe yellow cress is apparently tolerant of the dynamic nature of its habitat and is adapted for survival in a disturbance regime. However, due to the combination of unnatural lake level fluctuation due to dam operations and other human activities, habitat conditions are no longer considered natural. Heavy recreational use of the beaches may result in the direct loss of individual plants as well as the degradation of habitat through compaction and mixing of sandy substrates. Based on imminent threats of a high magnitude, we assigned this species a listing priority number of 2.

#### *Ferns and Allies*

*Botrychium lineare* (slender moonwort)—The following summary is based on information contained in our files and the petition received on July 28, 1999. Also see our 12-month petition finding (66 FR 30368) published on June 6, 2001. *Botrychium lineare* is a small perennial fern that is currently known from a total of nine populations in Colorado, Oregon, Montana, and Washington. In addition to these currently known populations, historic populations were previously known from Idaho (Boundary County), Montana (Lake County), California (Fresno County), Colorado (Boulder County), and Canada (Quebec and New Brunswick). However, they have not been seen for at least 20 years and may be extirpated (Wagner and Wagner 1994). Since the 12-month petition finding was published we received some additional information regarding the status and distribution of *B. lineare*. Two new population sites of *B. lineare* were tentatively identified in 2001, one site each in Idaho and Nevada, with an additional historic site discovered from a herbarium specimen collected in Utah in 1905. One researcher is intending to obtain fresh specimens from the Idaho and Nevada sites during 2002 for electrophoretic confirmation, in addition to visiting an historic *B. lineare* site in California. The species seems to be a habitat generalist and is often found in disturbed habitats along roadsides. Therefore, conclusions regarding *B. lineare*'s overall distribution and specific habitat requirements, along with identifying possible conservation needs, are problematic at this time. A specific habitat description for the species is problematic because of its current and historically disjunct distribution ranging from sea level in Quebec to nearly 3,000 meters (9,840 ft) in Boulder County, Colorado. Some botanists consider *B. lineare* to be a habitat generalist and believe that it is a rare plant that is difficult to survey for and observe in the wild and is often found along roadsides in disturbed habitats. Identifiable threats to various populations of this species include road maintenance and herbicide spraying (e.g., in Glacier National Park and on the Blackfeet Indian Reservation), recreation, timber harvest, trampling, and development. *Botrychium lineare* may also be affected by grazing from livestock or wildlife, but specific effects of grazing on the species are unknown. However, if grazing by livestock or wildlife species occurs prior to the maturation and release of spores, the capacity for sexual reproduction of

affected plants may be compromised. *Botrychium lineare* is considered a sensitive species in Regions 2, 5, and 6 of the Forest Service, which include extant and historical *B. lineare* sites found in Colorado, Oregon, Washington, and California. Because this species is listed under these regional sensitive species lists, the Forest Service has regulations that address the need to protect this species. Forest Service Regions 1, 4, and 5, which include extant and historical sites found in Montana and Idaho, do not have *B. lineare* on their regional sensitive species lists and it is, therefore, not given any special consideration. Although *Botrychium lineare* is considered to be rare and imperiled by the State natural heritage programs in Colorado, Montana, Oregon, and Washington, the State heritage program rankings are not legal designations and do not confer State regulatory protection to this species. Because we concluded that the overall magnitude of threats to *B. lineare* throughout its range is moderate and the overall immediacy of these threats is nonimminent, we assigned this species a listing priority number of 11. Although we are not proposing a listing priority change or removal of candidate status at this time, any new information we receive on the distribution and threat/conservation actions of *B. lineare* may have a bearing on whether listing under the Endangered Species Act is still warranted.

#### **Petitions To Reclassify Species Already Listed**

We have also previously made warranted but precluded findings on five petitions that sought to reclassify threatened species to endangered status. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice also constitutes the recycled petition findings for these species. We find that reclassification to endangered status is currently warranted but precluded by work identified above (see Petition of a Candidate Species) for the:

(1) North Cascades ecosystem grizzly bear (*Ursus arctos horribilis*) DPS (Region 6) (see 63 FR 30453, June 4, 1998, and the candidate form for a discussion on why reclassification is warranted);

(2) Cabinet-Yaak grizzly bear DPS (Region 6) (see 64 FR 26725, May 17, 1999, and the candidate form for a discussion on why reclassification is warranted);

(3) Selkirk grizzly bear DPS (Region 6) (see 64 FR 26725, May 17, 1999, for a

discussion on why reclassification is warranted);

(4) Spikedace (*Meda fulgida*) (Region 2) (see 59 FR 35303 and the candidate form for a discussion on why reclassification is warranted); and

(5) Loach minnow (*Tiaroga cobitis*) (Region 2) (see 59 FR 35303 and the candidate form for a discussion on why reclassification is warranted).

**Progress in Revising the Lists**

As described in section 4(b)(3)(B)(iii) of the Act, in order for us to make a warranted but precluded finding on a petitioned action, we must be making expeditious progress to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary. This notice describes our progress in revising the lists since our October 30, 2001, publication of the last CNOR. We intend to publish these descriptions annually.

Our progress in listing and delisting qualified species since October 30, 2001, is represented by the publication in the **Federal Register** of final listing actions for 6 species, emergency listing actions for 3 species, proposed listing actions for 10 species, and proposed delisting actions for 3 species. In addition, we proposed critical habitat for 184 listed species, repropoed critical habitat for 215 species, and finalized critical habitat for 3 listed species. Given our limited budget for implementing section 4 of the Act, these achievements constitute expeditious progress.

**Request for Information**

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

- (1) Indicating that we should add a species to the list of candidate species;
- (2) Indicating that we should remove a species from candidate status;
- (3) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of

critical habitat would not be prudent for a species;

(4) Documenting threats to any of the included species;

(5) Describing the immediacy or magnitude of threats facing candidate species;

(6) Pointing out taxonomic or nomenclature changes for any of the species;

(7) Suggesting appropriate common names; or

(8) Noting any mistakes, such as errors in the indicated historical ranges.

Submit your comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (503/231-6158).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87102 (505/248-6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056 (612/713-5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679-4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine,

Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589 (413/253-8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486 (303/236-7400).

Region 7. Alaska.

Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503-6199 (907/786-3505).

Our practice is to make comments, including names and home addresses of respondents, available for public inspection. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. In some circumstances, we can also withhold from the public record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. 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.

**Authority**

This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 3, 2002.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
<b>Mammals</b>						
PT .....	3	R1	<i>Pteropus mariannus mariannus</i>	Pteropodidae .....	Bat, Mariana fruit (=Mariana flying fox).	Western Pacific Ocean, U.S.A. (GU, MP).
C* .....	3	R1	<i>Emballonura semicaudata</i>	Emballonuridae .....	Bat, sheath-tailed (American Samoa, Aguijan DPS).	U.S.A. (AS, GU, MP), Caroline Islands.
PE .....	3	R1	<i>Urocyon littoralis littoralis</i>	Canidae .....	Fox, San Miguel Island ...	U.S.A. (CA).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE	3	R1	<i>Urocyon littoralis catalinae</i> .	Canidae	Fox, Santa Catalina Island.	U.S.A. (CA).
PE	3	R1	<i>Urocyon littoralis santacruzae</i> .	Canidae	Fox, Santa Cruz Island	U.S.A. (CA).
PE	3	R1	<i>Urocyon littoralis santarosae</i> .	Canidae	Fox, Santa Rosa Island	U.S.A. (CA).
C*	3	R7	<i>Enhydra lutris kenyonii</i>	Mustelidae	Otter, Northern Sea (southwest Alaska DPS).	U.S.A. (AK).
C	6	R1	<i>Thomomys mazama</i> (all ssp.).	Geomyidae	Pocket gopher, Mazama	U.S.A. (WA).
C*	8	R6	<i>Cynomys ludovicianus</i>	Sciuridae	Prairie dog, black-tailed	U.S.A. (AZ, CO, KS, MT, NE, NM, ND, OK, SD, TX, WY), Canada, Mexico.
PE	N/A	R1	<i>Brachylagus idahoensis</i>	Leporidae	Rabbit, pygmy (Columbia Basin DPS).	U.S.A. (CA, ID, MT, NV, OR, UT, WA, WY).
C	6	R1	<i>Spermophilus tereticaudus chlorus</i> .	Sciuridae	Squirrel, Coachella Valley round-tailed ground.	U.S.A. (CA).
C*	3	R1	<i>Spermophilus brunneus endemicus</i> .	Sciuridae	Squirrel, Southern Idaho ground.	U.S.A. (ID).
C*	2	R1	<i>Spermophilus washingtoni</i> .	Sciuridae	Squirrel, Washington ground.	U.S.A. (WA, OR).
<b>Birds</b>						
C	6	R1	<i>Porzana tabuensis</i>	Rallidae	Crake, spotless (American Samoa DPS).	U.S.A. (AS), Fiji, Marquesas, Polynesia, Philippines, Australia, Society Islands, Tonga, Western Samoa.
C	5	R1	<i>Oreomyza bairdi</i>	Fringillidae	Creep, Kauai	U.S.A. (HI).
C*	6	R1	<i>Coccyzus americanus occidentalis</i> .	Cuculidae	Cuckoo, western yellow-billed (Western U.S. DPS).	U.S.A. (AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, WY), Canada, Mexico, Central & South America.
C	6	R1	<i>Gallicolumba stairi</i>	Columbidae	Dove, friendly ground (American Samoa DPS).	U.S.A. (AS), Fiji, Tonga, Western Samoa.
C	6	R1	<i>Ptilinopus perousii perousii</i> .	Columbidae	Dove, many-colored fruit	U.S.A. (AS).
C*	5	R6	<i>Centrocercus minimus</i>	Phasianidae	Grouse, Gunnison sage	U.S.A. (AZ, CO, KS, OK, NM, UT).
C*	6	R1	<i>Centrocercus urophasianus phaios</i> .	Phasianidae	Grouse, western (Columbia basin DPS).	U.S.A. (OR, WA), Canada (BC).
C	6	R1	<i>Eremophila alpestris strigata</i> .	Alaudidae	Horned lark, streaked	U.S.A. (OR, WA), Canada (BC).
PT	2	R6	<i>Charadrius montanus</i>	Charadriidae	Plover, mountain	U.S.A. (western), Canada, Mexico.
C*	8	R2	<i>Tympanuchus pallidicinctus</i> .	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX).
C*	3	R1	<i>Oceanodroma castro</i>	Hyrobatidae	Storm-petrel, band-rumped (Hawaii DPS).	U.S.A. (HI).
C	5	R4	<i>Dendroica angelae</i>	Emberizidae	Warbler, elfin woods	U.S.A. (PR).
PE	2	R1	<i>Zosterops rotensis</i>	Zosteropidae	White-eye, Rota bridled	U.S.A. (MP).
<b>Reptiles</b>						
C	2	R2	<i>Sceloporus arenicolus</i>	Iguanidae	Lizard, sand dune	U.S.A. (TX, NM).
C	9	R3	<i>Sistrurus catenatus catenatus</i> .	Viperidae	Massasauga (=rattlesnake), eastern.	U.S.A. (IA, IL, IN, MI, MO, MN, NY, OH, PA, WI), Canada.
C	6	R4	<i>Pituophis melanoleucus lodingi</i> .	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS).
C*	5	R4	<i>Pituophis ruthveni</i>	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX).
C*	5	R2	<i>Graptemys caglei</i>	Emydidae	Turtle, Cagle's map	U.S.A. (TX).
C	3	R2	<i>Kinosternon sonoriense longifemorale</i> .	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico.
<b>Amphibians</b>						
PT	2	R2	<i>Rana chiricahuensis</i>	Ranidae	Frog, Chiricahua leopard	U.S.A. (AZ, NM), Mexico.
C*	3	R1	<i>Rana luteiventris</i>	Ranidae	Frog, Columbia spotted (Great Basin DPS).	U.S.A. (ID, NV, OR).
PE	(1)	R1	<i>Rana muscosa</i>	Ranidae	Frog, mountain yellow-legged (southern California DPS).	U.S.A. (CA, NV) including San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties.
C*	2	R1	<i>Rana pretiosa</i>	Ranidae	Frog, Oregon spotted	U.S.A. (CA, OR, WA), Canada (BC).
C	5	R1	<i>Rana onca</i>	Ranidae	Frog, relict leopard	U.S.A. (AZ, NV, UT).
C	6	R4	<i>Cryptobranchus alleganiensis bishopi</i> .	Cryptobranchidae	Hellbender, Ozark	U.S.A. (AR, MO).
C	2	R2	<i>Eurycea waterlooensis</i>	Plethodontidae	Salamander, Austin blind	U.S.A. (TX).
C*	5	R1	<i>Ambystoma californiense</i>	Ambystomatidae	Salamander, California tiger (Entire, except Sonoma County and where listed as endangered).	U.S.A. (CA).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	3	R1	<i>Ambystoma californiense</i>	Ambystomatidae	Salamander, California tiger (U.S.A. CA—Sonoma County DPS).	U.S.A. (CA).
C	2	R2	<i>Eurycea naufragia</i>	Plethodontidae	Salamander, Georgetown	U.S.A. (TX).
C	2	R2	<i>Eurycea chisholmensis</i>	Plethodontidae	Salamander, Salado	U.S.A. (TX).
C*	3	R6	<i>Bufo boreas boreas</i>	Bufoinae	Toad, boreal (Southern Rocky Mountains DPS).	U.S.A. (CO, NM, WY).
C	5	R4	<i>Necturus alabamensis</i>	Proteidae	Waterdog, black warrior	U.S.A. (AL).
<b>Fishes</b>						
PE	3	R1	<i>Gila bicolor vaccaceps</i>	Cyprinidae	Chub, Cowhead Lake tui	U.S.A. (CA).
C*	2	R2	<i>Gila intermedia</i>	Cyprinidae	Chub, Gila	U.S.A. (AZ, NM), Mexico.
C	11	R6	<i>Etheostoma cragini</i>	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK).
C	6	R4	<i>Etheostoma nigrum susanae</i>	Percidae	Darter, Cumberland johnny.	U.S.A. (KY, TN).
C	5	R4	<i>Percina aurora</i>	Percidae	Darter, Pearl	U.S.A. (LA, MS).
C	5	R4	<i>Etheostoma phytophilum</i>	Percidae	Darter, rush	U.S.A. (AL).
C	2	R4	<i>Etheostoma moorei</i>	Percidae	Darter, yellowcheek	U.S.A. (AR).
C*	9	R6	<i>Thymallus arcticus</i>	Salmonidae	Grayling, Arctic (upper Missouri River DPS).	U.S.A. (MT, WY).
C	2	R4	<i>Noturus sp.</i>	Ictaluridae	Madtom, chucky	U.S.A. (TN).
C	2	R3	<i>Cottus sp.</i>	Cottidae	Sculpin, grotto	U.S.A. (MO).
C	5	R2	<i>Notropis oxyrhynchus</i>	Cyprinidae	Shiner, sharpnose	U.S.A. (TX).
C	5	R2	<i>Notropis buccula</i>	Cyprinidae	Shiner, smalleye	U.S.A. (TX).
C	3	R2	<i>Catostomus discobolus yarrowi</i>	Catostomidae	Sucker, Zuni bluehead	U.S.A. (AZ, NM).
PT	6	R1	<i>Oncorhynchus clarki clarki</i>	Salmonidae	Trout, coastal cutthroat (Southwestern WA/Colombia River DPS).	U.S.A. (AK, CA, OR, WA), Canada (BC).
PSAT	N/A	R1	<i>Salvelinus malma</i>	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, OR, WA), Canada, East Asia.
<b>Clams</b>						
C	5	R4	<i>Pleurobema troschelianum</i>	Unionidae	Clubshell, Alabama	U.S.A. (AL, GA, TN).
C	5	R4	<i>Pleurobema chattanoogaense</i>	Unionidae	Clubshell, painted	U.S.A. (AL, GA, TN).
C	2	R2	<i>Popenaias popei</i>	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico
C	5	R4	<i>Ptychobranthus subtentum</i>	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA).
C	5	R4	<i>Lampsilis rafinesqueana</i>	Unionidae	Mucket, Neosho	U.S.A. (AR, KS, MO, OK).
C	2	R4	<i>Margaritifera marrianae</i>	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL).
C	5	R4	<i>Lexingtonia dolabelloides</i>	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA).
C	5	R4	<i>Pleurobema hanleyanum</i>	Unionidae	Pigtoe, Georgia	U.S.A. (AL, GA, TN).
C	5	R4	<i>Elliptio spinosa</i>	Unionidae	Spiny mussel, Altamaha	U.S.A. (GA).
<b>Snails</b>						
PE	1	R3	<i>Antrobia culveri</i>	Hydrobiidae	Cavesnail, Tumbling Creek.	U.S.A. (MO).
C	9	R6	<i>Oreohelix peripherica wasatchensis</i>	Oreohelicidae	Mountainsnail, Ogden Desert.	U.S.A. (UT).
C	2	R6	<i>Stagnicola bonnevillensis</i>	Lymnaeidae	Pondsnail, Bonneville	U.S.A. (UT).
C	2	R1	<i>Pyrgulopsis notidicola</i>	Hydrobiidae	Pyrg, elongate mud meadows.	U.S.A. (NV).
C	5	R4	<i>Leptoxis downei</i>	Pleuroceridae	Rocksnailed, Georgia	U.S.A. (GA, AL).
C	2	R1	<i>Ostodes strigatus</i>	Potaridae	Sisi	U.S.A. (AS).
C	2	R2	<i>Tryonia adamantina</i>	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX).
C	2	R1	<i>Samoana fragilis</i>	Partulidae	Snail, fragile tree	U.S.A. (GU, MP).
C	2	R1	<i>Partula radiolata</i>	Partulidae	Snail, Guam tree	U.S.A. (GU).
C	2	R1	<i>Partula gibba</i>	Partulidae	Snail, Humped tree	U.S.A. (GU, MP).
PE	2	R2	<i>Tryonia kosteri</i>	Hydrobiidae	Snail, Koster's tryonia	U.S.A. (NM).
C	2	R1	<i>Partulina semicarinata</i>	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C	2	R1	<i>Partulina variabilis</i>	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C	2	R1	<i>Partula langfordi</i>	Partulidae	Snail, Langford's tree	U.S.A. (MP).
PE	2	R2	<i>Assiminea pecos</i>	Assimineidae	Snail, Pecos assiminea	U.S.A. (NM, TX), Mexico.
C	2	R2	<i>Cochliopa texana</i>	Hydrobiidae	Snail, Phantom Lake cave.	U.S.A. (TX).
C	2	R1	<i>Eua zebrina</i>	Partulidae	Snail, Tutuila tree	U.S.A. (AS).
C	2	R2	<i>Tryonia cheatumi</i>	Hydrobiidae	Springsnail (=Tryonia), Phantom.	U.S.A. (TX).
C*	2	R2	<i>Pyrgulopsis chupaderae</i>	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM).
C*	11	R2	<i>Pyrgulopsis gilae</i>	Hydrobiidae	Springsnail, Gila	U.S.A. (NM).
C	2	R2	<i>Tryonia circumstriata</i> (=stocktonensis).	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX).
C	5	R2	<i>Pyrgulopsis thompsoni</i>	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico.
C*	11	R2	<i>Pyrgulopsis thermalis</i>	Hydrobiidae	Springsnail, New Mexico	New U.S.A. (NM).
C*	2	R2	<i>Pyrgulopsis morrisoni</i>	Hydrobiidae	Springsnail, Page	U.S.A. (AZ).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE	2	R2	<i>Pyrgulopsis roswellensis</i>	Hydrobiidae	Springsnail, Roswell	U.S.A. (NM).
C	2	R2	<i>Pyrgulopsis trivialis</i>	Hydrobiidae	Springsnail, Three Forks	U.S.A. (AZ).
C	5	R1	<i>Newcombia cumingi</i>	Achatinellidae	Tree snail, Newcomb's	U.S.A. (HI)
<b>Insects</b>						
C	11	R6	<i>Zaitzevia thermae</i>	Elmidae	Beetle, Warm Springs Zaitzevian riffle.	U.S.A. (MT).
C	2	R1	<i>Nysius wekiuicola</i>	Lygaeidae	Bug, Wekiu	U.S.A. (HI).
C	3	R1	<i>Hypolimnas octocula mariannensis</i> .	Nymphalidae	Butterfly, Mariana eight-spot.	U.S.A. (GU, MP).
C	2	R1	<i>Vagrans egestina</i>	Nymphalidae	Butterfly, Mariana wandering.	U.S.A. (GU, MP).
PE	N/A	R2	<i>Euphydryas anicia cloudcrofti</i> .	Nymphalidae	Butterfly, Sacramento Mountains checkerspot.	U.S.A. (NM).
C	6	R1	<i>Euphydryas editha taylori</i>	Nymphalidae	Butterfly, whulge checkerspot (=Taylor's).	U.S.A. (OR, WA), Canada (BC).
C	5	R4	<i>Glyphopsyche sequatchie</i>	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN).
C	5	R4	<i>Pseudanopthalmus major</i> .	Carabidae	Cave beetle, beaver	U.S.A. (KY).
C	5	R4	<i>Pseudanopthalmus caecus</i> .	Carabidae	Cave beetle, Clifton	U.S.A. (KY).
C	5	R4	<i>Pseudanopthalmus pholeter</i> .	Carabidae	Cave beetle, greater Adams.	U.S.A. (KY).
C	5	R5	<i>Pseudanopthalmus holsingeri</i> .	Carabidae	Cave Beetle, Holsinger's	U.S.A. (VA).
C	5	R4	<i>Pseudanopthalmus frigidus</i> .	Carabidae	Cave beetle, icebox	U.S.A. (KY).
C	5	R4	<i>Pseudanopthalmus inquisitor</i> .	Carabidae	Cave beetle, inquirer	U.S.A. (TN).
C	5	R4	<i>Pseudanopthalmus cataryctos</i> .	Carabidae	Cave beetle, lesser Adams.	U.S.A. (KY).
C	5	R4	<i>Pseudanopthalmus troglodytes</i> .	Carabidae	Cave beetle, Louisville	U.S.A. (KY).
C	5	R4	<i>Pseudanopthalmus inexpectatus</i> .	Carabidae	Cave beetle, surprising	U.S.A. (KY).
C	5	R4	<i>Pseudanopthalmus parvus</i> .	Carabidae	Cave beetle, Tatum	U.S.A. (KY).
C	9	R1	<i>Megalagrion nigrohamatum nigrolineatum</i> .	Coenagrionidae	Damselfly, blackline Hawaiian.	U.S.A. (HI).
C	2	R1	<i>Megalagrion leptodemus</i>	Coenagrionidae	Damselfly, crimson Hawaiian.	U.S.A. (HI).
C	2	R1	<i>Megalagrion nesiotae</i>	Coenagrionidae	Damselfly, flying earwig Hawaiian.	U.S.A. (HI).
C	2	R1	<i>Megalagrion oceanicum</i>	Coenagrionidae	Damselfly, oceanic Hawaiian.	U.S.A. (HI).
C	8	R1	<i>Megalagrion xanthomelas</i>	Coenagrionidae	Damselfly, orangeblack Hawaiian.	U.S.A. (HI).
C	2	R1	<i>Megalagrion pacificum</i>	Coenagrionidae	Damselfly, Pacific Hawaiian.	U.S.A. (HI).
C	5	R1	<i>Phaeogramma</i> sp	Tephritidae	Gall fly, Po'olanui	U.S.A. (HI).
PE	2	R1	<i>Drosophila aglaia</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
C	2	R1	<i>Drosophila attigua</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
C	2	R1	<i>Drosophila digressa</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila heteroneura</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila montgomeryi</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila mulli</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila musaphila</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila neoclavissetae</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila obatai</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila substenoptera</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila tarphytrichia</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila hemipeza</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila ochrobasis</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
PE	2	R1	<i>Drosophila differens</i>	Drosophilidae	Pomace fly, [unnamed]	U.S.A. (HI).
C	5	R2	<i>Heterelmis stephani</i>	Elmidae	Riffle beetle, Stephan's	U.S.A. (AZ).
PE	3	R1	<i>Pseudocopaodes eunus obscurus</i> .	Hesperiidae	Skipper, Carson wandering.	U.S.A. (CA, NV).
C	11	R3	<i>Hesperia dacotae</i>	Hesperiidae	Skipper, Dakota	U.S.A. (MN, IA, SD, ND, IL), Canada.
C	5	R1	<i>Polites mardon</i>	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA).
C*	9	R6	<i>Cicindela limbata albissima</i> .	Cicindelidae	Tiger beetle, Coral Pink Sand Dunes.	U.S.A. (UT).
C	5	R4	<i>Cicindela highlandensis</i>	Cicindelidae	Tiger beetle, highlands	U.S.A. (FL).
C	3	R6	<i>Cicindela nevadica lincolniensis</i> .	Cicindelidae	Tiger beetle, Salt Creek	U.S.A. (NE).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
<b>Arachnids</b>						
C	2	R2	<i>Cicurina wartoni</i>	Dictynidae	Meshweaver, Warton's cave.	U.S.A. (TX).
<b>Crustaceans</b>						
PE	N/A	R2	<i>Gammarus desperatus</i>	Gammaridae	Amphipod, Noel's	U.S.A. (NM).
C	11	R4	<i>Fallicambarus gordonii</i>	Cambaridae	Crayfish, Camp Shelby burrowing.	U.S.A. (MS).
C	2	R1	<i>Metabetaeus lohena</i>	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI).
C	2	R1	<i>Antecaridina lauensis</i>	Atyidae	Shrimp, anchialine pool	U.S.A. (HI), Mozambique, Saudi Arabia, Japan.
C	2	R1	<i>Calliasmata pholidota</i>	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI), Funafuti Atoll, Saudi Arabia, Sinai Peninsula, Tuvalu.
C	2	R1	<i>Palaemonella burnsi</i>	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI).
C	2	R1	<i>Procaris hawaiiensis</i>	Procarididae	Shrimp, anchialine pool	U.S.A. (HI).
C	2	R1	<i>Vetericaris chaceorum</i>	Procarididae	Shrimp, anchialine pool	U.S.A. (HI).
C	5	R4	<i>Typhlatya monae</i>	Atyidae	Shrimp, troglobitic groundwater.	U.S.A. (PR), Barbuda, Dominican Republic.
<b>Flowering Plants</b>						
C	11	R1	<i>Abronia alpina</i>	Nyctaginaceae	Sand-verbena, Ramshaw Meadows.	U.S.A. (CA).
C	11	R6	<i>Alicia caespitosa</i>	Polemoniaceae	Alice-flower, wonderland	U.S.A. (UT).
PE	N/A	R1	<i>Ambrosia pumila</i>	Asteraceae	Ambrosia, San Diego	U.S.A. (CA), Mexico.
C	11	R4	<i>Arabis georgiana</i>	Brassicaceae	Rockcress, Georgia	U.S.A. (GA).
C	11	R4	<i>Argythamnia blodgettii</i>	Euphorbiaceae	Silverbrush, Blodgett's	U.S.A. (FL).
C	3	R1	<i>Artemisia campestris</i> var. <i>wormskiodii</i> .	Asteraceae	Wormwood, northern	U.S.A. (OR, WA).
C	2	R1	<i>Astelia waialealae</i>	Liliaceae	Pa'iniu	U.S.A. (HI).
C	5	R4	<i>Aster georgianus</i>	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC).
C	8	R6	<i>Astragalus equisoleensis</i>	Fabaceae	Milk-vetch, horseshoe	U.S.A. (UT).
C	8	R6	<i>Astragalus tortipes</i>	Fabaceae	Milk-vetch, Sleeping Ute	U.S.A. (CO).
C	5	R1	<i>Bidens amplexens</i>	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C	6	R1	<i>Bidens campylothea pentamera</i> .	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C	3	R1	<i>Bidens campylothea waihoiensis</i> .	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C	8	R1	<i>Bidens conjuncta</i>	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C	6	R1	<i>Bidens micrantha ctenophylla</i> .	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C	5	R4	<i>Brickellia mosieri</i>	Asteraceae	Brickell-bush, Florida	U.S.A. (FL).
C	5	R1	<i>Calamagrostis expansa</i>	Poaceae	Reedgrass, [unnamed]	U.S.A. (HI).
C	5	R1	<i>Calamagrostis hillebrandii</i>	Poaceae	Reedgrass, [unnamed]	U.S.A. (HI).
C	5	R4	<i>Calliandra locoensis</i>	Mimosaceae	No common name	U.S.A. (PR).
C	2	R1	<i>Calochortus persistens</i>	Liliaceae	Mariposa lily, Siskiyou	U.S.A. (CA).
C	5	R4	<i>Calyptanthus estremereae</i>	Myrtaceae	No common name	U.S.A. (PR).
C	5	R1	<i>Canavalia napaliensis</i>	Fabaceae	'Awikiwiki	U.S.A. (HI).
C	2	R1	<i>Canavalia pubescens</i>	Fabaceae	'Awikiwiki	U.S.A. (HI).
C	8	R6	<i>Castilleja aquariensis</i>	Scrophulariaceae	Paintbrush, Aquarius	U.S.A. (UT).
C*	11	R1	<i>Castilleja christii</i>	Scrophulariaceae	Paintbrush, Christ's	U.S.A. (ID).
C	6	R4	<i>Chamaecrista lineata keyensis</i> .	Fabaceae	Pea, Big Pine partridge	U.S.A. (FL).
C	6	R4	<i>Chamaesyce deltoidea pinetorum</i> .	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL).
C	6	R4	<i>Chamaesyce deltoidea serpyllum</i> .	Euphorbiaceae	Spurge, wedge	U.S.A. (FL).
C	5	R1	<i>Chamaesyce eleanoriae</i>	Euphorbiaceae	'Akoko	U.S.A. (HI).
C	6	R1	<i>Chamaesyce remyi</i> var. <i>remyi</i> .	Euphorbiaceae	'Akoko	U.S.A. (HI).
C	6	R1	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i> .	Euphorbiaceae	'Akoko	U.S.A. (HI).
C	5	R1	<i>Charpentiera densiflora</i>	Amaranthaceae	Papala	U.S.A. (HI).
C*	3	R1	<i>Chorizanthe parryi</i> var. <i>fernandina</i> .	Polygonaceae	Spineflower, San Fernando Valley.	U.S.A. (CA).
C	5	R4	<i>Chromolaena frustrata</i>	Asteraceae	Thoroughwort, Cape Sable.	U.S.A. (FL).
C	2	R4	<i>Consouea corallicola</i>	Cactaceae	Cactus, Florida semaphore.	U.S.A. (FL).
C	2	R4	<i>Cordia rupicola</i>	Boraginaceae	No common name	U.S.A. (PR), Anegada
C	2	R1	<i>Cyanea asplenifolia</i>	Campanulaceae	Haha	U.S.A. (HI).
C	5	R1	<i>Cyanea calycina</i>	Campanulaceae	Haha	U.S.A. (HI).
C	2	R1	<i>Cyanea eleleensis</i>	Campanulaceae	Haha	U.S.A. (HI).
C	2	R1	<i>Cyanea kuhihewa</i>	Campanulaceae	Haha	U.S.A. (HI).
C	5	R1	<i>Cyanea kunthiana</i>	Campanulaceae	Haha	U.S.A. (HI).
C	5	R1	<i>Cyanea lanceolata</i>	Campanulaceae	Haha	U.S.A. (HI).
C	2	R1	<i>Cyanea obtusa</i>	Campanulaceae	Haha	U.S.A. (HI).
C	5	R1	<i>Cyanea tritomantha</i>	Campanulaceae	Haha	U.S.A. (HI).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R1	<i>Cyrtandra filipes</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C	5	R1	<i>Cyrtandra kaulantha</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C	5	R1	<i>Cyrtandra oenobarba</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C	2	R1	<i>Cyrtandra oxybapha</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C	2	R1	<i>Cyrtandra sessilis</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C	6	R4	<i>Dalea carthagenensis floridana</i>	Fabaceae	Prairie-clover, Florida	U.S.A. (FL).
C	5	R4	<i>Digitaria pauciflora</i>	Poaceae	Crabgrass, Florida pine-land.	U.S.A. (FL).
C	6	R1	<i>Dubautia imbricata imbricata</i>	Asteraceae	Na'ena'e	U.S.A. (HI).
C	3	R1	<i>Dubautia plantaginea magnifolia</i>	Asteraceae	Na'ena'e	U.S.A. (HI).
C	5	R1	<i>Dubautia waialealae</i>	Asteraceae	Na'ena'e	U.S.A. (HI).
C	6	R2	<i>Echinomastus erectocentrus</i> var. <i>acunensis</i>	Cactaceae	Cactus, Acuna	U.S.A. (AZ), Mexico.
C	11	R1	<i>Erigeron basalticus</i>	Asteraceae	Daisy, basalt	U.S.A. (WA).
C	5	R2	<i>Erigeron lemmonii</i>	Asteraceae	Fleabane, Lemmon	U.S.A. (AZ).
C	2	R1	<i>Eriogonum codium</i>	Polygonaceae	Buckwheat, Umtanum Desert.	U.S.A. (WA).
C	5	R1	<i>Eriogonum kelloggii</i>	Polygonaceae	Buckwheat, Red Mountain.	U.S.A. (CA).
C	5	R1	<i>Festuca hawaiiensis</i>	Poaceae	No common name	U.S.A. (HI).
C	11	R2	<i>Festuca ligulata</i>	Poaceae	Fescue, Guadalupe	U.S.A. (TX), Mexico.
C	5	R1	<i>Gardenia remyi</i>	Rubiaceae	Nanu	U.S.A. (HI).
C	5	R1	<i>Geranium hanaense</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C	8	R1	<i>Geranium hillebrandii</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C	2	R1	<i>Geranium kauaiense</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C	5	R4	<i>Gonocalyx concolor</i>	Ericaceae	No common name	U.S.A. (PR).
C	5	R1	<i>Hedyotis fluviatilis</i>	Rubiaceae	Kampu'a	U.S.A. (HI).
C	5	R4	<i>Helianthus verticillatus</i>	Asteraceae	Sunflower, whorled	U.S.A. (AL, GA, TN).
C	5	R2	<i>Hibiscus dasycalyx</i>	Malvaceae	Rose-mallow, Neches River.	U.S.A. (TX).
C	6	R4	<i>Indigofera mucronata keyensis</i>	Fabaceae	Indigo, Florida	U.S.A. (FL).
C	5	R1	<i>Ivesia webberi</i>	Rosaceae	Ivesia, Webber	U.S.A. (CA, NV).
C	3	R1	<i>Joinvillea ascendens ascendens</i>	Joinvilleaceae	Ohe	U.S.A. (HI).
C	5	R1	<i>Korthalsella degeneri</i>	Viscaceae	Hulumoa	U.S.A. (HI).
C	5	R1	<i>Labordia helleri</i>	Loganiaceae	Kamakahala	U.S.A. (HI).
C	5	R1	<i>Labordia pumila</i>	Loganiaceae	Kamakahala	U.S.A. (HI).
C	5	R1	<i>Lagenifera erici</i>	Asteraceae	No common name	U.S.A. (HI).
C	5	R1	<i>Lagenifera helenae</i>	Asteraceae	No common name	U.S.A. (HI).
C	5	R4	<i>Leavenworthia crassa</i>	Brassicaceae	Gladecress, [unnamed]	U.S.A. (AL).
C	2	R2	<i>Leavenworthia texana</i>	Brassicaceae	Gladecress, Texas golden.	U.S.A. (TX).
C*	2	R1	<i>Lepidium papilliferum</i>	Brassicaceae	Peppergrass, Slick spot	U.S.A. (ID).
C	5	R4	<i>Lesquerella globosa</i>	Brassicaceae	Bladderpod, Short's	U.S.A. (IN, KY, TN).
C	5	R1	<i>Lesquerella tuplashensis</i>	Brassicaceae	Bladderpod, White Bluffs	U.S.A. (WA).
PE	3	R1	<i>Limnanthes floccosa grandiflora</i>	Limnanthaceae	Meadowfoam, large-flowered wooly.	U.S.A. (OR).
C	2	R4	<i>Linum arenicola</i>	Linaceae	Flax, sand	U.S.A. (FL).
C	3	R4	<i>Linum carteri carteri</i>	Linaceae	Flax, Carter's small-flowered.	U.S.A. (FL).
PE	2	R1	<i>Lomatium cookii</i>	Apiaceae	Lomatium, Cook's	U.S.A. (OR).
C	5	R1	<i>Lysimachia daphnoides</i>	Primulaceae	Makanoe lehua	U.S.A. (HI).
C	5	R1	<i>Melicope christophersenii</i>	Rutaceae	Alani	U.S.A. (HI).
C	2	R1	<i>Melicope degeneri</i>	Rutaceae	Alani	U.S.A. (HI).
C	2	R1	<i>Melicope hiiakae</i>	Rutaceae	Alani	U.S.A. (HI).
C	2	R1	<i>Melicope makahae</i>	Rutaceae	Alani	U.S.A. (HI).
C	2	R1	<i>Melicope paniculata</i>	Rutaceae	Alani	U.S.A. (HI).
C	5	R1	<i>Melicope puberula</i>	Rutaceae	Alani	U.S.A. (HI).
C	5	R1	<i>Myrsine fosbergii</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C	2	R1	<i>Myrsine mezii</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C	5	R1	<i>Myrsine vaccinioides</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C	8	R5	<i>Narthecium americanum</i>	Liliaceae	Asphodel, bog	U.S.A. (DE, NC, NJ, NY, SC).
PE	1	R1	<i>Nesogenes rotensis</i>	Verbenaceae	No common name	U.S.A. (MP).
C	5	R1	<i>Nothoecstrum latifolium</i>	Solanaceae	'Aiea	U.S.A. (HI).
C	2	R1	<i>Ochrosia haleakalae</i>	Apocynaceae	Holei	U.S.A. (HI).
PE	2	R1	<i>Osmoxylon mariannense</i>	Araliaceae	No common name	U.S.A. (MP).
C	5	R5	<i>Panicum hirstii</i>	Poaceae	Panic grass, Hirst	U.S.A. (DE, GA, NC, NJ).
C	11	R2	<i>Paronychia congesta</i>	Caryophyllaceae	Whitlow-wort, bushy	U.S.A. (TX).
C	6	R2	<i>Pediocactus peeblesianus fickeiseniae</i>	Cactaceae	Cactus, Fickeisen plains	U.S.A. (AZ).
C	5	R6	<i>Penstemon debilis</i>	Scrophulariaceae	Beardtongue, Parachute	U.S.A. (CO).
C	5	R6	<i>Penstemon grahamii</i>	Scrophulariaceae	Beardtongue, Graham	U.S.A. (CO, UT).
C*	6	R6	<i>Penstemon scariosus albifluvis</i>	Scrophulariaceae	Beardtongue, White River	U.S.A. (CO, UT).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R1	<i>Peperomia subpetiolata</i> ..	Piperaceae .....	'Ala 'ala wai nui .....	U.S.A. (HI).
C	11	R6	<i>Phacelia submutica</i> .....	Hydrophyllaceae .....	Phacelia, DeBeque .....	U.S.A. (CO).
C	2	R1	<i>Phyllostegia bracteata</i> .....	Lamiaceae .....	No common name .....	U.S.A. (HI).
C	5	R1	<i>Phyllostegia floribunda</i> .....	Lamiaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Phyllostegia hispida</i> .....	Lamiaceae .....	No common name .....	U.S.A. (HI).
C	5	R1	<i>Pittosporum napallense</i> ..	Pittosporaceae .....	Hoo'awa .....	U.S.A. (HI).
C	5	R4	<i>Platanthera integrilabia</i> ..	Orchidaceae .....	Orchid, white fringeless ..	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
C	6	R1	<i>Platydesma cornuta cornuta</i> .	Rutaceae .....	No common name .....	U.S.A. (HI).
C	6	R1	<i>Platydesma cornuta decurrens</i> .	Rutaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Platydesma remyi</i> .....	Rutaceae .....	No common name .....	U.S.A. (HI).
C	5	R1	<i>Platydesma rostrata</i> .....	Rutaceae .....	Pilo kea lau li'i .....	U.S.A. (HI).
C	5	R1	<i>Pleomele forbesii</i> .....	Agavaceae .....	Hala pepe .....	U.S.A. (HI).
PE	2	R1	<i>Polygonum hickmanii</i> .....	Polygonaceae .....	Polygonum, Scotts Valley ..	U.S.A. (CA).
C	5	R1	<i>Potentilla basaltica</i> .....	Rosaceae .....	Cinquefoil, Soldier Meadow- ows.	U.S.A. (NV).
C	5	R1	<i>Pritchardia hardyi</i> .....	Asteraceae .....	Lo'ulu, (=Na'ena'ena).	U.S.A. (HI).
C	6	R1	<i>Pseudognaphalium (=Gnaphalium) sandwicensium</i> var <i>molokaiense</i> .	Asteraceae .....	'Ena'ena .....	U.S.A. (HI).
C	2	R1	<i>Psychotria grandiflora</i> .....	Rubiaceae .....	Kopiko .....	U.S.A. (HI).
C	3	R1	<i>Psychotria hexandra oahuensis</i> .	Rubiaceae .....	Kopiko .....	U.S.A. (HI).
C	2	R1	<i>Psychotria hobbyi</i> .....	Rubiaceae .....	Kopiko .....	U.S.A. (HI).
C	5	R1	<i>Pteralyxia macrocarpa</i> ..	Apocynaceae .....	Kaulu .....	U.S.A. (HI).
C	5	R1	<i>Ranunculus hawaiiensis</i> ..	Ranunculaceae .....	Makou .....	U.S.A. (HI).
C	2	R1	<i>Ranunculus mauiensis</i> ..	Ranunculaceae .....	Makou .....	U.S.A. (HI).
C*	2	R1	<i>Rorippa subumbellata</i> .....	Brassicaceae .....	Cress, Tahoe yellow .....	U.S.A. (CA, NV).
C	2	R1	<i>Schiedea attenuata</i> .....	Caryophyllaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Schiedea pubescens</i> .....	Caryophyllaceae .....	Ma'oli'oli .....	U.S.A. (HI).
C	2	R1	<i>Schiedea salicaria</i> .....	Caryophyllaceae .....	No common name .....	U.S.A. (HI).
C	5	R1	<i>Sedum eastwoodiae</i> .....	Crassulaceae .....	Stonecrop, Red Mountain ..	U.S.A. (CA).
C	5	R1	<i>Sicyos macrophyllus</i> .....	Cucurbitaceae .....	'Anunu .....	U.S.A. (HI).
C	9	R1	<i>Sidalcea hickmanii parishii</i> .	Malvaceae .....	Checkerbloom, Parish's ..	U.S.A. (CA).
C	5	R1	<i>Solanum nelsonii</i> .....	Solanaceae .....	Popolo .....	U.S.A. (HI).
C	2	R1	<i>Stenogyne cranwelliae</i> ..	Lamiaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Stenogyne kealiae</i> .....	Lamiaceae .....	No common name .....	U.S.A. (HI).
PE	2	R1	<i>Tabernaemontana rotensis</i> .	Apocynaceae .....	No common name .....	U.S.A. (GU, MP).
C	2	R1	<i>Zanthoxylum oahuense</i> ..	Rutaceae .....	A'e .....	U.S.A. (HI).

**Ferns and Allies**

C*	11	R1	<i>Botrychium lineare</i> .....	Ophioglossaceae .....	Moonwort, slender .....	U.S.A. (CA, CO, ID, MT, OR, WA), Canada (BC, NB, QC).
C	6	R1	<i>Cyclosorus boydiae boydiae</i> .	Thelypteridaceae .....	No common name .....	U.S.A. (HI).
C	6	R1	<i>Cyclosorus boydiae kiphahuensis</i> .	Thelypteridaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Dryopteris takeuchii</i> .....	Dryopteridaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Dryopteris tenebrosa</i> .....	Dryopteridaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Microlepia mauiensis</i> .....	Dennstaedtiaceae .....	No common name .....	U.S.A. (HI).
C	2	R1	<i>Phlegmariurus stemmermanniae</i> .	Lycopodiaceae .....	Wawae'iole .....	U.S.A. (HI).

<sup>1</sup> No data.

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS

Status		Lead region	Scientific name	Family	Common name	Historic range
Code	Expl					
<b>Mammals</b>						
E	L	R1	<i>Sorex ornatus relictus</i>	Soricidae .....	Shrew, Buena Vista Lake ornate	U.S.A. (CA).
<b>Amphibians</b>						
E	L	R4	<i>Rana capito sevosa</i> ..	Ranidae .....	Frog, Mississippi gopher (Wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA).	U.S.A. (AL, FL, LA, MS).

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Code	Expl					
<b>Fishes</b>						
E .....	L	R4	<i>Etheostoma chermocki</i> .	Percidae .....	Darter, vermilion .....	U.S.A. (AL).
<b>Insects</b>						
Rc .....	I	R1	<i>Tinostoma smaragditiis</i> .	Spingidae .....	Moth, fabulous green sphinx .....	U.S.A. (HI).
<b>Flowering Plants</b>						
E .....	L	R4	<i>Carex lutea</i> .....	Cyperaceae .....	Sedge, golden .....	U.S.A. (NC).
E .....	L	R1	<i>Hackelia venusta</i> .....	Boraginaceae .....	Stickseed, showy .....	U.S.A. (WA).
Rc .....	M	R1	<i>Pleomele fernaldii</i> .....	Agavaceae .....	Hala pepe .....	U.S.A. (HI).
T .....	L	R6	<i>Yermo xanthocephalus</i> .	Asteraceae .....	Yellowhead, desert .....	U.S.A. (WY).

[FR Doc. 02-14963 Filed 6-12-02; 8:45 am]  
 BILLING CODE 4310-55-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR. Parts 223, and 226**

[Docket no. 020603139-2139-01 I.D. 052302A]

**Listing Endangered and Threatened Species: Finding on Petition to Delist Coho Salmon in the Klamath River Basin; Reopening of Public Comment Period**

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

**ACTION:** Notice of finding; re-opening of public comment period.

**SUMMARY:** The National Marine Fisheries Service (NMFS) has received a petition to delist coho salmon (*Oncorhynchus kisutch*) in the Klamath River Basin (California and Oregon). Coho populations in the Klamath River Basin are part of the Southern Oregon/Northern California Coasts (SONCC) Evolutionarily Significant Unit (ESU), which is listed as a threatened species under the Endangered Species Act of 1973, as amended (ESA). The petition fails to present substantial scientific or commercial information to suggest that delisting may be warranted. On February 11, 2002, NMFS published a notice in the **Federal Register** on the findings on 6 delisting petitions and status reviews of 25 ESUs of Pacific salmon and steelhead, including the

SONCC coho salmon ESU. Based on input received thus far, NMFS is reopening the comment period and seeking additional information on the status of the 25 ESUs under review.

**DATES:** Written comments on the previous February 11, 2002, findings on 6 delisting petitions and on the status review updates for 25 ESUs of Pacific salmon and steelhead (67 FR 6215), must be received by August 12, 2002.

**ADDRESSES:** Information or comments on this action should be submitted to the Assistant Regional Administrator, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR, 97232-2737. Comments will not be accepted if submitted via e-mail or the Internet. However, comments may be sent via facsimile to (503) 230-5435.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, NMFS, Northwest Region, (503) 231-2005; Craig Wingert, NMFS, Southwest Region, (562) 980-4021; or Chris Mobley, NMFS, Office of Protected Resources, (301) 713-1401. Additional information, including the references used and the petitions addressed in this notice, is available on the Internet at [www.nwr.noaa.gov](http://www.nwr.noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Delisting Factors and Basis for Determination*

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (ESA) requires that, to the maximum extent practicable, within 90 days after receiving a petition for delisting species, the Secretary make a finding whether the petition presents substantial scientific information indicating that the petitioned action

may be warranted. The ESA implementing regulations for the National Marine Fisheries Service (NMFS) define “substantial information” as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In evaluating a petitioned action, the Secretary must consider whether such a petition (1) clearly indicates the recommended administrative measure and the species involved, (2) contains a detailed narrative justification for the recommended measure, describing past and present numbers and distribution of the species involved and any threats faced by the species, (3) provides information regarding the status of the species over all or a significant portion of its range, and (4) is accompanied by appropriate supporting documentation (50 CFR 424.14(b)(2)).

Section 424.11(d) contains provisions concerning petitions from interested persons requesting the Secretary to delist or reclassify a species listed under the ESA. A species may be delisted for one or more of the following reasons: the species is extinct or has been extirpated from its previous range; the species has recovered and is no longer endangered or threatened; or investigations show that the best scientific or commercial data available when the species was listed or that the interpretation of such data were in error.

**Salmonid Evolutionarily Significant Units**

NMFS is responsible for determining whether a species, subspecies, or

distinct population segment (DPS) of Pacific salmon and steelhead (*Oncorhynchus* spp.) is threatened or endangered species under the ESA. NMFS has determined that DPSs are represented by ESUs of Pacific salmon and steelhead and treats ESUs as a "species" under the ESA (56 FR 58612, November 20, 1991). To date, NMFS has completed comprehensive coastwide status reviews of Pacific salmonids and identified 51 ESUs in California, Oregon, Washington, and Idaho. Five of these ESUs are currently listed under the ESA as endangered, and 21 ESUs are listed as threatened.

#### Petition Received

On March 18, 2002, NMFS received a petition from the California State Grange (Grange petition) to delist coho salmon in Siskiyou County, California. These fish are part of a larger ESU of SONCC coho salmon. The SONCC coho ESU was listed as a threatened species on May 6, 1997 (62 FR 24588). This ESU includes all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California. NMFS has recently committed to update the status of 25 ESUs of Pacific salmon and steelhead, including the SONCC coho ESU (67 FR 6215 February 11, 2002).

The Grange petition is a duplicate of a petition received by NMFS on September 19, 2001, from the Interactive Citizens United (ICU). NMFS rejected the ICU petition in a notice published in the **Federal Register** on February 11, 2002 (67 FR 6215), finding that the petition failed to present substantial scientific or commercial information to suggest that delisting may be warranted.

#### Petition Finding

The Grange petition seeks delisting of a portion of the threatened SONCC coho salmon ESU (i.e., fish in Siskiyou County), an action not enabled by the ESA. NMFS having determined that DPSs are represented by ESUs of Pacific salmon and steelhead, treats ESUs as species under the ESA (56 FR 58612, November 20, 1991). The ESA authorizes the listing, delisting, or reclassification of a species, subspecies, or DPS, as defined under the Act (50 CFR 424.02(k)). However, the ESA does not authorize the delisting of one subset or portion of a listed species/ subspecies/DPS (50 CFR 424.11(d)). The petition lacks a coherent narrative detailing the justification for the recommended measure. Additionally, it does not present substantial scientific or commercial information that the SONCC ESU is recovered, extinct, or that the data or the interpretation in the original

listing determination were in error. Furthermore, the Grange petition does not provide status data for the listed ESU over all or a significant portion of its range, hence the data provided are not instructive in the context of the ESU's status as a whole. The data provided in the petition are restricted to the Iron Gate Hatchery population, a population which is not part of the listed ESU (62 FR 24588 May 6, 1997). Therefore, NMFS determines that the petition does not present substantial scientific or commercial information to indicate that the petitioned action may be warranted based on the criteria specified in 424.11(d) and 424.14(b)(2).

#### Re-opening of Comment Period

Several comments and requests have been received to extend the comment period for the February 11, 2002, petition findings (67 FR 6215) and the associated status review updates for 25 Pacific salmon and steelhead ESUs. The comment period closed on April 12, 2002. Accordingly, NMFS is re-opening the comment period for 60 days to allow adequate opportunity for public comment (see **DATES** and **ADDRESSES**). NMFS is seeking information, comments, and/or data concerning the petition findings or the status review updates. The following are the 25 ESUs for which NMFS is conducting status review updates: Ozette lake sockeye (*O. nerka*) ESU; Sacramento River winter-run, Snake River spring/summer, Snake River fall, Puget Sound, Upper Willamette River, Lower Columbia River, Upper Columbia River spring-run, Central Valley spring-run, and California Coastal chinook (*O. tshawytscha*) ESUs; Central California Coast, Southern Oregon/Northern California Coasts, Oregon Coast, and Lower Columbia/Southwest Washington coho ESUs; Hood Canal summer-run, and Columbia River chum (*O. keta*) ESUs; and South-Central California, Central California Coast, Upper Columbia River, Snake River Basin, Lower Columbia River, California Central Valley, Upper Willamette River, Middle Columbia River, and Northern California steelhead (*O. mykiss*) ESUs. NMFS is soliciting such pertinent information on naturally spawned and hatchery populations within these ESUs as data on population abundance, recruitment, productivity, escapement, and reproductive success (e.g. spawner-recruit or spawner-spawner survivorship, smolt production estimates, fecundity, and ocean survival rates); historical and present data on hatchery fish releases, outmigration, survivorship, returns, straying rates, replacement rates, and reproductive

success in the wild; data on age structure and migration patterns of juveniles and adults; meristic, morphometric, and genetic studies; and spatial or temporal trends in the quality and quantity of freshwater, estuarine, and marine habitats. NMFS is particularly interested in such information for the period since the most recent status review for a given ESU (see 67 FR 6215, February 11, 2002, for a summary, by ESU, of the last status review conducted and the most recent data used). Status reviews for the majority of the 25 ESUs to be reviewed were conducted in 1997–2000. However, the status of Sacramento River winter-run chinook, and Central California coast coho were last assessed in 1994 and 1995, respectively. Comments submitted during the initial public comment period need not be re-submitted. NMFS will consider all information, comments, and recommendations received during the extended public comment period.

#### References

The complete citations for the references used in this document can be obtained by contacting NMFS or via the Internet (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 7, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–14959 Filed 6–12–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 020522128–2128–01; I.D. 050602B]

RIN 0648–AP79

### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 60 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Area

(FMP). This action would prohibit the use of non-pelagic trawl gear in Cook Inlet. This action is necessary to address bycatch avoidance objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), to mirror existing regulations in State waters of Cook Inlet, and is intended to further the goals and objectives of the FMP.

**DATES:** Comments on the proposed rule must be received by July 29, 2002.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to (907) 586-7465. Comments will not be accepted if submitted via e-mail or internet. Copies of Amendment 60 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR, parts 600 and 679.

### Background and Need for Action

This action is designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National Standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures shall minimize bycatch, to the extent practicable, and shall minimize mortality of bycatch where bycatch cannot be avoided.

More specific authority for the proposed rule is provided by section 303(b)(2) of the Magnuson-Stevens Act. It states: "Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may...designate zones where, and periods when, fishing...shall be permitted only ...with specified types and quantities of fishing gear."

The objective of Amendment 60, as adopted by the Council in September 2000, is to reduce bycatch of crab in the exclusive economic zone (EEZ) of Cook Inlet in the GOA groundfish fishery. The proposed action would prohibit the use of non-pelagic trawl gear in the EEZ of Cook Inlet in an area north of a line from Cape Douglas (58°51.10' N. lat.) to Point Adam (59°15.27' N. lat.).

### Status of Crab Resources in Cook Inlet

Historically, Cook Inlet supported significant Tanner crab (*Chionoecetes bairdi*) and red king crab (*Paralithodes camtschaticus*) fisheries. These crab fisheries occurred in State of Alaska (State) and Federal waters, and a number of the most productive fishing grounds were within the Federal waters of Lower Cook Inlet. The earliest recorded red king crab fishery in Cook Inlet occurred in 1937. The proximity to ports encouraged the development of this fishery and by the mid-1950s annual harvests increased. The peak harvest of over 8 million lb (3,629 mt) of red king crab occurred during the 1962-1963 season. The fishery remained productive through the mid-1970s then productivity declined. In 1982, the fishery was closed and has remained closed.

The commercial Tanner crab fishery in Cook Inlet began in the mid-1960s as a fishery incidental to the more lucrative red king crab fishery. Harvests in the Tanner crab fishery of Lower Cook Inlet peaked in the early 1970s at over 4 million lb (1,814 mt) then declined gradually until the fishery closed in 1995. The fishery has remained closed. These harvest patterns are similar to other Tanner and red king crab fisheries in the Gulf of Alaska.

Fishery surveys conducted by the Alaska Department of Fish and Game (ADF&G) in Cook Inlet throughout the early and mid-1990s indicated that both Tanner and red king crab stocks remained at historically low levels of abundance. In response to concerns by fishermen and ADF&G biologists about the potential impacts of non-pelagic trawl gear on crab bycatch and habitat, the Alaska Board of Fisheries (Board) prohibited the use of non-pelagic trawl gear in State waters encompassing primary crab habitat in 1990. In 1996, the Board extended that prohibition to all of the State waters of Cook Inlet and in many other areas of the Gulf of Alaska. In 1999, based on continuing concerns about the impacts of trawl gear on crab bycatch and habitat, the Board further extended State water closures to non-pelagic trawl gear in additional areas of the GOA, particularly in State waters in the Kodiak region.

Recent surveys in Cook Inlet in 1999 and 2001 indicate that Tanner crab stocks may be improving. These indications are highly uncertain at this point. Surveys conducted in other regions of the GOA indicate that some Tanner crab stocks may be improving. ADF&G opened limited Tanner crab fisheries in nearby Kodiak in 2001 and 2002, and the South Alaska Peninsula in 2001.

Although the State of Alaska manages crab fisheries in the GOA EEZ in the absence of Federal regulations, the Secretary retains management authority for groundfish fisheries in the GOA EEZ. The Board does not have authority to manage groundfish fisheries in the EEZ that may affect crab stocks. In June 1998, ADF&G submitted a proposal to the Council to prohibit the use of non-pelagic trawl gear in the EEZ of Cook Inlet. ADF&G submitted this proposal to effectively extend the existing State water prohibition on non-pelagic trawling to protect crab stocks that may occur in the EEZ of Cook Inlet. The Council adopted this proposal as Amendment 60 to the GOA FMP in September 2000.

### Effects of Non-Pelagic Trawl Gear on Crab Resources

Non-pelagic trawl gear may catch crab incidental to its target species. The amount of crab incidental catch or bycatch by non-pelagic trawl gear varies depending on the abundance of crab stocks, the type of trawl gear used, the type of substrate on which the gear is fishing, and the target species of the trawl gear. Non-pelagic trawl gear can impact crab populations in several ways. Non-pelagic trawl gear can cause direct mortality of crab through bycatch. Although numerous studies have been conducted on the impact of non-pelagic trawl gear on crab, the level of bycatch mortality varies. NMFS has restricted the use of non-pelagic trawl gear in several areas of the GOA that have historically supported crab fisheries where crab bycatch is relatively high compared to other areas (e.g., Amendment 26 to the GOA FMP, (58 FR 503, January 6, 1993)). NMFS has implemented similar measures in the Bering Sea and Aleutian Islands management area (BSAI) groundfish fisheries in regions that support crab fisheries with high incidence of crab bycatch (e.g., Amendment 37 to the BSAI FMP, (61 FR 65985, December 12, 1996)).

Non-pelagic trawl gear also may cause indirect mortality of crab. As non-pelagic trawl gear passes over the ocean floor, it may kill or damage crab that come into contact with the gear. Few

studies exist on the potential impacts of this indirect mortality on crab resources, but recent research described in the EA (see **ADDRESSES**) indicates that this indirect bycatch mortality may be less than 10 percent of the crabs that encounter the gear.

Finally, non-pelagic trawl gear may alter the benthic substrate so that it is less favorable to crab survival. Numerous studies exist on the potential impact of trawl gear on benthic habitats. Generally, these studies indicate that non-pelagic gear can damage sedentary megafauna (e.g., sponges, corals), reduce the overall diversity of sedentary organisms, smooth the surface of the ocean floor, and resuspend sediment near the ocean floor. Research outside of Alaska cited in the EA indicates that crab populations have a mixed response to this disturbance and some crab populations may benefit whereas others may not. No study has directly assessed the impacts of non-pelagic trawl gear on crab habitat and crab populations in Alaska. The potential impact of indirect mortality due to gear interactions or habitat modification on Tanner and red king crab populations in Cook Inlet is unknown.

#### Groundfish Fisheries in Cook Inlet

Groundfish fisheries in Cook Inlet have expanded in the past 10 years. Historically, non-pelagic trawl gear has been little used in Cook Inlet. According to ADF&G data, from 1987-2000, only two vessels have used non-pelagic trawl gear in Cook Inlet—one vessel in 1990, and another vessel in 1995. Both of these vessels harvested a small amount of groundfish. No non-pelagic trawling has occurred in Cook Inlet since 1995.

Although a Pacific cod fishery developed in the EEZ of Cook Inlet, and has expanded since 1995, most of the harvest from this fishery comes from pot and longline gear. Despite sporadic interest by some fishermen to use non-pelagic trawl gear in the Cook Inlet EEZ, no one has recently used this gear type. The State has managed a Pacific cod fishery for pot and jig gears in the State waters of Cook Inlet since 1997. Harvests in the State water Pacific cod fishery are well below the guideline harvest level allocated to the fishery in each of the past five years.

#### Effect of this Action

The proposed measure would prevent potential adverse effects of non-pelagic trawl crab bycatch on low populations of Tanner and red king crab stocks in Cook Inlet. Although no crab fisheries currently exist in Cook Inlet and no recent non-pelagic trawling has occurred, this proposed action would

prevent the development of a non-pelagic trawl gear fishery in an area that has supported a productive crab fishery. This proposed action would have no negative effect on existing levels of crab bycatch or non-pelagic trawling given the recent, though uncertain, indications that Cook Inlet crab stocks may be improving and the negligible use of non-pelagic trawl gear in this area.

Although non-pelagic trawling may have an adverse effect on some sedentary megafauna and certain types of substrate, the potential impacts of non-pelagic trawl gear on crab populations are unknown. Given the negligible use of non-pelagic trawl gear in Cook Inlet, this proposed action would not be expected to have any impacts on crab habitat or benthic habitat in general. This action is a proactive measure to limit potential crab bycatch from non-pelagic fisheries that may develop in the future. Some vessel owners have indicated an interest in maintaining these areas open for non-pelagic trawling, although no effort has occurred recently. The proposed measure would reduce potential bycatch on crab resources currently at relatively low abundance, mirror existing regulations in State waters of Cook Inlet, and minimize potential adverse effects of non-pelagic trawl gear on the benthic habitat for crab and other groundfish stocks. This proposed rule would implement these benefits without adversely affecting any existing non-pelagic trawl gear fisheries.

#### Classification

At this time, NMFS has not determined that the amendment this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

A notice of availability (NOA) of the FMP amendment was published on May 14, 2002 (67 FR 34424), with comments on the FMP amendment invited through July 15, 2002. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by July 15, 2002, to be considered in the decision to approve or disapprove the FMP amendment.

The Council and NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. Analysis of catch data from 1987-2000 indicates that few, if any, vessels would be adversely affected by the Council's preferred alternative. One vessel used non-pelagic trawl gear in the EEZ of Cook Inlet in 1990 and

another vessel in 1995. The specific amounts of harvest from these two vessels cannot be released due to State confidentiality requirements. However, the ex-vessel value of Pacific cod from both of these vessels was less than \$10,000. This proposed action would not have any adverse impact on existing fishing vessels, given the negligible use of non-pelagic trawl gear in Cook Inlet, the availability of other more productive non-pelagic trawl fisheries in other areas of the GOA, pot and jig gear fisheries for Pacific cod in the State waters of Cook Inlet, and a pot and longline gear fishery for Pacific cod in the EEZ of Cook Inlet. Numerous fishing opportunities exist for vessels within Cook Inlet, or outside of Cook Inlet if non-pelagic trawl gear is used. Nearby fishery-dependent communities and recreational fishermen would not be affected by the non-pelagic trawl gear ban.

Likewise, this action is not expected to have any economic benefit for small entities, because no Tanner or red king crab fishery currently exists in Cook Inlet. This action may improve the prospects for rebuilding crab stocks. However, the potential economic benefits of this possibility are not now foreseeable. Although NMFS does not anticipate that this proposed rule would have a significant impact on a substantial number of small entities, it is unable to state this with certainty and, therefore, prepared an IRFA (see **ADDRESSES**).

No new reporting or recordkeeping requirements are imposed by this proposed rule.

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

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 7, 2002.

**William T. Hogarth,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*, Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.22, paragraph (b)(7) is added to read as follows:

**§ 679.22 Closures.**

(b) \* \* \*

(7) Cook Inlet. No person may use a non-pelagic trawl in waters of the EEZ of Cook Inlet north of a line from Cape

Douglas (58°51.10' N lat.) to Point Adam (59°15.27' N. lat.).

[FR Doc. 02-14958 Filed 6-12-02; 8:45 am]

**BILLING CODE 3510-22-S**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Tongue Allotment Management Planning on the Tongue Ranger District, Bighorn National Forest, Sheridan County, WY

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an environmental impact statement (EIS) to update range management planning on twenty-three livestock grazing allotments (currently managed as seventeen allotments) which will result in development of new allotment management plans (AMPs). There are twelve cattle and horse allotments and eleven sheep and goat allotments. The cattle and horse allotments are Amsden, Copper Creek/Upper Dry Fork, Freezeout, Little Tongue, Lower Tongue, Nickelmine, Pass Creek, Prospect/Cedar, Upper Tongue and Wolf Creek. The sheep and goat allotments are Bull Creek/Bruce Mountain/Woodrock, Fishhook, Fool Creek, Lookout Mountain, Owen Creek, Pole Creek, Spring and Wallrock/Hidden Tepee. The allotments are located approximately 50 miles, by road, northwest of Sheridan, Wyoming in the Tongue River drainage. National Forest System lands within the Bighorn National Forest will be considered in the proposal. Management actions are planned to be implemented beginning in the year 2003. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis should be received in writing by July 15, 2002, or thirty days

from publication of this notice. Scoping comments previously submitted for this project do not need to be submitted again.

**ADDRESSES:** Send written comments and suggestions concerning this proposal to Craig Yancey, District Ranger, Tongue Ranger District, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and EIS to David Beard, Interdisciplinary Team Leader, Bighorn National Forest, Tongue Ranger District, 2013 Eastside 2nd Street, phone (307) 674-2600.

**SUPPLEMENTARY INFORMATION:** The purpose of the analysis is to determine if livestock grazing will continue on the analysis area. If the decision is to continue livestock grazing, then updated management strategies outlining how livestock will be grazed and at what levels will be developed to assure implementation of Forest Plan management direction. The analysis will consider actions that continue to improve trends in vegetation, watershed conditions, and ecological sustainability relative to livestock grazing within the twenty-three allotments. The allotments are located within the Tongue watershed on the Tongue and Medicine Wheel/Paintrock districts on the Bighorn National Forest.

The action is needed to develop new AMPs which incorporate results of recent scientific research and analysis at the watershed level.

The Bighorn National Forest Land and Resource Management Plan (Forest Plan), as amended, identifies livestock grazing as an appropriate use and identifies lands capable and suitable for domestic livestock.

The Forest planning process allocated specific management direction across the Bighorn National Forest. Within the area encompassed by the twenty-three allotments, management areas include 1.11 (wilderness), 2A (semi-primitive motorized recreation), 2B (rural and roaded natural recreation), 3A (semi-primitive nonmotorized recreation), 3B (primitive recreation), 4B (wildlife), 4D (aspen), 5B (winter range), 6A (livestock forage improvement), 6B, (livestock grazing), 7E (timber), 9A (riparian areas), 9B (water yield) and 10D (wild and scenic rivers).

The twenty-three allotments encompass approximately 172,000 acres of National Forest System Lands and 2,500 acres of Non Forest Service lands. Important riparian areas occur in several of the allotments including Copper Creek, Freezeout, Little Tongue, Lower Tongue, Pass Creek, Upper Tongue, Prospect/Cedar, Nickelmine, Pole Creek, Fishhook/Fool Creek and Bull Creek/Bruce Mountain/Woodrock. The management of riparian areas to protect them from livestock is of key concern. Some exclusive have been built in riparian areas to protect resources from these impacts.

Potential focal/MIS species include amphibians such as the wood frog and spotted frog that inhabit wetland areas, particularly near Woodrock. An additional potential focal species is the watervole that inhabits riparian areas on several allotments.

Approximately thirty miles of the Tongue River are in the Forest Plan as a wild and scenic management area. The Upper North Tongue River is a fourteen-mile long stretch of stream that is a very popular fishery in the northern part of the forest. There are numerous heritage resources in the planning area including several prehistoric sites and the historical Woodrock Tie Hack District. The Wyoming Department of Game and Fish has rated the Tongue River within the canyon as a Blue Ribbon Stream—a fishery of national importance. Fish species within the planning area include native populations of brook trout, brown trout, rainbow trout, Yellowstone Cutthroat trout and Snake River Cutthroat trout.

Preliminary issues include: (1) The effects of livestock grazing on riparian conditions (including water quality, water temperature and stream bank stability); (2) effects of livestock grazing on fisheries and wildlife habitat, including big game winter range; (3) the effects of no grazing or reduced grazing on the local economy; (4) management of livestock near developed campgrounds and in areas heavily used for dispersed recreation; and (5) the effects of livestock grazing on TES species.

A detailed public involvement plan has been developed, and an interdisciplinary team has been selected to do the environmental analysis, prepare and accomplish scoping and public involvement activities.

Consultation with the U.S. Fish and Wildlife Service, as required by the Endangered Species Act (ESA), will be completed on all proposed activities.

Public involvement is especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be consulting with Indian Tribes and seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying issues including key issues to be analyzed in depth.
2. Developing alternatives based on themes which will be derived from issues recognized during scoping activities.
3. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
4. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comments.

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by February 2003. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available June 2003.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environment review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully

consider and respond to them in the final EIS.

Comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Officials on the Bighorn National Forest are Craig Yancey, Tongue District Ranger and Dave Myers, Medicine Wheel/Paintrock District Ranger. The Responsible Officials will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

Dated: May 28, 2002.

**Craig L. Yancey**,  
Tongue District Ranger.

Dated: May 31, 2002.

**Dave Myers**,  
Medicine Wheel/Paintrock District Ranger.  
[FR Doc. 02-14853 Filed 6-12-02; 8:45 am]  
**BILLING CODE 3410-FN-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### North Fork Fire Salvage; Notice of Intent

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare an Environmental Impact Statement.

**SUMMARY:** The purpose of this notice is to inform the public that the Forest Service intends to prepare an environmental impact statement for the North Fork Fire Salvage project, Sierra National Forest, Madera County, California.

**DATES:** The public is asked to submit any issues regarding potential effects of the proposed action or alternatives by July 15, 2002.

**ADDRESSES:** Send written comments to David Martin, District Ranger, Bass Lake

River Ranger District, P.O. 57003 Road 225, North Fork, California 93643.

**FOR FURTHER INFORMATION CONTACT:** Michael Price, Team Leader, at (559) 877-2218 ext. 3162, or e-mail [mjprice@fs.fed.us](mailto:mjprice@fs.fed.us).

#### SUPPLEMENTARY INFORMATION:

##### Background and Early Public Involvement

On Monday, August 20, 2001, the North Fork Fire started at 12:25 approximately 1 mile north of the town of North Fork. The fire proceeded to burn 4132 acres of the South Fork Bluffs threatening the town of North Fork and outlying communities, destroying two residential homes and approximately 1498 acres of coniferous forest stands. The Fire occurred in the area addressed by the Willow Creek Landscape Ecosystem Analysis, June 1995. On September 28, 2001, the Forest decided to commence an environmental analysis of proposed timber salvage harvest and the public was invited to present their comments or concerns. The Forest has decided to prepare an Environmental Impact Statement. No additional public meetings are anticipated.

##### Proposed Action

The proposed action is to salvage harvest and sell merchantable trees identified within the guidelines of the Sierra National Forest Land and Resource Management Plan, 1991, (SNF LRMP) as amended by the Sierra Nevada Forest Plan Amendment (SNF EIS), Record of Decision (ROD), Jan. 2001 (Framework). The proposal includes salvage harvest of dead timber, predominately by helicopter harvest system, on approximately 538 acres, and conventional ground tractor/skidder harvest on approximately 71 acres. Harvesting and follow-up treatments, such as activity fuels treatments and planting, will be consistent with SNF EIS ROD requirements for the Urban/Wildland Intermix Defense and Threat Zones. Planting will be done on a portion of the burned area to accelerate a return of these areas to native coniferous vegetation.

The purpose and need is defined and guided by the Sierra National Forest Land and Resource Management Plan (LRMP), as amended in January 2001 by the Sierra Nevada Forest Plan Amendment (SNFP) Final Environmental Impact Statement Record of Decision (ROD) and the Willow Creek Landscape Analysis Plan. The SNFP ROD directs the national forest to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and

services from the land (ROD pg 7). Under the plan, an estimated 91 million board feet (MMBF) of salvage harvest may be produced from the 11 national forests annually (ROD-11). This project will contribute approximately 5 MMBF to these expectations.

The proposed activities are consistent with the Sierra National Forest LRMP, as amended, and the Willow Creek Landscape Ecosystem Analysis.

### Preliminary Alternatives to the Proposed Action

To comply with NEPA, the Forest Service will evaluate alternatives to the proposed action within the EIS, including No Action and other alternatives responding to public comments. Each alternative will be rigorously explored and evaluated, or rationale will be given for eliminating an alternative from detailed study. A range of alternatives may be considered.

### Responsible Official

The Responsible Deciding Official is James L. Boynton, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Rd., Clovis, CA 93612.

### Public Involvement

The public will be invited to participate in the scoping process, and review of the draft environmental impact statement (DEIS). Comments from the public and other agencies will be used in preparation of the DEIS. No public meetings are planned. The draft environmental impact statement is expected to be available for public review and comment in September 2002 and a final environmental impact statement in November 2002. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215.

Additionally, 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 awarded that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental state may be viewed or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490F. Supp. 1334 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to

refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: June 5, 2002.

**James L. Boynton,**

*Forest Supervisor.*

[FR Doc. 02-14898 Filed 6-12-02; 8:45 am]

BILLING CODE 3410-11-M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Forest Counties Payments Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting and extension of comment period.

**SUMMARY:** The Forest Counties Payments Committee will meet in Washington, DC, on July 10, 2002. The purpose of the meeting is to receive comments from both elected officials and the general public on the recommendations the Committee must make to Congress as specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. The meeting will consist of a business session, which is open to public attendance, from 9 a.m. to 12 noon and a public input session from 1 p.m. until 5 p.m. This notice also provides an extension of the comment period associated with the Forest Counties Payments Committee notices published in the **Federal Register** on February 4, 2002 (67 FR 5087), March 26, 2002 (67 FR 13748), and on May 6, 2002 (67 FR 30353).

**DATES:** The Washington, DC, meeting will be held on July 10, 2002. Persons who are interested in providing comments to the Committee, including those who attended or have an interest in the meetings in Reno, Nevada, and Rapid City, South Dakota, identified in the preceding **SUMMARY**, have until July 31, 2002, to submit their written comments. Comments received after this date will be considered to the extent possible.

**ADDRESSES:** The July 10 meeting will be held at the Holiday Inn on the Hill, 415 New Jersey Avenue, NW, Washington, DC. Those who cannot be present may submit written responses to the questions listed in **SUPPLEMENTARY INFORMATION** in this notice to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, P.O. Box 34718, Washington, DC 20043-4713, or electronically at the Committee's website at <http://countypayments.gov/comments.html>.

**FOR FURTHER INFORMATION CONTACT:**

Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208-6574 or via e-mail at [rphillips01@fs.fed.us](mailto:rphillips01@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Public Law 106-291) created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. To formulate its recommendations to Congress, the Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106-393).

At the July 10 meeting in Washington, DC, the Committee asks that elected officials and others who wish to comment provide information in response to the following questions:

1. Do counties receive their fair share of Federal revenue-sharing payments made to eligible States?
2. What difficulties exist in complying with and managing all of the Federal revenue-sharing payments programs? Are some more difficult than others?
3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?
4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?
5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years as a result of changes in management on public lands in your State or county?
6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions or revenue-sharing payments?
7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?
8. What relationship, if any, should exist between Federal revenue-sharing

programs, and management activities on public lands?

9. What alternatives exist to provide equitable revenue-sharing to States and counties and to promote "sustainable forestry?"

10. What has been your experience regarding implementation of Public Law 106-393, the Secure Rural Schools and Community Self-Determination Act?

11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple-use management of these lands?

12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple-use management of these lands?

Dated: June 6, 2002.

**George D. Lennon,**

*Acting Deputy Chief.*

[FR Doc. 02-14860 Filed 6-12-02; 8:45 am]

**BILLING CODE 3410-11-P**

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## CIVIL RIGHTS COMMISSION

### Sunshine Act Meeting

**AGENCY:** Commission on Civil Rights.

**DATE AND TIME:** Friday, June 21, 2002, 9:30 a.m.

**PLACE:** 400 S.E. Second Avenue, Tuttle Room, Miami, FL 33131

**STATUS:** Open to the public.

#### Agenda

- I. Approval of Agenda
  - II. Approval of Minutes of May 17, 2002 Meeting
  - III. Announcements
  - IV. Staff Director's Report
  - V. State Advisory Committee Appointments for Florida and Kentucky
  - VI. State Advisory Committee Report
    - Barriers Facing Minority- and Women-Owned Businesses in Pennsylvania (Pennsylvania)
  - VII. Future Agenda Items
- 10:30 a.m. Briefing: Voting Rights in Florida 2002: The Impact of the Commission's Report and the Florida Election Reform Act of 2002 (Thursday, June 20, 2002)

**Debra Carr,**

*Deputy General Counsel.*

[FR Doc. 02-15041 Filed 6-11-02; 10:32 am]

**BILLING CODE 6335-01-M**

## DEPARTMENT OF COMMERCE

[I.D. 061002A]

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Fishing Capacity Reduction Program Buyback Requests.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0376.

*Type of Request:* Regular submission.

*Burden Hours:* 38,563.

*Number of Respondents:* 878.

*Average Hours Per Response:* 6,634 hours for a business plan; 4 hours for a referendum vote; 4 hours for an invitation to bid; 10 minutes to submit a fish ticket; 2 hours for a monthly buyer report; 4 hours for an annual buyer report; 2 hours for a seller/buyer report; 270 hours for a state approval of plans and amendments to state fishery management plan; and 1 hour for advising of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

*Needs and Uses:* NMFS has established a program to reduce excess fishing capacity by paying fishermen (1) to surrender their fishing permits or (2) both surrender their permits and either scrap their vessels or restrict vessel titles to prevent fishing. NMFS proposes to add a provision which would allow the public 30 days to advise of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership, and to merge requirements currently cleared under OMB Control Number 0648-0413.

*Affected Public:* Business or other for-profit organizations, individuals or households, and State, Local, or Tribal Government.

*Frequency:* On occasion, monthly, annually.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington,

DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 4, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer,  
Office of the Chief Information Officer.*

[FR Doc. 02-14960 Filed 6-12-02; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Customer Input: United States Patent and Trademark Office Customer Surveys

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), 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 the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 12, 2002.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone 703-308-7400; by e-mail at [susan.brown@uspto.gov](mailto:susan.brown@uspto.gov); or by facsimile at 703-308-7400.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Cathy Smith, Program Analyst, Center for Quality Services, Crystal Park 1—Suite 812, 2011 Crystal Drive, Arlington, VA 22202; by telephone at 703-305-4211; by facsimile at 703-308-8002; or by e-mail to [cathy.smith@uspto.gov](mailto:cathy.smith@uspto.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This is a generic clearance for an undefined number of voluntary surveys that the United States Patent and Trademark Office (USPTO) may conduct over the next three years. These surveys may be conducted in a variety of forms, such as telephone surveys, face-to-face interviews, mail surveys, questionnaires

and customer surveys, comment cards, and focus groups.

The USPTO is currently investigating the feasibility of electronic surveys for all of the customer satisfaction surveys that the USPTO conducts. At this time, customers can respond only to the Annual Patent and Trademark Customer Satisfaction surveys electronically.

In the past year there has been an increase in the use of electronic transmissions throughout the USPTO, with various offices assessing their specific services through customer surveys. This is part of a broader agency initiative to improve customer satisfaction with the USPTO. Although customers do have the option to respond to the Annual Customer Satisfaction surveys electronically, the USPTO may not be able to collect other surveys electronically because the agency does not collect e-mail addresses in the databases that support the external surveys. Currently, the USPTO is in the process of developing an electronic customer database.

A brief description of the expected methodology for the various survey vehicles is provided below:

For telephone surveys, the USPTO calls the respondent and either surveys the respondent over the phone or schedules an appointment and faxes the survey questions to the respondent. In addition, a script is prepared for the actual telephone interview so that each telephone survey is conducted in the same manner. At this time, the USPTO is unable to predict the actual number of telephone surveys that may be conducted. The USPTO estimates that 400 responses will be received from telephone surveys, for an estimated burden of 100 hours.

For possible face-to-face interviews, the USPTO uses a variety of delivery mechanisms to try to meet our customers' needs. A script is prepared so that each respondent is asked the same questions. There also may be other occasional uses of face-to-face interviews to assess customer satisfaction. The USPTO estimates that 200 responses will be received from face-to-face interviews, for an estimated burden of 50 hours.

The USPTO also mails surveys to respondents with instructions to mail the completed surveys back to the USPTO in the self-addressed and stamped envelope provided with the survey. In general, the USPTO follows up non-responses by mailing reminders and through phone contacts. At this time, the USPTO is unable to predict the actual number of survey mailings that may be conducted. In the past year there has been an increase in the use of electronic transmissions throughout the

USPTO in assessing specific services through customer surveys. This accounts for an increase in the estimated number of responses through this category of surveys since the last submission. The USPTO estimates that 5,000 responses will be received from survey mailings. The USPTO estimates that 3,500 of these will be submitted electronically, for an estimated burden of 875 hours, and that the remaining 1,500 paper surveys will be mailed to the USPTO, for an estimated burden of 750 hours. The overall burden for the mail surveys is 1,625 hours.

The USPTO uses questionnaires and customer surveys to survey users of USPTO's various services or to survey attendees at various conferences, among other items. The USPTO provides survey forms which are either handed to the respondents by the staff or left for attendees to pick up as they enter or exit from various functions. If the completed surveys are not handed directly back to a staff member, the respondents are instructed to drop off their surveys or mail them back to the USPTO. At this time, the USPTO is unable to predict the actual number of questionnaires and customer surveys that may be conducted. The USPTO estimates that 1,800 responses will be received from questionnaires and customer surveys, for an estimated burden of 144 hours.

Another survey instrument which the USPTO frequently uses is customer comment cards. These comment cards are pre-paid and return-addressed postage cards which the respondent can mail back to the USPTO. At this time, the USPTO is unable to predict the actual number of questionnaires and customer surveys that may be conducted. The USPTO estimates that 2,000 responses will be received from customer surveys and questionnaires, for an estimated burden of 160 hours.

The USPTO frequently uses focus groups as a survey instrument. The USPTO asks groups of its customers to get together and discuss issues of mutual interest. Many times the results of these sessions are used to help make improvements to USPTO operations or to recommend that certain issues be studied further. There has been an increase in assessing the needs of our external customers through direct customer contact. This is part of a broader agency initiative to compile data in lieu of paper surveys and accounts for the increase in estimated responses from focus groups since the last submission. The USPTO estimates that 600 responses will be received from focus groups, for an estimated burden of 1,200 hours.

These various survey vehicles are designed to obtain customer feedback

regarding products, services, and related service standards of the USPTO. At this time, the USPTO is unable to state precisely which survey vehicles will be used during the renewal period. As the USPTO's survey needs are determined, the USPTO will submit the specific survey instrument for approval.

**II. Method of Collection**

These surveys will be conducted by telephone and face-to-face interviews, mailings, questionnaires and customer surveys, comment cards, and focus groups. The USPTO is also exploring the possibility of using the USPTO Web site to conduct customer surveys. Respondents currently have the option to respond electronically to the Annual Customer Satisfaction surveys through the USPTO website. A random sample is used to collect the data. Statistical methods will be followed.

**III. Data**

*OMB Number:* 0651-0038.  
*Form Number(s):* Depending on the individual situation, the USPTO may have survey and questionnaire forms and comment cards. The USPTO is exploring the feasibility of using electronic surveys, so this information collection may also include electronic forms in the future.  
*Type of Review:* Revision of a currently approved collection.  
*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.  
*Estimated Number of Respondents:* 10,000 responses per year.  
*Estimated Time Per Response:* The USPTO estimates that it will take approximately 15 minutes to complete telephone surveys and face-to-face interviews, 5 minutes to complete questionnaires, customer surveys, and

comment cards, and 2 hours to conduct a focus group. The USPTO estimates that it will take approximately 15 minutes to complete the Annual Patent and Trademark Customer Satisfaction surveys electronically, and that it will take approximately 30 minutes to complete the paper versions of these same surveys.

*Estimated Total Annual Respondent Burden Hours:* 3,279 hours per year.

*Estimated Total Annual Respondent Cost Burden:* \$644,324. The USPTO believes that both professionals and para-professionals will complete these surveys, at a rate of 75% of the current professional rate of \$252 per hour and 25% of the para-professional rate of \$30 per hour. Using a combination of these rates, the USPTO is using an hourly rate of \$196.50 to calculate the respondent costs. The USPTO estimates \$644,324 per year for salary costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Telephone Surveys .....	15 minutes .....	400	100
Face-to-Face Interviews .....	15 minutes .....	200	50
Mail Surveys (Annual Patent/Trademark Customer Satisfaction Surveys) ....	30 minutes .....	1,500	750
Electronic Patent/Trademark Customer Satisfaction Surveys .....	15 minutes .....	3,500	875
Questionnaires and Customer Surveys .....	5 minutes .....	1,800	144
Comment Cards .....	5 minutes .....	2,000	160
Focus Groups .....	2 hours .....	600	1,200
<b>Total .....</b>	<b>.....</b>	<b>10,000</b>	<b>3,279</b>

**Note:** The burden figures shown in the table above are estimates based on the types of surveys that the USPTO may be using during the next three years. At this time, the USPTO cannot predict which and how many surveys will be conducted. Depending on the number of surveys that the USPTO actually conducts, it is possible that the burden hours could decrease from the totals shown in the table.

*Estimated Total Annual Nonhour Respondent Cost Burden:* \$0. (There are no capital start-up or maintenance costs associated with this information collection.)

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 7, 2002.  
**Susan K. Brown,**  
*Records Officer, USPTO, Office of Data Management, Data Administration Division.*  
 [FR Doc. 02-14899 Filed 6-12-02; 8:45 am]  
**BILLING CODE 3510-16-P**

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget, of information collection requirements in a toy cap rule.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: notify the Commission of their intent to distribute such caps; participate in a program to develop toy caps producing sound levels below 138 dB; and report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels. The Commission wishes to obtain current

**CONSUMER PRODUCT SAFETY COMMISSION**

**Proposed Collection; Comment Request—Information Collection Requirements for Sound Levels of Toy Caps**

**AGENCY:** Consumer Product Safety Commission.

and periodically updated information from all manufacturers concerning the status of programs to reduce sound levels of toy caps. The Commission will use this information to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 158 db.

The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

**DATES:** Written comments must be received by the Office of the Secretary not later than August 12, 2002.

**ADDRESSES:** Written comments should be captioned "Information Collection Requirements for Sound Levels of Toy Caps" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504-0127 or by e-mail at [cpssc-os@cpssc.gov](mailto:cpssc-os@cpssc.gov).

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed collection of information call or write Linda L. Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504-0416, Ext. 2226.

**SUPPLEMENTARY INFORMATION:**

**A. Estimated Burden**

The Commission staff estimates that there are ten firms required to annually submit the required information. The staff further estimates that the average number of hours per respondent is four per year, for a total of 40 hours of annual burden.

**B. Request for Comments**

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: June 7, 2002.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 02-14992 Filed 6-12-02; 8:45 am]

**BILLING CODE 6355-01-P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Science Board**

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee meeting date change.

**SUMMARY:** On Thursday, May 9, 2002 (67 FR 31282), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Wideband RadioFrequency Systems. One of the meetings advertised has been rescheduled from August 29-30, 2002, to August 28-29, 2002. The meeting will be held at SAIC, 4001 Fairfax Drive, Suite 500, Arlington, VA.

Dated: June 6, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02-14850 Filed 6-12-02; 8:45 am]

**BILLING CODE 5001-08-M**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Science Board**

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting cancellation.

**SUMMARY:** As previously advertised in the **Federal Register** on March 13, 2002 (67 FR 11293), the Defense Science Board Task Force on Discriminant Use of Force meeting scheduled for June 18-19, 2002, is cancelled.

Dated: June 6, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02-14851 Filed 6-12-02; 8:45 am]

**BILLING CODE 5001-10-M**

**DEPARTMENT OF EDUCATION**

[CFDA Nos. 84.184K, 84.215E, 84.215F, 84.184A, 84.184B]

**Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities—National Programs**

**AGENCY:** Department of Education.

**ACTION:** Notice of closing date extensions and revisions for Safe and Drug-Free Schools Program discretionary grants.

**SUMMARY:** The Assistant Secretary extends or revises the closing date for applications for two grant competitions, announces procedures to extend closing dates for Safe and Drug-free Schools Program discretionary grants if the e-Application system is unavailable, and reaffirms the use of e-Application as the only electronic means of application submission.

**FOR FURTHER INFORMATION CONTACT:** Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6123. Telephone (202) 260-3954.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

Individuals with disabilities may obtain this document in an alternative format, (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact listed in the preceding paragraph.

**Electronic Access to This Document:** You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: [www.ed.gov/legislation/FedRegister](http://www.ed.gov/legislation/FedRegister).

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**SUPPLEMENTARY INFORMATION:** On March 28, 2002, we published a notice in the **Federal Register** (67 FR 15048 through 15050) inviting applications for new awards for the Elementary and Secondary School Counseling Programs grant competition with a deadline of May 13, 2002, for receipt of applications. Conflicting information in the application package may have caused some applicants to misconstrue whether applications had to be received or transmitted by the closing date. We,

therefore, revise the closing date to allow for transmittal as well as receipt of the application by the May 13, 2002, closing date. An applicant must show one of the following as proof of mailing on or before May 13, 2002: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service, or (3) a dated shipping label, invoice, or receipt from a commercial carrier. We will not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

On April 12, 2002, we published a notice in the **Federal Register** (67 FR 17974 through 17976) inviting applications for new awards for the National Coordinator Program with a deadline of May 28, 2002, for receipt of applications. We extend the deadline for receipt of applications for this competition to June 14, 2002. Applications must be received on or before June 14, 2002, in the Department of Education's Application Control Center at the address given in the mailing instructions section of the application package. The e-Application system will not be available for the submission of applications for the National Coordinator Program during this extension. Applications received after June 14, 2002, will not be accepted. This action is taken because of technical difficulties with the e-Application system on May 28, 2002, the closing date for the National Coordinator grant program.

*Closing Date Extension in case of System Unavailability:* An applicant that elects to participate in the e-Application pilot for the Carol M. White Physical Education Program, the Alcohol Abuse Reduction program, or the Mentoring Programs and is prevented from submitting an application on any of the closing dates because the e-Application system is unavailable will be granted an extension of one business day in order to mail the application. For the extension to be granted, the applicant must be a registered user of e-Application and the e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 4:30 p.m. Washington, D.C. time on the closing date. We will not grant a further extension of the deadline if technical problems with the e-Application system persist.

*e-Application as the only electronic means of submission:* e-Application is a data driven system that allows users to enter data on-line while completing their applications. It is the only

electronic means by which we will accept applications. Applications transmitted by e-mail or any electronic means other than e-Application will not be accepted.

[FR Doc. 02-14978 Filed 6-12-02; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

[CFDA No. 84.235F]

### Parent Information and Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* To establish programs to provide training and information to enable individuals with disabilities, and the parents, family members, guardians, advocates, or other authorized representatives of the individuals, to participate more effectively with professionals in meeting the vocational, independent living, and rehabilitation needs of individuals with disabilities. These grants are designed to meet the unique training and information needs of those individuals who live in the area to be served, particularly those who are members of populations that have been unserved or underserved.

*Eligible Applicants:* Private nonprofit organizations that meet the requirements in section 303(c)(4) of the Rehabilitation Act of 1973, as amended (Act).

An applicant organization—  
(1) Must demonstrate the capacity and expertise to—

Coordinate training and information activities with Centers for Independent Living;

Coordinate and work closely with parent training and information centers established pursuant to section 682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17); and

Effectively conduct the training and information activities authorized in section 303 of the Act by the Parent Training and Information Program;

(2)(i) Must be governed by a board of directors—

That includes professionals in the field of vocational rehabilitation; and  
On which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; or

(ii) Must have a membership that represents the interests of individuals with disabilities; and

Must establish a special governing committee that includes professionals in the field of vocational rehabilitation and on which a majority of the members are individuals with disabilities or the parents, family members, guardians, advocates, or authorized representatives of the individuals; and

(3) Must serve individuals with a full range of disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

*Applications Available:* June 17, 2002.

*Deadline for Transmittal of Applications:* August 1, 2002.

*Deadline for Intergovernmental Review:* September 30, 2002.

*Estimated Available Funds:* \$700,000.

*Estimated Range of Awards:* \$95,000–\$105,000.

*Estimated Average Size of Awards:* \$100,000.

*Estimated Number of Awards:* 7.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, and 99.

### Statutory Activities

Applicants must provide information on how they will meet the requirements under section 303(c)(2) of the Act, which requires grantees to assist individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals—

- To better understand vocational rehabilitation and independent living programs and services;
- To provide follow-up support for transition and employment programs;
- To communicate more effectively with transition and rehabilitation personnel and other relevant professionals;
- To provide support in the development of the individualized plan for employment;
- To provide support and expertise in obtaining information about rehabilitation and independent living programs, services, and resources that are appropriate; and
- To understand the provisions of the Act, particularly provisions relating to employment, supported employment, and independent living.

## Priorities

### *Competitive Preference Priority—Employing and Advancing in Employment Qualified Individuals with Disabilities*

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application that is otherwise eligible for funding under this program. The maximum score under the selection criteria for this program is 100 points; however, we will also use the following competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

### *Invitational Priority*

We are particularly interested in applications that meet the following priority.

Applicants are encouraged to include or address activities they may wish to undertake related to the implementation of the Supreme Court's recent decision in the *Olmstead* case, which requires community living alternatives, if appropriate, in place of institutionalization. However, training on the *Olmstead* decision can be provided only in States that have implemented a policy regarding the *Olmstead* decision.

These activities may include, but are not limited to—

- Training to provide families with a clear understanding of the implication of the *Olmstead* decision and its impact on individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals;
- Dissemination of relevant printed and electronic materials to individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals; and

- Provision of individualized information and referral by staff with knowledge of the *Olmstead* decision to individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

Training provided to families on the *Olmstead* decision must be consistent with the policy of the State regarding the implementation of the decision.

Under 34 CFR 75.105(c)(1) we do not give an application that meets this priority a competitive or absolute preference over other applications.

**Selection Criteria:** In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

**For Applications Contact:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html>, or you may contact ED Pubs at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235F.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2550. Telephone: (202) 205-8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**For Further Information Contact:** Joyce Libby, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2650. Telephone: (202) 205-5392. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

**Program Authority:** 29 U.S.C. 773(c).

Dated: June 7, 2002.

**Loretta L. Petty,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02-14864 Filed 6-12-02; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[CFDA No. 84.235G]

### Parent Information and Training Program—Technical Assistance; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

**Purpose of Program:** To provide coordination and technical assistance for establishing, developing, and coordinating the Parent Information and Training Projects funded under Title III of the Rehabilitation Act of 1973, as amended (Act).

**Eligible Applicants:** Private nonprofit organizations that, to the extent practicable, are the training and information centers established pursuant to section 682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105-17).

**Applications Available:** June 17, 2002.  
**Deadline for Transmittal of Applications:** August 1, 2002.

**Deadline for Intergovernmental Review:** September 30, 2002.

**Estimated Available Funds:** \$100,000.  
**Estimated Number of Awards:** 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, and 99.

### Statutory Activities

Grantees must coordinate with and provide technical assistance to the Parent Information and Training Centers funded under Title III of the Act. These centers are required to assist individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals—

- To better understand vocational rehabilitation and independent living programs and services;
- To provide follow-up support for transition and employment programs;
- To communicate more effectively with transition and rehabilitation personnel and other relevant professionals;
- To provide support in the development of the individualized plan for employment;
- To provide support and expertise in obtaining information about rehabilitation and independent living programs, services, and resources that are appropriate; and
- To understand the provisions of the Act, particularly provisions relating to employment, supported employment, and independent living.

In addition, grantees must coordinate and provide technical assistance to the Parent Information and Training Centers that address optional activities related to the Supreme Court's recent decision in the Olmstead case, which requires community living alternatives, if appropriate, in place of institutionalization.

### Priorities

*Competitive Preference Priority—Employing and Advancing in Employment Qualified Individuals With Disabilities*

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application that is otherwise eligible for funding under this program. The maximum score under the selection criteria for this program is 100 points; however, we will also use the following

competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

*Selection Criteria:* In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html>, or you may contact ED Pubs at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235G.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2550. Telephone: (202) 205-8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

*For Further Information Contact:* Joyce Libby, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202-2650. Telephone: (202) 205-5392. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

**Program Authority:** 29 U.S.C. 773(c)(6).

Dated: June 7, 2002.

**Loretta L Petty,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02-14865 Filed 6-12-02; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A]

### Centers for Independent Living—Training and Technical Assistance Center; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

*Purpose of Program:* To provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living to the following eligible entities authorized under title VII of the Rehabilitation Act of 1973, as amended (Act): eligible agencies, centers for independent living (CIL), and Statewide Independent Living Councils (SILCs). The purpose of independent living (IL) services is to maximize independence, productivity, empowerment, and leadership of individuals with disabilities and integrate these individuals into the mainstream of society. A CIL is defined in section 702(1) of the Act as a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and

operated within a local community by individuals with disabilities and that provides an array of IL services.

**Eligible Applicants:** To be eligible to apply for funds under this program, an entity must demonstrate in its application that it has experience in the operation of centers for independent living.

**Applications Available:** June 17, 2002.

**Deadline for Transmittal of Applications:** August 1, 2002.

**Deadline for Intergovernmental**

**Review:** September 30, 2002.

**Estimated Available Funds:**

\$1,237,500.

**Estimated Range of Awards:**

\$618,750—\$1,237,500.

**Estimated Average Size of Awards:**

\$618,750.

**Estimated Number of Awards:** 1–2.

**Note:** The Department is not bound by any estimates in this notice.

**Project Period:** Up to 60 months.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86. (b) The regulations for this program in 34 CFR part 366.

**Selection Criteria:** In evaluating an application for a new grant under this competition, we use the selection criteria in 34 CFR 366.15. The selection criteria to be used for this competition will be provided in the application package for this competition.

**Supplementary Information:** The Secretary has determined that this grant requires substantial Federal involvement during the grant award period. Therefore, the award will be made as a cooperative agreement.

With the New Freedom Initiative, the Administration has committed to support community-based services in order to promote maximum independence and integration of individuals with disabilities in community life. One component of this initiative is the President's commitment to swiftly implement the Supreme Court's decision in *Olmstead v. L.C.*, which found that the Americans with Disabilities Act requires the placement of persons with disabilities in a community-integrated setting whenever possible.

The Department is promoting community-based services for persons with disabilities through its *Olmstead* project in an effort to help States plan, implement, and evaluate consumer-directed and community-based services. The Rehabilitation Continuing Education Program (RCEP) received funding to develop and implement training programs for State vocational

rehabilitation agencies, rehabilitation professionals, and community organizations on issues related to community-based services. In the following invitational priorities, we encourage applicants for this program to build on the work of the *Olmstead* project and the RCEP.

#### Priorities

##### Invitational Priorities

We are particularly interested in applications that meet one or all of the following priorities.

##### Invitational Priority 1

Applications should demonstrate how the project would encourage community-based alternatives to institutionalization. Applications should address how the project will help CILs meet the housing, transportation, assistive technology, and independent living skills training needs of individuals with disabilities moving from an institutional setting to community-based living.

##### Invitational Priority 2

Applications should demonstrate how the project would improve the provision of effective independent living peer mentoring programs.

##### Invitational Priority 3

Applications should demonstrate how the project would assist CILs to increase consumer participation in systems change advocacy.

##### Invitational Priority 4

Applications should provide an annual and comprehensive analysis of centers' operations, consumer services, process measures, access measures, and services and training needs as measured by the annual 704 performance reports, on-site compliance reports, and standards and indicators.

##### Invitational Priority 5

Applications should demonstrate how the project would help CILs provide outreach and services to consumers from diverse multicultural communities and from underserved disability communities, including those with sensory and psychiatric disabilities.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

##### Competitive Preference Priority

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program,

published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i), up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded in this competition. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities. Therefore, within this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the selection criteria in 34 CFR 366.15, for a total possible score of 110 points.

**For Applications Contact:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html>, or you may contact ED Pubs at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202-2550. Telephone: (202) 205-8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339. The preferred method for requesting applications is to FAX your request to (202) 205-8717.

However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**For Further Information Contact:** James Billy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202-2741. Telephone: (202) 205-9362. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative

format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the preceding paragraph.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

**Program Authority:** 29 U.S.C. 796f.

Dated: June 7, 2002.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02-14866 Filed 6-12-02; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP00-331-003 and RP01-23-005]

#### Algonquin Gas Transmission Company; Notice of Compliance Filing

June 6, 2002.

Take notice that on May 29, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in the Appendices to the filing.

Algonquin states that the purpose of this filing is to comply with the Commission's February 27, 2002 Order on Algonquin's Order No. 637 Compliance Filing.

Algonquin states that copies of its filing have been mailed to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14883 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL02-87-000]

#### Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California and City of Vernon, California v. California Independent System Operator Corporation; Notice of Filing

June 7, 2002.

Take notice that on May 17, 2002, the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) and the City of Vernon, California (Vernon) filed with the Federal Energy Regulatory Commission (Commission) a Petition for Review of Arbitrator's Award, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, and Section 13.4 of the California Independent System Operator Corporation's (ISO) Tariff. The petition states that the Southern Cities and Vernon are requesting review of the "Award of Arbitrator" issued on May 1, 2002, in American Arbitration Association (AAA) Case No. 71 198 00758 00.

The Southern Cities and Vernon state that their filing has been served upon all parties to the arbitration and the Arbitrator through his designated representative at the AAA.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. *Comment Date:* June 14, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14915 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-356-000]

#### Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

June 6, 2002.

Take notice that on May 31, 2002, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective July 1, 2002. Assuming the ordinary suspension period, these sheets will become effective December 1, 2002.

Canyon states that the purpose of this filing is to implement a general rate increase. Canyon is submitting two alternative cases. The primary case includes a cost-of-service tracking mechanism. The alternate case, a more traditional rate derivation, results in higher rates than the initial rates under the primary case. While both cases represent a rate increase, both also incorporate a decrease in cost of service from that underlying Canyon's currently effective rates. Canyon has also proposed other tariff changes, including elimination of provisions for crediting interruptible revenue.

Canyon requests waivers of the Commission's Regulations to the extent necessary to permit these tariff sheets to become effective. The requested effective date is July 1, 2002. Assuming the ordinary suspension period, the revised rates and tariffs will become effective December 1, 2002. Canyon has requested that the Commission make effective the tariff sheets setting out the primary case. In the event the Commission does not accept the cost-of-service tracker, Canyon asks that the tariff sheets for the alternate case be made effective.

Canyon states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14893 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-355-000]

#### Central New York Oil And Gas Company, LLC; Notice of Tariff Filing

June 6, 2002.

Take notice that on June 3, 2002, Central New York Oil And Gas Company, LLC (CNYOG) tendered for filing and acceptance as part of its FERC

Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective July 3, 2002:

First Revised Sheet No. 101

First Revised Sheet No. 102

First Revised Sheet No. 103

Original Sheet No. 103A

CNYOG states that the purpose of its filing is to revise the creditworthiness provisions of its tariff and to add a provision to its tariff regarding limitation of liability.

CNYOG further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14892 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-346-000]

#### CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

June 6, 2002.

Take notice that on May 31, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, the following revised tariff sheets to be effective July 1, 2002:

First Revised Sheet No. 129

First Revised Sheet No. 130

Original Sheet No. 130A

First Revised Sheet No. 131

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to implement a new feature of Rate Schedule GPS for Gas Parking Service, that will enable a shipper to nominate delivery of gas to its parking point and receipt of an equivalent quantity of gas from its parking point within the gas day.

Trunkline states that copies of the public portion of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14884 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. RP02-348-000]

Colorado Interstate Gas Company;  
Notice of Compliance Filing

June 6, 2002.

Take notice that on May 31, 2002, Colorado Interstate Gas Company (CIG) is submitting this filing pursuant to Subpart C of Part 154 of the Commission's Regulations and Section 1.30(b) of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 in order to demonstrate that the quarterly L&U and Other Fuel Gas percentage remains unchanged for the quarter beginning July 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-14886 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. RP96-389-053]

Columbia Gulf Transmission  
Company; Notice of Compliance Filing

June 7, 2002.

Take notice that on June 3, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 316, to become effective May 24, 2002.

Columbia Gulf states on April 30, 2002, it made a filing with the Federal Energy Regulatory Commission (Commission) seeking approval of a Rate Schedule ITS-2 negotiated rate agreement with Dunhill Resources, Inc. in Docket NO. RP96-389-049. On May 24, 2002, the Commission issued an order on the filing, approving the service agreement effective May 24, 2002, and directing Columbia Gulf to file a tariff sheet identifying the agreement as a non-conforming agreement in compliance with Section 154.112(b) of the Commission's regulations. The instant filing is being made to comply with Section 154.112(b) and reference the non-conforming service agreement in its Volume No. 1 tariff.

Columbia Gulf states that copies of its filing has been mailed to each of the parties listed on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Copies of this filing are on file with Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-14924 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. ER02-1890-000]

Conoco Gas & Power Marketing, a  
Division of Conoco Inc.; Notice of  
Filing

June 7, 2002.

Take notice that on May 23, 2002, Conoco Gas & Power Marketing, a Division of Conoco Inc., filed a letter stating that it is the correct entity engaging in power transactions.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

*Comment Date:* June 13, 2002.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-14917 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. GT02-26-000]

Discovery Gas Transmission LLC;  
Notice of Proposed Tariff Change

June 6, 2002.

Take notice that on May 30, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing its revised title page to its FERC Gas Tariff

Original Volume No. 1. Such amendment is proposed to become effective May 30, 2002.

Discovery states that the purpose of the instant filing is to replace Discovery's existing title page to its tariff to correct information regarding the person to whom communications concerning the tariff should be sent. This change is made necessary by the change in operatorship of Discovery from Texaco Pipelines LLC to Williams Energy LLC.

Discovery states that copies of the filing are being mailed to affected customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14868 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-351-000]

#### Discovery Gas Transmission LLC; Notice of Lost and Unaccounted for Gas Filing and Proposed Tariff Changes

June 6, 2002.

Take notice that on May 31, 2002, Discovery Gas Transmission LLC (Discovery) filed to comply with the

terms of its FERC Gas Tariff relating to lost and unaccounted for gas for the calendar year 2001, and tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective July 1, 2002:

Second Revised Sheet No. 33

Second Revised Sheet No. 44

Second Revised Sheet No. 53

Discovery states that the revised tariff sheets replace the original retention percentage of 0.5% with 0.1% for lost and unaccounted for gas.

Discovery states that Attachment A to the filing includes the lost and unaccounted for gas recovery factor calculations for 2001 and corrections to volumes for the years 1998, 1999 and 2000.

Discovery states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14889 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-352-000]

#### Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

June 6, 2002.

Take notice that on May 31, 2002, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 2002:

Third Revised Sheet No. 254

First Revised Sheet No. 255

Second Revised Sheet No. 256

First Revised Sheet No. 603

First Revised Sheet No. 654

First Revised Sheet No. 683

Third Revised Sheet No. 1001

Second Revised Sheet No. 1006

Second Revised Sheet No. 1007

First Revised Sheet No. 1031

First Revised Sheet No. 1052

First Revised Sheet No. 1053

Third Revised Sheet No. 1057

Third Revised Sheet No. 1143

First Revised Sheet No. 1143A

Second Revised Sheet No. 1173

Third Revised Sheet No. 1185

DIT states that the purpose of the filing is to update the tariff sheets currently on file with the Commission to make certain administrative and NAESB-related changes and correct typographical errors. The administrative changes made by DTI include an update of the addressee for communications concerning the tariff, a correction of the numbering of the paragraphs in Section 8 of Rate Schedule IT, and elimination of Section 11 in Rate Schedule IT because it is duplicative with Section 9. The NAESB-related changes include changing the references in the tariff from GISB to NAESB and adding references to Central Time in addition to Eastern Time. Typographical errors were corrected on three tariff sheets.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14890 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14923 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-M

surcharge of 3.1 cents per Dth per Month for "low load factor customs" (3) a volumetric commodity/usage surcharge of 0.4 cents; and (4) a special "small customer"; (3) a volumetric commodity/usage surcharge of 0.4 cents; and (4) a special "small customer" surcharge of 0.6 cents per Dth. All of the proposed 2003 surcharges represent decreases from corresponding current levels.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on August 2, 2002. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 16, 2002. GRI's reply comments must be filed with the Commission on or before August 16, 2002. GRI's reply comments must be filed on or before August 23, 2002.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 21, 2002. All comments and protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.**

*Deputy Secretary.*

[FR Doc. 02-14934 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-383-043]

#### Dominion Transmission, Inc.; Notice of Negotiated Rate Filing

June 7, 2002.

Take notice that on May 31, 2002, Dominion Transmission, Inc. (DTI) tendered for filing to the Commission the following tariff sheets for disclosure of two recently negotiated rate transactions with Pleasants Energy LLC and Armstrong Energy LTD Partnership, L.L.L.P. and to make two numbering corrections in previously filed and approved tariff sheets:

Second Revised Sheet No. 1416

Second Revised Sheet No. 1419

Original Sheet Nos. 1420

Original Sheet Nos. 1421

Sheet Nos. 1422-1499

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers, interested state commissions and the service list for the above-referenced docket as maintained by the Office of the Secretary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-354-000]

#### Gas Research Institute; Notice of Annual Application

June 7, 2002.

Take notice that on June 3, 2002, the Gas Research Institute (GRI) filed an application requesting advance approval of its 2033-2007 Five-Year Research, Development and Demonstration (RD&D) Plan, and the 2003 RD&D Program and the funding of its RD&D activities for 2003, pursuant to Section 154.401 of the Commission's April 29, 1998 Order Approving Settlement [83 FERC ¶61,093 (1998)].

In its application, GRI states that all aspects of its proposed 2003 Program are consistent with the current Settlement. GRI states that proposed budgets are identical to those approved as part of the Settlement. GRI proposes to incur contract obligations of \$60.0 million in 2003. Consistent with the Commission's April 29, 1998 Order Approving Settlement, GRI states that all \$60.0 million of the 2003 contract obligations will be for Core Projects. GRI's application seeks to collect funds to support its RD&D program through jurisdictional rates and charges during the twelve months ending December 31, 2003.

Consistent with the Commission's April 29, 1998 Order Approving Settlement, GRI proposes to fund the 2003 RD&D program by the use of the following surcharges: (1) a demand/reservation surcharge of 5.0 cents per Dth per Month for "high load factor customers"; (2) a demand/reservation

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP02-349-000]

**Gulf South Pipeline Company, LP; Notice of Cash-Out Report**

June 6, 2002.

Take notice that on May 31, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing its report of the net revenues attributable to the operation of its cash-in/cash-out program for an annual period beginning April 1, 2001 and ending March 31, 2002.

Gulf South states that this filing reflects its annual report of the net revenues attributable to the operation of its cash-in/cash out program used to resolve transportation imbalances. The report shows a negative cumulative position that will continue to be carried forward and applied to the next cash-in/cash-out reporting period as provided in Gulf South's tariff, Section 20.1(E)(i) of the General Terms and Conditions.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,***Secretary.*

[FR Doc. 02-14887 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket Nos. RP01-623-004, and RP01-622-003 (Not Consolidated)]

**Mississippi River Transmission Corporation; Notice of Compliance Filing**

June 7, 2002.

Take notice that on May 31, 2002, Mississippi River Transmission Corporation (MRT), tendered for filing to become a part of MRT's FERC Gas Tariff, Third Revised Volume revised tariff sheets, with an effective date of April 1, 2002:

Revised First Revised Substitute Fourth revised Sheet No. 2  
Substitute Sixth Revised Sheet No. 2  
Second substitute Fifth Revised Sheet No. 74  
Substitute Fourth Revised Sheet No. 235  
Substitute Original Sheet No. 235A  
Second Substitute Sixth Revised Sheet No. 249  
Second Substitute First Revised Sheet No. 249A

MRT states that the filing is being made in compliance with the Commission's Order issued May 22, 2002, subject to conditions and to correct previous pagination, hereby submits that filing proposed.

Additionally, MRT requests that the following tariff sheets be removed from the Commission's data base because of their incorrect pagination.

Eighth Revised Sheet No. 2  
Seventh Revised Sheet No. 74

MRT states that it has served copies of the filing upon all customers and relevant state regulatory commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commissions web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,***Deputy Secretary.*

[FR Doc. 02-14933 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP99-176-059]

**Natural Gas Pipeline Company of America; Notice of Negotiated Rates**

June 7, 2002.

Take notice that on May 31, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 26P.03, to be effective June 1, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing rate transaction entered into by Natural and Dynergy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the official service list in Docket No. RP99-176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14929 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14930 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14939 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-176-060]

#### Natural Gas Pipeline Company of America; Notice of Negotiated Rates

June 7, 2002.

Take notice that on May 31, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective June 1, 2002.

Natural states that the purpose of this filing is to implement a new negotiated rate transaction entered into by Natural and Aquila Energy Marketing Corp. under Natural's Rate Schedule ITS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list at Docket No. RP99-176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-176-061]

#### Natural Gas Pipeline Company of America; Notice of Negotiated rates

June 7, 2002.

Take notice on May 31, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26W.12, to be effective June 1, 2002.

Natural also submits for filing and acceptance copies of the related Firm Transportation Negotiated Rate Agreement.

Natural states that the purpose of this filing is to implement a new negotiated rate transaction entered into by Natural and Mirant Americas Energy Marketing, LP under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99-176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-350-000]

#### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 6, 2002.

Take notice that on May 31, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on July 1, 2002:

Fourth Revised Sheet No. 146

Second Revised Sheet No. 227

Sixth Revised Sheet No. 267

Northern proposes to modify the above referenced tariff sheets due to Gas Daily combining certain price discovery point information applicable to Northern's system. Specifically, daily pricing information for Northern's MID 10 (North-Texas Panhandle), MID 11 (Oklahoma) and MID 13 (Other) would be combined into a single posting for Texas, Oklahoma, and Kansas (TOK).

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-14888 Filed 6-12-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-272-046]

#### Northern Natural Gas Company; Notice of Negotiated Rates

June 7, 2002.

Take notice that on May 31, 2002, Northern Natural Gas Company, (Northern) tendered for filing as part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective July 1, 2002:

27 Revised Sheet No. 66  
24 Revised Sheet No. 66A  
Original Sheet No. 130A  
First Revised Sheet No. 131

The above sheets are being filed to implement specific negotiated rate transactions with WPS Energy Services, Inc. and Cinergy Marketing and Trading, L.P., in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments,

protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-14938 Filed 6-12-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER02-1054-000, ER02-1055-000, and ER02-1056-000]

#### NRG Northern Ohio Generating LLC; NRG Ashtabula Generating LLC; and NRG Lakeshore Generating LLC; Notice of Issuance of Order

June 7, 2002.

NRG Northern Ohio Generating LLC, NRG Ashtabula Generating LLC, and NRG Lakeshore Generating LLC (collectively, "the NRG Companies") each filed an application for market-based rate authority, with accompanying tariffs and codes of conduct. The proposed market-based tariffs provide for the wholesale sale of electric energy, capacity, and ancillary services, and the sale, assignment or transfer of transmission capacity. The NRG Companies also requested waiver of various Commission regulations. In particular, the NRG Companies requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the NRG Companies.

On March 29, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the NRG Companies should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, the NRG Companies are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any

security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the NRG Companies, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the NRG Companies' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-14916 Filed 6-12-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-518-028]

#### PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

June 7, 2002.

Take notice that on June 3, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, Twentieth Revised Sheet No. 7, Fifth Revised Sheet No. 7B and Sixth Revised Sheet No. 7C. GTN states that these sheets are being filed to reflect the implementation of three negotiated rate agreements. GTN requests that this tariff sheets become effective June 1, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14932 Filed 6-19-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99-513-017]

#### Questar Pipeline Company; Notice of Negotiated Rates

June 7, 2002.

Take notice that on June 3, 2002, pursuant to 18 CFR 154.7 and 154.203, and as provided by Section 30 (Negotiated Rates) to the General Terms and Conditions of Part 1 of Questar Pipeline Company's (Questar)FERC Gas Tariff, Questar filed a tariff filing to implement a negotiated-rate contract for BP Energy Company as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99-513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T-1, NNT, T-2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95-6-000 and RM96-7-000 (Policy Statement) issued January 31, 1996.

Questar states that copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and

the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14931 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-353-000]

#### Reliant Energy Gas Transmission Company; Notice of Take-or-Pay Cost

June 6, 2002.

Take notice that on June 3, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing an annual take-or-pay cost recovery filing including a statement of the customer allocation of REGT's final take-or-pay cost recovery.

REGT states that the filing is submitted in compliance with the Stipulation and Agreement (Settlement) approved by Commission order in Docket No. RP91-149 on March 31, 1992. *Arkla Energy Resources, a division of Arkla, Inc., 58 FERC* ¶ 61,359 (1992). REGT's filing is its tenth and final annual filing pursuant to the Settlement.

REGT states that it has served its filing on each of its authorized tariff holders, firm customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14891 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-200-081]

#### Reliant Energy Gas Transmission Company; Notice of Negotiated Rates

June 7, 2002.

Take notice that on May 31, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective June 1, 2002:

Second Revised Sheet No. 637  
Second Revised Sheet No. 638  
Second Revised Sheet No. 639

REGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14936 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-200-082]

#### Reliant Energy Gas Transmission Company; Notice of Negotiated Rates

June 7, 2002.

Take notice that on May 31, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective June 1, 2002.

Second Revised Sheet No. 630

REGT states that the purpose of this filing is to reflect the revision of an existing negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link,

select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14937 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

[Docket Nos. CP02-379-000, and CP02-380-000]

### Federal Energy Regulatory Commission Southern LNG, Inc.; Notice of Application

June 7, 2002.

Take notice that on May 31, 2002, Southern LNG, Inc. (Southern LNG), P. O. Box 2563, Birmingham, Alabama 35202-2563, filed an application in the above-referenced docket numbers pursuant to Sections 3(a) and 7(c) of the Natural Gas Act (NGA) and Parts 153 and 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing the construction, operation and maintenance of additional facilities at its liquefied natural gas (LNG) import terminal on Elba Island located in Chatham County, Georgia (Elba Island Terminal). The application is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (please call (202) 208-2222 for assistance).

The expansion includes new process facilities and moving moored LNG ships to a new marine slip, cut in Elba Island and away from the Savannah River's main channel. Southern LNG proposes (1) to expand the storage capacity of Elba Island Terminal by constructing and operating a fourth cryogenic storage tank with a working capacity of approximately 3.3 billion cubic feet of natural gas equivalent (Bcfe); (2) to increase its average design sendout rate from 446 million cubic feet (MMcf) per day to 806 MMcf per day, and its maximum sendout rate from 675 MMcf per day to 1,215 MMcf per day, by constructing and operating additional LNG pumps and LNG vaporizers; (3) to construct and operate two unloading berths cut into a marine slip on Elba Island; and (4) appurtenant supporting facilities.

Southern LNG conducted an open season for the expansion capacity from September 10, 2001 to December 14, 2001. As a consequence, Southern LNG entered into a precedent agreement on December 24, 2001 with Shell NA LNG, Inc. (Shell). The precedent agreement obligates Southern LNG and Shell to enter into a contract for firm service for all the expansion capacity under Southern LNG's tariff on file with the Commission. The contract will have a primary term of thirty years.

The proposed construction will take place almost entirely on Elba Island, which Southern LNG already owns and has dedicated to its terminal. To establish the new marine slip, Southern LNG will perform some construction in the Savannah River, adjacent to Elba Island. Southern LNG has already applied for permits necessary for this construction from both the U.S. Army Corps of Engineers and the State of Georgia.

Southern LNG estimates that the total capital cost of constructing its proposed expansion will be approximately \$148 million. Because the revenues from the expansion service will exceed the expenses each year, the existing service will not subsidize the expansion cost of service. Southern LNG proposes to operate the existing and expansion facilities as an integrated whole, which provides better outage protection and more flexibility. Rolling in the expansion facilities will thus provide both financial and operational benefits to both expansion and existing customers. Southern LNG requests that it may roll in the expansion with the existing rates in a Section 4 proceeding following the in-service date.

Any questions regarding the application be directed to Patrick B. Pope, Vice President and General Counsel, Southern LNG, Inc., P. O. Box 2563, Birmingham, Alabama 35202-2563 at (205) 325-7126.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 28, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other

parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file

comments or to intervene as early in the process as possible.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14913 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-312-072]

#### Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

June 6, 2002.

Take notice that on May 30, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and BP Energy. Tennessee requests that the Commission grant such approval effective July 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14881 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-312-071]

#### Tennessee Gas Pipeline Company; Notice of Negotiated Rates

June 6, 2002.

Take notice that on May 30, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a notice of a change in the rates for the October 18, 2001 Negotiated Rate Agreement between Tennessee and NJR Energy Services ("Negotiated Rate Agreement") which was accepted by the Commission in *Tennessee Gas Pipeline Company*, 97 FERC ¶ 61,248 (2001) (November 30 Order). As agreed to in the November 30 Order, Tennessee is providing notice of a change in rate to be effective June 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-14882 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-14935 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-M

instructions on the Commission's Web site under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-14870 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP91-203-072 and RP92-132-060]

#### Tennessee Gas Pipeline Company; Notice of Tariff Filing

June 7, 2002.

Take notice that on May 31, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, certain revised tariff sheets, with an effective date of July 1, 2002.

Tennessee states that pursuant to the May 15, 1995 comprehensive settlement in the referenced proceeding, which relates to Tennessee's recovery of the costs of remediating polychlorinated biphenyl (PCB) and other hazardous substance list contamination on its system ("Settlement"), Tennessee is seeking to extend the PCB Adjustment Period for twenty-four months as provided for in the Settlement. Tennessee further states that it is submitting revised tariff sheets to update its rate sheet footnote pertaining to the PCB Adjustment Period and to reflect the extension of the PCB Adjustment Period proposed in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(2)(1)(iii) and the

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. GT02-28-000]

#### Trailblazer Pipeline Company; Notice of Negotiated Rate Filing

June 6, 2002.

Take notice that on June 3, 2002, Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective June 1, 2002.

Trailblazer states that the purpose of this filing is to implement a permanent capacity release for an existing negotiated rate transaction entered into by Trailblazer and CMS Energy Marketing Services and Trading Company (CMS). Effective June 1, 2002, CMS has permanently released their capacity to Marathon Oil Company.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-255-047]

#### TransColorado Gas Transmission Company; Notice of Compliance Filing

June 7, 2002.

Take notice that on June 3, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Sixth Revised Sheet No. 21 and Nineteenth Revised Sheet No. 22A, to be effective June 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97-255-000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect three amended contracts with Sempra Energy Trading, National Fuel Marketing Co. and Williams Energy Marketing & Trade, BP Energy Co. and Enserco Energy, Inc., were deleted.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14926 Filed 6-12-02; 8:45 am]

**BILLING CODE 7811-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP01-245-000 and RP01-253-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

June 7, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 am on Monday, June 17, 2002 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Bill Collins at (202) 208-0248 or Irene Szopo at (202) 208-1602.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14925 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-288-020]

#### Transwestern Pipeline Company; Notice of Negotiated Rates

June 7, 2002.

Take notice that on May 31, 2002, Transwestern Pipeline Company (TW) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective June 1, 2002:

Second Revised Volume No. 1  
15th Revised Sheet No. 5B.05  
6th Revised Sheet No. 5B.06  
5th Revised Sheet No. 5B.08  
2nd Revised Sheet No. 5B.09

TW states that the above sheets are being filed to implement specific negotiated rate agreements with Richardson Products Company, Sepra Energy Trading Corp., and Virginia Power Energy Marketing, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of Service Ratemaking for Natural Gas Pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14927 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP98-290-010]

#### Viking Gas Transmission Company; Notice of Compliance Filing

June 7, 2002.

Take notice that on May 31, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective July 1, 2002.

2nd Rev. Twenty-Seventh Revised Sheet No. 6  
2nd Rev. Twentieth Revised Sheet No. 6A  
3rd Rev. Eleventh Revised Sheet No. 6B

Viking states that the purpose of this filing is to comply with the Offer of

Settlement and Stipulation and Agreement (Settlement) filed by Viking on March 16, 1999 in the above-referenced docket and approved by the Commission by order issued May 12, 1999 by filing to place the Stage 4 Settlement Rates into effect in accordance with the terms and conditions of the Settlement.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all of Viking's jurisdictional customers and to affected state regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" line, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14928 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. GT02-27-000]

#### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 6, 2002.

Take notice that on May 29, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective June 1, 2002:

Sixth Revised Sheet No. 374  
Ninth Revised Sheet No. 375

Williston Basin states that it has revised the above-referenced tariff sheets found in Section 48 of the General Terms and Conditions of its Tariff to remove an inactive receipt point, Point ID No. 02982 (Cottonwood Creek), from Williston Basin's Wind River Pool and to rename receipt point, Point ID No. 03421 from (Montana Power-Warren) to (NorthWestern Energy-Warren), in Williston Basin's Big Horn Pool.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,  
Secretary.

[FR Doc. 02-14869 Filed 6-12-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. MG02-4-000]

#### Williston Basin Interstate Pipeline Company; Notice of Filing

June 6, 2002.

On May 15, 2002, Williston Basin Interstate Pipeline Company filed its revised standards of conduct under Part 161 of the Commission's regulations, 18 CFR part 161.

Williston Basin Interstate Pipeline Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before June 21, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,  
Secretary.

[FR Doc. 02-14871 Filed 6-12-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP02-347-000]

#### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 6, 2002.

Take notice that on May 31, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 2002:

First Revised Sheet No. 162  
Original Sheet No. 162A

Williston Basin is proposing to revise the provisions of Rate Schedule PAL-1, Park and Loan Service.

Williston Basin states that it has added a new provision to Rate Schedule PAL-1 to allow shippers to nominate a parked quantity to Williston Basin's aggregate storage pursuant to Shipper's executed Transportation Service Agreement and executed Storage Service Agreement. Williston Basin also states it is allowing the negotiation of a specific discount rate for transport

of parked quantities from an initial PAL point to another PAL point or from a receipt point on Williston Basin's system to clear a loaned quantity at a PAL point.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,  
Secretary.

[FR Doc. 02-14885 Filed 6-12-02; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL02-65-004, et al.]

#### Alliance Companies, et al.; Electric Rate and Corporate Regulation Filings

June 6, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

##### 1. Alliance Companies National Grid USA

[Docket No. EL02-65-004]

Take notice that on May 28, 2002, FirstEnergy Corp. on behalf of its wholly-owned transmission subsidiary, American Transmission Systems, Incorporated (ATSI) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the

Commission's April 25, 2002 Order on Petition for Declaratory Order.

*Comment Date:* June 18, 2002.

## 2. Avista Corporation

[Docket No. ER02-1951-000]

Take notice that on May 31, 2002, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13 a proposed revision to its FERC Rate Schedule No. 105, Avista's currently effective rate schedule for General Transfer Service for the Bonneville Power Administration and Bonneville customers. The revisions to the rate schedule consist of changes to data in exhibits to the GTA to reflect changes in transmission facilities and Bonneville customers and to comply with FERC Order No. 614. Avista requests that the Commission accept the changes effective August 1, 2002.

Copies of the filing were served upon Bonneville Power Administration, the counterparty to the Agreement.

*Comment Date:* June 21, 2002.

## 3. Southern California Edison Company

[Docket No. ER02-1952-000]

Take notice that on May 31, 2002, Southern California Edison Company (SCE) tendered for filing an unexecuted Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff, an unexecuted Interconnection Facilities Agreement, and an unexecuted Reliability Management System Agreement (Agreements) between SCE and Berry Petroleum Company (BPC). SCE respectfully requests the Agreements become effective on June 1, 2002.

These Agreements specify the terms and conditions under which SCE will interconnect BPC's Newhall Phase II Project to its electrical system and provide Distribution Service for up to 19.8 MW of power produced by the project.

Copies of this filing were served upon the Public Utilities Commission of the State of California and BPC.

*Comment Date:* June 21, 2002.

## 4. Gilroy Energy Center, LLC King City Energy Center, LLC

[Docket No. ER02-1953-000]

Take notice that on May 31, 2002, Gilroy Energy Center, LLC and King City Energy Center, LLC each filed an executed power marketing agreement under which they will make wholesale sales of capacity and electric energy to Calpine Energy Services, L.P. at market-based rates.

*Comment Date:* June 21, 2002.

## 5. Cinergy Services, Inc.

[Docket No. ER02-1954-000]

Take notice that on May 31, 2002, Cinergy Services, Inc. (Cinergy) and TransCanada Energy Limited requested a cancellation of Service Agreement No.117, under Cinergy Operating Companies, FERC Electric Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of May 31, 2002.

*Comment Date:* June 21, 2002.

## 6. Cinergy Services, Inc.

[Docket No. ER02-1955-000]

Take notice that on May 31, 2002, Cinergy Services, Inc. (Cinergy) and TransCanada Energy Limited Company requested a cancellation of Service Agreement No 139, under Cinergy Operating Companies, FERC Electric Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of May 31, 2002.

*Comment Date:* June 21, 2002.

## 7. Cinergy Services, Inc.

[Docket No. ER02-1956-000]

Take notice that on May 31, 2002, Cinergy Services, Inc. (Cinergy) and TransCanada Energy Limited requested a cancellation of Service Agreement No.117, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of May 31, 2002.

*Comment Date:* June 21, 2002.

## 8. Ameren Services Company

[Docket No. ER02-1957-000]

Take notice that on May 31, 2002, Ameren Services Company (ASC) tendered for filing an unexecuted Firm Point-to-Point Service Agreement between ASC and Aquila Energy Marketing Corp. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the Aquila Energy Marketing Corp. pursuant to Ameren's Open Access Transmission Tariff.

*Comment Date:* June 21, 2002.

## 9. New England Power Pool

[Docket No. ER02-1958-000]

Take notice that on May 31, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Sixth Agreement Amending New England Power Pool Agreement (Eighty-Sixth Agreement), which amends the

present formula for calculating Participants' Installed Capability (ICAP) Responsibilities concerning the treatment of Interruptible and Dispatchable Loads as contained in Section 12.2(a)(1) of the Restated NEPOOL Agreement. Expedited consideration and a waiver of the sixty-day notice requirement and a July 1, 2002 effective date has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

*Comment Date:* June 21, 2002.

## 10. CPN Bethpage 3rd Turbine Inc.

[Docket No. ER02-1959-000]

Take notice that on May 31, 2002, CPN Bethpage 3rd Turbine Inc. (CPN Bethpage) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. CPN Bethpage proposes to own and operate a 45 megawatt simple cycle natural gas-fired combustion turbine generating facility located in Hicksville, New York.

*Comment Date:* June 21, 2002.

## 11. Dominion Energy Marketing, Inc.

[Docket No. ER02-1960-000]

Take notice that on May 31, 2002, Dominion Energy Marketing, Inc. (the Company) respectfully tendered for filing the following:

Service Agreement by Dominion Energy Marketing, Inc. to Exelon Generation Company, LLC designated as Service Agreement No 2 under the Company's Market-Based Sales Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 15, 2000. The Company respectfully requests a waiver of the Commission's regulations to permit an effective date of May 1, 2002, as requested by the customer.

Copies of the filing were served upon the Exelon Generation Company, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date:* June 21, 2002.

## 12. New York Independent System Operator, Inc.

[Docket No. ER02-1961-000]

Take notice that on May 31, 2002 the New York Independent System Operator, Inc. (NYISO) filed revisions to its Open-Access Transmission Tariff (OATT) and Market Administration and

Control Area Services (Services Tariff) to implement a new cost allocation methodology under Rate Schedule 1 of each tariff. The NYISO has requested an effective date of June 1, 2002 for the filing.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's OATT and Services Tariff and on the electric utility regulatory agencies of New York, New Jersey and Pennsylvania.

*Comment Date:* June 21, 2002.

### 13. Commonwealth Edison Company

[Docket No. ER02-1962-000]

Take notice that on May 31, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Network Service and Network Operating Agreement between ComEd and the City of Batavia, Illinois (Batavia), an unexecuted Network Service and Network Operating Agreement between ComEd and the City of St. Charles, Illinois (St. Charles) and an unexecuted agreement for Dynamic Scheduling of Transmission Service (Scheduling Agreement) between ComEd and Exelon Generation Company, LLC (EXGN) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of June 1, 2002 for the Agreements with Batavia, St. Charles and EXGN and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Batavia, St. Charles, EXGN and the Illinois Commerce Commission.

*Comment Date:* June 21, 2002.

### 14. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1963-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing certain limited changes to the formula rate template of Attachment O of the Midwest ISO's Open Access Transmission Tariff (OATT) to accommodate the unique circumstances presented with respect to establishing Attachment O rates for International Transmission Company (International Transmission).

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In

addition, the filing has been electronically posted on the Midwest ISO's Web site at [www.midwestiso.org](http://www.midwestiso.org) under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

*Comment Date:* June 21, 2002.

### 15. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1964-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Notices of Succession of certain Transmission Service Agreements and Network Transmission Service and Operating Agreements entered into by and between (i) Michigan Electric Transmission Company (METC) or Michigan Electric Transmission Company, LLC (Michigan Transco LLC) and various transmission customers and (ii) International Transmission Company (International Transmission) and its corporate parent, DTE Energy Company (DTE Energy) and various transmission customers.

The subject Notices of Succession are intended to transfer only the provisions and obligations of Transmission Service from Michigan Transco LLC and International Transmission to the Midwest ISO and are not intended to affect Michigan Transco LLC's or International Transmission's contractual obligations to provide certain ancillary services or contractual right to receive revenues from Transmission Customers for such ancillary services. Any revenues collected or otherwise received by the Midwest ISO for Transmission Service under the transferred Transmission Service Agreements and Network Transmission Service and Operating Agreements will be received by the Midwest ISO solely as agent for Michigan Transco LLC and International Transmission, will be held by the Midwest ISO as custodial trustee for Michigan Transco LLC and International Transmission, and will be passed through to Michigan Transco LLC and International Transmission in accordance with Appendix C of the Midwest ISO Agreement.

The Midwest ISO has served copies of its filing on all affected customers. In addition, the Midwest ISO has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee

participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at [www.midwestiso.org](http://www.midwestiso.org) under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

*Comment Date:* June 21, 2002.

### 16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1965-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Bay City Electric Light & Power.

A copy of this filing was sent to Bay City Electric Light & Power.

*Comment Date:* June 21, 2002.

### 17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1966-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by the Village of Chelsea.

A copy of this filing was sent to the Village of Chelsea.

*Comment Date:* June 21, 2002.

### 18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1967-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Detroit Edison Merchant Operations.

A copy of this filing was sent to Detroit Edison Merchant Operations.

*Comment Date:* June 21, 2002.

**19. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1968-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Duke Power.

A copy of this filing was sent to Duke Power.

*Comment Date:* June 21, 2002.

**20. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1969-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by City of Eaton Rapids.

A copy of this filing was sent to City of Eaton Rapids.

*Comment Date:* June 21, 2002.

**21. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1970-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by EnergyUSA-TPC Corp.

A copy of this filing was sent to EnergyUSA-TPC Corp.

*Comment Date:* June 21, 2002.

**22. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1971-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Florida Power & Light Company.

A copy of this filing was sent to Florida Power & Light Company.

*Comment Date:* June 21, 2002.

**23. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1972-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by City of Hart.

A copy of this filing was sent to City of Hart.

*Comment Date:* June 21, 2002.

**24. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1973-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by the City of Holland/Holland Board of Public Works.

A copy of this filing was sent to the City of Holland/Holland Board of Public Works.

*Comment Date:* June 21, 2002.

**25. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1974-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Michigan Public Power Agency.

A copy of this filing was sent to Michigan Public Power Agency.

*Comment Date:* June 21, 2002.

**26. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1975-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Michigan South Central Power Agency.

A copy of this filing was sent to Michigan South Central Power Agency.  
*Comment Date:* June 21, 2002.

**27. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1976-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Midland Cogeneration Venture Limited Partnership.

A copy of this filing was sent to Midland Cogeneration Venture Limited Partnership.

*Comment Date:* June 21, 2002.

**28. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1977-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Midwest Energy Cooperative.

A copy of this filing was sent to Midwest Energy Cooperative.

*Comment Date:* June 21, 2002.

**29. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1978-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by the City of Portland.

A copy of this filing was sent to the City of Portland.

*Comment Date:* June 21, 2002.

**30. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER02-1979-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network

Service Agreement for transmission service by Quest Energy, LLC.

A copy of this filing was sent to Quest Energy, LLC..

*Comment Date:* June 21, 2002.

### 31. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1980-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Sebewaing Light & Water Department.

A copy of this filing was sent to Sebewaing Light & Water Department.

*Comment Date:* June 21, 2002.

### 32. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1981-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by the City of St. Louis.

A copy of this filing was sent to the City of St. Louis.

*Comment Date:* June 21, 2002.

### 33. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1982-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Thumb Electric Cooperative.

A copy of this filing was sent to Thumb Electric Cooperative.

*Comment Date:* June 21, 2002.

### 34. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1983-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR

35.13, submitted for filing a Network Service Agreement for transmission service by Energy International Power Marketing.

A copy of this filing was sent to Energy International Power Marketing.

*Comment Date:* June 21, 2002.

### 35. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1984-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by Commonwealth Edison.

A copy of this filing was sent to Commonwealth Edison.

*Comment Date:* June 21, 2002.

### 36. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02-1985-000]

Take notice that on May 31, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.13, submitted for filing a Network Service Agreement for transmission service by the City of Croswell.

A copy of this filing was sent to the City of Croswell.

*Comment Date:* June 21, 2002.

### Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions

may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

*Deputy Secretary.*

[FR Doc. 02-14908 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC02-72-000, et al.]

### NEO California Power LLC, et al.; Electric Rate and Corporate Regulation Filings

June 5, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

#### 1. NEO California Power LLC

[Docket Nos. EC02-72-000 and EL02-92-000]

Take notice that on May 29, 2002, NEO California Power LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization, to the extent necessary of the disposition of jurisdictional facilities in connection with a sale and leaseback transaction involving generating facilities consisting of 32 natural gas reciprocating engine sets located in California. Applicant also requests the Commission to issue an order disclaiming jurisdiction over certain passive participants in the transaction.

*Comment Date:* June 19, 2002.

#### 2. CPN Bethpage 3rd Turbine Inc.

[Docket No. EG02-140-000]

Take notice that on June 3, 2002, CPN Bethpage 3rd Turbine Inc. (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Applicant, a Delaware corporation, proposes to own and operate a 45 megawatt simple cycle natural gas-fired combustion turbine electric generating facility located in Hicksville, New York.

*Comment Date:* June 26, 2002.

**3. TXU Generation Company LP**

[Docket No. EG02-141-000]

Take notice that on May 31, 2002, TXU Generation Company LP (TXU Generation) filed with the Federal Energy Regulatory Commission (Commission) a notice of material change and application for Commission (Commission) redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

TXU Generation currently is an EWG that presently owns and operates certain eligible facilities, and operates, but does not own, certain other eligible facilities, identified in Docket Number EG02-54.

TXU Generation plans to acquire, own and operate a gas-fired electrical generation facility consisting of three combustion turbines and one steam turbine with a net electrical generating capacity of approximately 257 megawatts (MW) located near the City of Sweetwater in Nolan County, Texas.

*Comment Date:* June 26, 2002.

**4. Montcalm County Renaissance Trust**

[Docket No. EG02-142-000]

Take notice that on May 30, 2002, Montcalm County Renaissance Trust, 1000 Louisiana, Suite 5800, Houston, Texas filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

*Comment Date:* June 26, 2002.

**5. NRG 2002 Trust**

[Docket No. EG02-143-000]

Take notice that on May 30, 2002, NRG 2002 Trust, a Delaware statutory business trust with its principal place of business at c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001 (the Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Pursuant to a sale/leaseback transaction, the Applicant is acquiring title to generating facilities consisting of 32 natural gas reciprocating engine sets located in California (the Facilities). The Applicant will lease the Facilities to NEO California Power LLC, a Delaware limited liability company.

*Comment Date:* June 26, 2002.

**6. Puget Sound Energy, Inc.**

[Docket No. ER02-1918-000]

Take notice that Puget Sound Energy, Inc., on May 29, 2002, tendered for filing an Agreement for the Installation of Electrical Facilities—Bow Lake/North SeaTac and Amendment No. 1 to Agreement for the Installation of Electrical Facilities—Bow Lake/North SeaTac. Puget Sound Energy requests an effective date of April 20, 2001 for these filings.

The filings reflect an agreement between Puget Sound Energy and the Port of Seattle or the installation of, and payment for, certain substation facilities for service to Seattle Tacoma International Airport, and the Port of Seattle.

Copies of the filing were served upon the parties listed in the certificate of service.

*Comment Date:* June 19, 2002.

**7. Oklahoma Gas and Electric Company**

[Docket No. ER02-1919-000]

Take notice that on May 29, 2002, Oklahoma Gas and Electric Company (OG&E) submitted for filing a service agreement for power sales (the Agreement) between OG&E and Purcell Public Works Authority (Purcell) under OG&E's Power Sales Tariff.

OG&E requests an effective date of June 1, 2002 for the Agreement. Accordingly, OG&E requests waiver of the Commission's notice requirements. Copies of this filing were served upon Purcell and the Oklahoma Corporation Commission.

*Comment Date:* June 19, 2002.

**8. DukeSolutions, Inc.,**

[Docket No. ER02-1920-000]

Take notice that on May 29, 2002, DukeSolutions, Inc. (DukeSolutions) tendered for filing a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Rate Schedule No. 1. DukeSolutions requests an effective date of May 30, 2002 for the cancellation.

*Comment Date:* June 19, 2002.

**9. El Paso Electric Company**

[Docket No. ER02-1921-000]

Take notice that on May 29, 2002, El Paso Electric Company (EPE) tendered for filing an executed interconnection Agreement (Agreement) between EPE and Public Service Company of New Mexico. EPE seeks an effective date of May 23, 2002 for the Agreement.

*Comment Date:* June 19, 2002.

**10. Xcel Energy Services Inc.**

[Docket No. ER02-1922-000]

Take notice that on May 29, 2002, Xcel Energy Services Inc. (XES) on behalf of Southwestern Public Service Company (SPS), submitted for filing Amendment No. 2 to the Commitment and Dispatch Service Agreement between SPS and Golden Spread Electric Cooperative, Inc. (Golden Spread), SPS Rate Schedule FERC No. 133. A copy of this filing has been served on Golden Spread and the applicable state commissions.

*Comment Date:* June 19, 2002.

**11. TECO EnergySource, Inc.**

[Docket No. ER02-1923-000]

Take notice that on May 29, 2002, TECO EnergySource, Inc. (TES) tendered for filing a request to amend the Western Systems Power Pool (WSPP) Agreement to include TES as a participant pursuant to section 205 of the Federal Power Act.

A copy of this filing has been served on the WSPP Executive Committee and on Michael E. Small, General Counsel to the WSPP.

*Comment Date:* June 19, 2002.

**12. Tenaska Alabama Partners, L.P.**

[Docket No. ER02-1924-000]

Take notice that on May 30, 2002, Tenaska Alabama Partners, L.P., 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama), filed with the Federal Energy Regulatory Commission (Commission) the Fuel Conversion Services Agreement between Tenaska Alabama and Williams Energy Marketing & Trading Company (Williams) dated as of September 5, 1999, as amended as of January 8, 2000 (FCSA). The filing is made pursuant to Tenaska Alabama's authority to sell power at market-based rates under its Market-Based Rate Tariff, Rate Schedule FERC No. 1, Original Volume No. 1, approved by the Commission on February 9, 2000, in Docket No. ER00-840-000.

*Comment Date:* June 20, 2002.

**13. PJM Interconnection, L.L.C.**

[Docket No. ER02-1925-000]

Take notice that on May 30, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreements: four umbrella service agreements for firm point-to-point transmission service for Dynege Power Marketing, Inc. (Dynege).

PJM requested a waiver of the Commission's notice regulations to permit effective date of May 1, 2002 for the agreements, the date the agreements were executed.

Copies of this filing were served upon Dynegy, as well as the state utility regulatory commissions within the PJM region.

*Comment Date:* June 20, 2002.

#### 14. Exelon Generation Company, LLC

[Docket No. ER02-1926-000]

Take notice that on May 30, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing power sales service agreements under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2, between Exelon Generation and the following customers: ANP Funding I, LLC; Bethlehem Steel Corporation; Dominion Energy Marketing, Inc.; Consolidated Edison Energy, Inc.; Peoples Energy Services Corporation; and Virginia Electric and Power Company.

Exelon Generation requests that each of the Service Agreements be accepted for filing effective as of May 1, 2002.

*Comment Date:* June 20, 2002.

#### 15. Somerset Windpower LLC

[Docket No. ER02-1927-000]

Take notice that on May 30, 2002, Somerset Windpower LLC (Somerset), 1001 McKinney, Suite 1740, Houston Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) the Amended and Restated Power Purchase Agreement by and between Somerset and Exelon Generation Company, LLC (Exelon), dated as of March 30, 2002 (ARPPA). This ARPPA amends and restates a Power Purchase Agreement between Somerset and Exelon dated April 4, 2001. The filing is made pursuant to Somerset's authority to sell power at market-based rates under its Market-Based Rate Tariff, Second Revised Sheet No. 1, Original Volume No. 1 (Docket No. ER01-2139-002), approved by the Commission on July 20, 2001 in Docket No. ER01-2139-001.

#### 16. Mill Run WindPower LLC

[Docket No. ER02-1928-000]

Take notice that on May 29, 2002, Mill Run Windpower LLC (Mill Run), 1001 McKinney, Suite 1900, Houston Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) the Power Purchase Agreement by and between Mill Run and Exelon Generation Company, LLC (Exelon), dated as of March 30, 2002, (ARPPA). This ARPPA amends and restates a Power Purchase Agreement between Mill Run and Exelon dated February 14, 2001. The filing is made pursuant to Mill Run's authority to sell power at market-based rates under its

Market-Based Rate Tariff, Original Sheet No. 1, Original Volume No. 1, approved by the Commission on July 17, 2001 in Docket No. ER01-1710-001.

*Comment Date:* June 20, 2002.

#### 17. Commonwealth Electric Company

[Docket No. ER02-1929-000]

Take notice that on May 30, 2002, Commonwealth Electric Company (Commonwealth) tendered for filing with the Federal Energy Regulatory Commission (Commission) a non-firm point-to-point transmission service agreement between Commonwealth and NRG Power Marketing Inc. (NRG). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to NRG under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER01-2291-001.

Commonwealth requests that the service agreement become effective on May 1, 2002.

*Comment Date:* June 20, 2002.

#### 18. Cambridge Electric Light Company

[Docket No. ER02-1930-000]

Take notice that on May 30, 2002, Cambridge Electric Light Company (Cambridge Electric) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge Electric and NRG Power Marketing Inc. (NRG). Cambridge Electric states that the service agreement sets out the transmission arrangements under which Cambridge Electric will provide non-firm point-to-point transmission service to NRG under Cambridge Electric's open access transmission tariff accepted for filing in Docket No. ER01-2291-001. Cambridge Electric requests that the service agreement become effective on May 1, 2002.

*Comment Date:* June 20, 2002.

#### 19. Commonwealth Edison Company

[Docket No. ER02-1931-000]

Take notice that on May 30, 2002, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service between ComEd and Dominion Energy Marketing, Inc. (Dominion) and an Agreement for Dynamic Scheduling of Transmission Service (Scheduling Agreement) between ComEd and Exelon Generation Company, LLC (EXGN) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of April 30, 2002 for the Agreements with

Dominion and an effective date of May 1, 2002 for the Agreement with EXGN and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Dominion, EXGN, and the Illinois Commerce Commission.

*Comment Date:* June 20, 2002.

#### 20. Southwestern Electric Power Company

[Docket No. ER02-1932-000]

Take notice that on May 30, 2002, Southwestern Electric Power Company (SWEPCO) submitted for filing actuarial reports in support of the amounts to be collected in SWEPCO's 2001 actual and 2002 projected formula rates for post-employment benefits other than pensions as directed by the Statement of Financial Accounting Standard No. 106 (SFAS 106), issued by the Financial Accounting Standards Board, and the collection in such formula rates of other post-employment benefits as directed by SFAS 112.

SWEPCO seeks an effective date of January 1, 2001 and, accordingly, requests waiver of the Commission's notice requirements. SWEPCO has served copies of the transmittal letter on all of its formula rate customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

*Comment Date:* June 20, 2002.

#### 21. FirstEnergy Solutions Corp.

[Docket No. ER02-1933-000]

Take notice that on May 30, 2002, FirstEnergy Solutions Corp. (FE Solutions) submitted for filing first revised service agreements between FE Solutions and its affiliates, Metropolitan Edison Company and Pennsylvania Electric Company, under FE Solutions' market-based rate power sales tariff, FirstEnergy Solutions Corp., FERC Electric Tariff, Original Volume No.1.

*Comment Date:* June 20, 2002.

#### 22. Entergy Services, Inc.

[Docket No. ER02-1934-000]

Take notice that on May 30, 2002, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing six copies of a Notice of Termination of the Interconnection and Operating Agreement and generator Imbalance Agreement between Entergy Louisiana and St. Charles Development Company, L.L.C.

*Comment Date:* June 20, 2002.

**23. Ameren Services Company**

[Docket No. ER02-1935-000]

Take notice that on May 30, 2002, Ameren Services Company (ASC) tendered for filing Firm Point-to-point Services Agreements between ASC and Ameren Energy-Marketing and Reliant Energy. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

*Comment Date:* June 20, 2002.

**24. Ameren Services Company**

[Docket No. ER02-1936-000]

Take notice that on May 30, 2002, Ameren Services Company (Ameren Services) tendered for filing unexecuted Network Operating Agreements and unexecuted Service Agreements for Network Integration Transmission Service between Ameren Services and Ameren Energy Marketing Company, EnerStar Power Corporation d/b/a Edgar Electric Cooperative Association and Mount Carmel Public Utility Company (the parties). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to the parties pursuant to Ameren's Open Access Tariff.

*Comment Date:* June 20, 2002.

**25. Central Vermont Public Service Corporation**

[Docket No. ER02-1937-000]

Take notice that on May 30, 2002, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 2001 Cost Report required under Paragraph Q-1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS-2 Rate Schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Actual 2001 Cost Report supports a refund to the Customer in the amount of \$875,731.61, including interest, as provided by the RS-2 Rate Schedule. The Actual 2001 Cost Report reflects changes to the RS-2 Rate Schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88-456-000.

Copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

*Comment Date:* June 20, 2002.

**26. Progress Energy Inc. on behalf of Carolina Power & Light Company**

[Docket No. ER02-1938-000]

Take notice that on May 30, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Progress Ventures, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of May 10, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment Date:* June 20, 2002.

**27. Louisville Gas and Electric Company/ Kentucky Utilities Company**

[Docket No. ER02-1939-000]

Take notice that on May 30, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed extension of the interim interconnection and operating agreement with LG&E Capital Trimble County LLC (TCLC). This agreement extends the time period for the interim interconnection agreement until the first to occur (a) August 31, 2002 or (b) the transfer of the units from TCLC to the Companies.

*Comment Date:* June 20, 2002.

**28. American Electric Power Service Corporation**

[Docket No. ER02-1940-000]

Take notice that on May 30, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing Firm and Non-Firm Point-to-Point Transmission (PTP) Service Agreements for J. Aron and Company and Long-Term Firm PTP Service Agreement Specifications for AEPSC's Power Marketing Organization. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective on and after May 1, 2002. A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

*Comment Date:* June 20, 2002.

**29. Tri-State Power, LLC**

[Docket No. ER02-1941-000]

Take notice that on May 31, 2002, Tri-State Power, LLC (TSP) tendered for filing with the Federal Energy Regulatory Commission (Commission) two power purchase agreements between Tri-State Generation and Transmission Association, Inc., (TSGTA) and the Public Service Company of Colorado under which TSGTA agrees to sell electricity from the Limon Generating Station located near Limon, Colorado and the Brighton Generating Station located near Brighton, Colorado to PSCO and an Assignment Contract under which TSGTA assigned its right, title and interest in the Limon and Brighton Contracts to TSP.

*Comment Date:* June 21, 2002.

**30. Tenaska Virginia Partners, L.P.**

[Docket No. ER02-1942-000]

Take notice that on May 31, 2002, Tenaska Virginia Partners, L.P., (Tenaska Virginia), which will own and operate a natural gas-fired electric generating facility to be constructed in Fluvanna County, Virginia, submitted for filing with the Federal Energy Regulatory Commission its initial FERC Electric Rate Schedule No. 1 which will enable Tenaska Virginia to engage in the sale of electric energy and capacity at market-based rates.

*Comment Date:* June 21, 2002.

**31. CH Resources, Inc.**

[Docket No. ER02-1943-000]

Take notice that on May 31, 2002, CH Resources, Inc. (CHR) tendered for filing a Notice of Cancellation of Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1 for Electric Power Sales between CHR and Central Hudson Enterprise Corporation (CHEC). The Notice of Cancellation does not affect any other Service Agreements under FERC Electric Tariff Original Volume No. 1.

Copies of the filing have been served upon Central Hudson Enterprise Corporation (CHEC) and those persons on the service list in this proceeding.

*Comment Date:* June 21, 2002.

**32. Florida Power & Light Company**

[Docket No. ER02-1944-000]

Take notice that on May 31, 2002 Florida Power & Light Company (FPL) tendered for filing a Vandolah-Whidden 230 kV Interconnection Agreement between FPL and Florida Power Corporation. FPL proposes to make the Interconnection Agreement effective June 1, 2002.

*Comment Date:* June 21, 2002.

**33. Virginia Electric and Power Company**

[Docket No. ER02-1945-000]

Take notice that on May 31, 2002, Virginia Electric and Power Company (the Company), respectfully tendered for filing the following Service Agreement by Virginia Electric and Power Company to Exelon Generation Company, LLC designated as Service Agreement No. 15 under the Company's Wholesale Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6, effective on June 15, 2000.

The Company requests a waiver of the Commission's regulations to permit an effective date of May 1, 2002, as requested by the customer. Copies of the filing were served upon Exelon Generation Company, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date:* June 21, 2002.

**34. New England Power Pool**

[Docket No. ER02-1946-000]

Take notice that on May 31, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Cross Sound Cable Company, LLC (CSCC), Dominion Energy Marketing, Inc. (DEM), Power Development Company LLC (PDC), Sempra Energy Solutions (SES), and Vermont Yankee Nuclear Power Corporation (VYNPC); and (2) to terminate the membership of Griffin Energy Marketing, LLC (Griffin), FPL Energy Avec LLC (FPL Avec), PEC Energy Marketing (PEC), Berkshire Power Development, Inc. (Berkshire), and EmPower Energy, LLC (EmPower). The Participants Committee requests the following effective dates: March 4, 2002 for the termination of Griffin; May 1, 2002 for the termination of FPL Avec and PEC; June 1, 2002 for commencement of participation in NEPOOL by CSCC, DEM, and PDC and the termination of Berkshire and EmPower; August 1, 2002 for commencement of participation in NEPOOL by SES; and an effective date for commencement of participation in NEPOOL by VYNPC as of the closing date of the sale of the Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment Date:* June 21, 2002.

**35. Occidental Power Services, Inc.**

[Docket No. ER02-1947-000]

Take notice that on May 27, 2002, Occidental Power Services, Inc. (OPSI) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Occidental Power Services, Inc. FERC Electric Rate Schedule No. 1; the issuance of certain blanket authorizations, and an authorization to sell electric capacity and energy at market-based rates; and the waiver of certain Commission regulations.

OPSI intends to engage in wholesale electric capacity and energy purchases and sales as an electric power marketer. OPSI is not in the business of electric power generation or transmission. OPSI is affiliated, however, with four "qualifying facilities" under PURPA and proposes to market some affiliate-generated electric power.

OPSI is a wholly owned subsidiary of Occidental Petroleum Corporation, which, through affiliates, explores for, develops, produces and markets crude oil and natural gas and manufactures and markets a variety of basic chemicals as well as specialty chemicals.

*Comment Date:* June 21, 2002.

**36. California Independent System Operator Corporation**

[Docket No. ER02-1948-000]

Take notice that on May 31, 2002, the California Independent System Operator Corporation (ISO) filed Fourth Revised Service Agreement No. 116 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement between the ISO and Wheelabrator Martell, Inc (Wheelabrator). The ISO has revised the PGA to update Schedule 1 of the PGA. The ISO requests an effective date for the filing of May 7, 2002.

The ISO has served copies of this filing upon Wheelabrator and all entities that are on the official service list for Docket No. ER99-2055-000.

*Comment Date:* June 21, 2002.

**37. Biv Generation Company, L.L.C.**

[Docket No. ER02-1949-000]

Take notice that on May 31, 2002, BVI Generation Company, L.L.C. (BIV) tendered for filing a Purchase Power Agreement, together with the First Amendment to such agreement, for sales of power pursuant to BIV's Rate Schedule No. 2.

BIV states that its filing is made in compliance with Appendix B, Paragraph 7 of the Letter Order issued in Docket No. ER99-3197, Minergy Neenah L.L.C., et al., 88 FERC ¶ 61,102

(1999), and are to reflect an expansion of BIV's generating facilities.

*Comment Date:* June 21, 2002.

**38. Virginia Electric and Power Company Dominion Energy Marketing, Inc.**

[Docket No. ER02-1950-000]

Take notice that on May 29, 2002, Virginia Electric and Power Company (Dominion Virginia Power) and Dominion Energy Marketing, Inc. (Dominion Marketing), (the Applicants) respectfully tendered for filing Designation Sheet to the Service Agreements between Dominion Energy Marketing, Inc. and Borough of Tarentum. Dominion Virginia Power assigns all its rights and obligations to Dominion Marketing pertaining to the following Service Agreements:

Designation Sheet pertaining to Service Agreement dated January 18, 2002, under Docket No. ER02-1036-000 (to be re-designated as Service Agreement No. 4 under Dominion Energy Marketing, Inc.'s FERC Electric Tariff, Original Volume No. 1).

Designation Sheet pertaining to Service Agreement dated January 28, 2002, under Docket No. ER02-1543-000 (to be re-designated as Service Agreement No. 5 under Dominion Energy Marketing, Inc.'s FERC Electric Tariff, Original Volume No. 1).

Copies of the filing were served upon Borough of Tarentum, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date:* June 19, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions

may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-14867 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP93-541-012]

#### Young Gas Storage Company, Ltd.; Notice of Compliance Filing

June 7, 2002.

Take notice that on April 29, 2002, Young Gas Storage Company, Ltd. (Young) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective April 10, 2002:

Sixth Revised Sheet No. 11  
Fifth Revised Sheet No. 12  
Fifth Revised Sheet No. 13  
Sixth Revised Sheet No. 14  
Eighth Revised Sheet No. 47  
Third Revised Sheet No. 47A  
Third Revised Sheet No. 47B  
Third Revised Sheet No. 47C  
Fifth Revised Sheet No. 47D  
First Sheet No. 47E  
First Sheet No. 47F  
First Sheet No. 47G  
First Sheet No. 47H  
First Sheet No. 47I  
Twelfth Revised Sheet No. 50  
Ninth Revised Sheet No. 52  
Third Revised Sheet No. 52A  
Fifth Revised Sheet No. 52B  
First Sheet No. 52C  
Second Revised Sheet No. 80I  
Second Revised Sheet No. 80M  
Second Revised Sheet No. 80N

Young states these tariff sheets were accepted by the Commission in Young's certificate amendment proceeding at Docket No. CP93-541-010, and are being filed with an effective date of April 10, 2002 to comply with that order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed by June 11, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-14914 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 516]

#### South Carolina Electric and Gas Company; Notice of Revised Schedule for Preparation of an Environmental Assessment

June 7, 2002.

The Federal Energy Regulatory Commission (Commission) is requiring the seismic remediation of the Saluda Dam, part of the Saluda Hydroelectric Project (FERC No. 516). The Saluda Dam impounds the 48,000-acre Lake Murray and is located in Richland, Lexington, Newberry, and Saluda counties, South Carolina. Remediation of the dam is being required to ensure public safety, pursuant to Paragraph 12.4(b)(2)(iv) of the Commission's Regulations, and will necessitate a temporary partial drawdown of Lake Murray. The drawdown will lower the reservoir approximately 5-13 feet below its normal operating level, which varies seasonally, for approximately 20 months.

On April 16, 2002, the Commission issued public notice of its intent to prepare an Environmental Assessment (EA) for the Saluda Dam Remediation Project, which will be used by the Commission to identify project impacts and to identify measures that may help mitigate the impacts caused by the project. That notice also provided notice of our scheduled scoping meetings and our intent to issue a scoping document.

On May 3, 2002, the Commission issued Scoping Document 1, which provided Commission staff's preliminary determination of the resource issues to be considered in our environmental analysis and provided our proposed schedule for preparation

of the EA. Scoping meetings were held on May 17 in Columbia, South Carolina and our proposed EA preparation schedule was further discussed.

Following consultations with involved regulatory agencies, it has become apparent that in order to prevent delays in the start of the remediation work, it is now necessary to revise the schedule for preparation of the EA. The revised schedule is as follows.

Scoping Comments Due; June 17, 2002  
Draft EA Issued; June 28, 2002  
DEA Comments Due; July 15, 2002  
Final EA Issued; July 22, 2002

Implementation of the revised schedule should ensure that public safety is adequately protected by allowing dam remediation work to proceed without delay. To provide as much opportunity as possible for comment on the Draft EA under the revised schedule, we will post the Draft EA on the Commission's Web site (<http://www.ferc.gov>) on June 28, 2002, in addition to distributing the Draft EA to the mailing list. We will also post on the Web site locations in the project vicinity where copies of the Draft EA will be available.

The Commission's receipt of U.S. mail is still being impacted by the events of September 11, 2001. To ensure that comments are received in a timely manner, commentors are urged to send them by alternate means. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Please direct any questions concerning the foregoing to John M. Mudre at (202) 219-1208.

**Linwood A. Watson, Jr.,**  
*Deputy Secretary.*

[FR Doc. 02-14921 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Preliminary Permit.
- b. *Project No.:* 12160-000.

c. *Date filed*: May 3, 2002.

d. *Applicant*: Lake Dorothy Hydro, Inc.

e. *Name of Project*: Lake Dorothy Hydroelectric Project.

f. *Location*: In the Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Corry V. Hildenbrand, Lake Dorothy Hydro, Inc., 5601 Tongard Court, Juneau, AK 99801, (907)463–6315.

i. *FERC Contact*: Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P–12160–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) Lake Dorothy, which has a 998-acre surface area at elevation 2,421 feet; (2) Bart Lake, which has a 250-acre surface area at elevation 986 feet; (3) a lake tap at Bart Lake; (4) a 54-inch-diameter to 96-inch-diameter, 7,500-foot-long tunnel and penstock (combined length); (5) a powerhouse containing a generator unit with an installed capacity of 15 MW; (6) a 138-kV, 3.0-mile-long transmission line connecting the project to the existing submarine transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 74.5 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888

First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular applications.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02–14872 Filed 6–12–02; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments**

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12161-000.

c. *Date filed*: May 8, 2002.

d. *Applicant*: Fall Creek Hydro, LLC.

e. *Name of Project*: Fall Creek Dam Project.

f. *Location*: On Fall Creek in Lane County, Oregon. The existing Fall Creek Dam is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, President, Northwest Power Services, Inc., Agent for Fall Creek Hydro, LLC., P.O. Box 535, Rigby, ID 83442, (208)745-8630, E-mail [npsihydro@aol.com](mailto:npsihydro@aol.com).

i. *FERC Contact*: Robert Bell, (202) 219-2806.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P-12161-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project utilizing the existing U.S. Army Corps of Engineer's Fall Creek Dam and reservoir would consist of: (1) A proposed intake structure, (2)

a proposed 650-foot-long 144-inch-diameter steel penstock, (3) a proposed powerhouse containing a generator unit with an installed capacity of 4 MW, (4) a 1.0-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 10.2 GWh that would be sold to a local utility.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "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.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 02-14873 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
CommissionNotice of Application Accepted for  
Filing and Soliciting Motions To  
Intervene, Protests, and Comments

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12163-000.

c. *Date filed*: May 13, 2002.

d. *Applicant*: Berlin Hydro, LLC.

e. *Name of Project*: Berlin Dam Project.

f. *Location*: On the Mahoning River in Mahoning County, Ohio. The existing Berlin Dam is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, President, Northwest Power Services, Inc., Agent for Berlin Hydro, LLC., P.O. Box 535, Rigby, ID 83442, (208) 745-8630, E-mail npsihydro@aol.com.

i. *FERC Contact*: Robert Bell, (202) 219-2806.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P-12163-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project utilizing the existing U.S. Army Corps of Engineer's Berlin Dam and reservoir would consist of: (1) A proposed intake structure, (2) a

proposed 300-foot-long 96-inch-diameter steel penstock, (3) a proposed powerhouse containing a generator unit with an installed capacity of 2 MW, (4) a 4.0-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 12 GWh that would be sold to a local utility.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "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.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,  
Secretary.

[FR Doc. 02-14874 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments**

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12164-000.

c. *Date filed:* May 9, 2002.

d. *Applicant:* Cottage Grove Hydro, LLC.

e. *Name of Project:* Cottage Grove Dam Project.

f. *Location:* On Coast Fork Willamette River in Lane County, Oregon. The existing Cottage Grove Dam is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., Agent for Cottage Grove Hydro, LLC., P.O. Box 535, Rigby, ID 83442, (208)745-8630, E-mail npsihydro@aol.com. i. *FERC Contact:* Robert Bell, (202) 219-2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P-12164-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S. Army Corps of Engineer's Cottage Grove Dam and reservoir would consist

of: (1) A proposed intake structure, (2) a proposed 200-foot-long, 72-inch-diameter steel penstock, (3) a proposed powerhouse containing a generator unit with an installed capacity of 1.1 MW, (4) a 5.0-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 3 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be

served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**  
Secretary.

[FR Doc. 02-14875 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12167-000.

c. *Date filed:* May 17, 2002.

d. *Applicant:* Ceresco Power and Light.

e. *Name of Project:* Ceresco Project.

f. *Location:* On the Kalamazoo River in Calhoun County, Michigan. The existing Ceresco Dam is owned and operated by the Applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. William Morris, Ceresco Power and Light, 544 West Columbia Avenue, Suite B, Battle Creek, MI 49015, (616) 968-4242, Ext. 105

i. *FERC Contact:* Robert Bell, (202) 219-2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P-12167-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they

must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 231-foot-long, 13-foot high dam with provisions for 4-foot-high stoplogs, (2) an existing reservoir having a surface area of 220 acres having a storage capacity of 2800-acre-feet and normal water surface elevation of 880 feet NGVD, (3) a proposed 45-foot-long, 5-foot-diameter steel penstock, (4) a proposed powerhouse containing two generating units having a total installed capacity of 400 kW, (5) a 2.0-mile-long, 12.48 kV transmission line, and (6) appurtenant facilities.

The project would have an annual generation of 2.6 GWh that would be sold to a local utility.

l. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "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.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be

filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**  
Secretary.

[FR Doc. 02-14876 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12168-000.

c. *Date filed:* May 15, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Allegheny Lock and Dam #2 Project.

f. *Location:* On the Allegheny River in Allegheny County, Pennsylvania. The existing Allegheny Lock and Dam #2 is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535-7115, e-mail [uep@neo.rr.com](mailto:uep@neo.rr.com).

i. *FERC Contact:* Robert Bell, (202) 219-2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P-12168-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list

for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S. Army Corps of Engineer's Allegheny Lock and Dam #2 and reservoir would consist of: (1) A proposed powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 8.940 MW; (2) a proposed transmission line; and (3) appurtenant facilities.

The project would have an annual generation of 55 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing is also available on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**  
Secretary.

[FR Doc. 02-14877 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application*: Preliminary Permit.
- b. *Project No.*: 12169-000.
- c. *Date filed*: May 15, 2002.
- d. *Applicant*: Universal Electric Power Corp.
- e. *Name of Project*: Allegheny Lock and Dam #4 Project.
- f. *Location*: On the Allegheny River in Allegheny County, Pennsylvania. The existing Allegheny Lock and Dam #4 is administered by the U.S. Army Corps of Engineers.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact*: Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535-7115, e-mail [upe@neo.rr.com](mailto:upe@neo.rr.com).
- i. *FERC Contact*: Robert Bell, (202) 219-2806.
- j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the

project number (P-12169-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project utilizing the existing U.S. Army Corps of Engineer's Allegheny Lock and Dam #4 and reservoir would consist of: (1) A proposed powerhouse to be constructed on the tailrace side of the dam having an installed capacity of 8.6 MW; (2) a proposed transmission line; and (3) appurtenant facilities.

The project would have an annual generation of 55 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory

Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14878 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

June 6, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12170-000.

c. *Date filed:* May 15, 2002.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Allegheny Lock and Dam #4 Project.

f. *Location:* On the Allegheny River in Allegheny County, Pennsylvania. The existing Allegheny Lock and Dam #4 is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535-7115, e-mail [uep@neo.rr.com](mailto:uep@neo.rr.com).

i. *FERC Contact:* Robert Bell, (202) 219-2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions

may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P-12170-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the existing U.S. Army Corps of Engineer's Allegheny Lock and Dam #7 and reservoir would consist of: (1) Six proposed 45-foot-long, 114-inch-diameter steel penstocks (2) a proposed powerhouse to containing six generating units having a total installed capacity of 11.68 MW; (3) a proposed 800-foot long, 14.7 kV transmission line; and (4) appurtenant facilities.

The project would have an annual generation of 48.5 GWh that would be sold to a local utility. l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing is also available on the Commission's Web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the

particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The

Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Magalie R. Salas,**  
Secretary.

[FR Doc. 02-14879 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 7, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of License to Change Project Boundary and Approve Revised Exhibits.

b. *Project No.*: 2030-039.

c. *Date Filed*: January 30, and April 19, 2002.

d. *Applicant*: Portland General Electric Company (PGE) & The Confederated Tribes of Warm Springs Reservation of Oregon.

e. *Name of Project*: Pelton Hydroelectric.

f. *Location*: The project is located on the Deschutes River in Jefferson County, Oregon.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a), 825(r), 799, and 801.

h. *Applicant Contact*: Ms. Julie Keil, Director, Hydro Licensing, Portland General Electric, 121 S. W. Salmon, Portland, OR 97204, tel (503) 464-8864.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Mohamad Fayyad at (202) 219-2665, or

e-mail address:

*mohamad.fayyad@ferc.gov*.

j. *Deadline for filing comments and or motions*: July 8, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Please include the project number (P-2030-039) on any comments or motions filed.

k. *Description of Request*: The licensees are proposing to delete from the license the 100-mile-long, 230-kV Bethel-Round Butte transmission line, which the licensees say is part of PGE's interconnected transmission system. Also, the licensees request the deletion from project description the 3.2-mile-long, 69-kV line from the Re-regulating Dam to Warm Springs Substation, in compliance with a Commission order approving the sale of the line to PacificCorp, issued on November 3, 1994. The licensees say the Bethel-Round Butte transmission line occupies 475.3 acres of federal lands, in addition to 710.9 acres of Tribal lands within the Warm Springs Reservation.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS",

"RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. *Comments, protests and interventions* may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

**Linwood A. Watson, Jr.,**  
Deputy Secretary.

[FR Doc. 02-14918 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

June 7, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*:: Non-Project Use of Project Lands and Waters.

b. *Project No*: 2232-443.

c. *Date Filed*: April 8, 2002.

d. *Applicant*: Duke Energy Corporation.

e. *Name of Project*: Catawba-Wateree Hydroelectric Project.

f. *Location*: On Mountain Island Lake at Mt. Isle Harbor, in Mecklenburg County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201-1006. Phone: (704) 382-5778

i. *FERC Contact*: Any questions on this notice should be addressed to Brian

Romanek at (202) 219-3076, or e-mail address: [brian.romanek@ferc.gov](mailto:brian.romanek@ferc.gov).

j. *Deadline for filing comments and motions:* July 8, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Please include the project number (2232-443) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to issue a revised Commercial/Residential lease to Mt. Isle Harbor Boat Slip Association, Inc. (Mt. Isle) to construct a reduced number of boat slips from that originally approved by Commission order issued October 4, 1999. The number of slips approved in 1999 was for 130 boat slips in a lease area totaling 3.627 acres. The revised lease is for 86 boat slips in a area totally 3.363 acres. The facility would provide access to the reservoir for residents of Mt. Isle Harbor.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance).

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as

applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02-14919 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 7, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project Nos:* 2447-153, 2448-158, 2449-137, 2450-133, 2451-136, 2452-144, 2453-163, 2468-140, 2580-183, and 2599-151.

c. *Date Filed:* April 30, 2002.

d. *Applicant:* Consumers Energy Company.

e. *Name of Projects:* Alcona, Mio, Loud, Cooke, Rogers, Hardy, Five Channels, Croton, Tippy and Hodenpyl.

f. *Location:* The projects are located on the Manistee, Muskegon and Au Sable Rivers in Manistee, Wexford, Mecosta, Newaygo, Alcona, Iosco and Oscoda Counties, Michigan.

g. *Filed Pursuant To:* Federal Power Act, 16 U.S.C. 791(a)-825(r) and Section 4.201 of the Commission's regulations.

h. *Applicant Contact:* Robert M. Neustifter, Esq.; Consumers Energy Company; 212 W. Michigan Avenue; Jackson, MI 49201. Telephone: (517) 788-2974

i. *FERC Contact:* Any questions concerning this notice should be addressed to Mr. Thomas LoVullo at (202) 219-1168, or e-mail address: [thomas.lovullo@ferc.gov](mailto:thomas.lovullo@ferc.gov).

j. *Deadline for filing comments, motions to intervene and protests:* July 8, 2002.

All documents (an original and eight copies) should be filed with: Magalie R. Salas; Secretary; Federal Energy Regulatory Commission; 888 First Street, NE; Washington, DC 20426. Please include the project numbers (line b. above) on any comments or motions filed.

k. *Description of Request:* Each of the 10 referenced hydroelectric projects contain an article within their respective licenses that states, in part, that Consumers Energy Company (licensee) shall make specific annual monetary contributions to the State of Michigan Habitat Improvement Account for fish losses due to turbine entrainment mortality. The specific monetary contributions vary by project and are to be used for fish habitat restoration and other fish management purposes. The licensee proposes to amend the license requirement to reflect the conclusions reached in a November 2001 desktop evaluation and April 2002 supplemental analysis of the appropriateness of a 1990/1991 study of fish losses at the projects. The licensee concludes that subsequent studies and analyses demonstrate that substantially fewer and smaller sized fish are entrained at the licensee's 10 projects. Based on the results of the licensee's analyses, the licensee proposes to reduce the total annual monetary contributions from \$472,590 to \$65,229 (in 1999 dollars) for the 10 referenced projects.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208-1371. This filing may also be viewed on the Web at <http://www.ferc.gov> using the "FERRIS" link select "General Search" 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*: All filings must bear in capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. *Comments, protests and interventions* may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.gov> under the "e-Filing" link.

**Linwood A. Watson, Jr.**,

*Deputy Secretary.*

[FR Doc. 02-14920 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM01-12-000]

#### Standard Market Design, Data and Software Standards; Notice of Conference

June 6, 2002.

The staff of the Federal Energy Regulatory Commission (Commission) previously scheduled a conference for May 22, 2002 on data and software needs in connection with the Commission's Standard Market Design (SMD) rule. This conference was postponed by Notice issued on May 7, 2002. A new date for this conference is July 18, 2002, starting at 9:30 a.m. in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., in Washington, DC.

The conference is intended to discuss the data and software standards that are needed to implement SMD efficiently. The focus will be on exploring what should be standardized; whether there should be a standard data model; the potential for developing data sets to benchmark the needed software; and the need for user-friendly transparent interfaces that will help instill confidence in the process.

Software vendors will be invited to present their products the same day in the lobby area.

All interested parties are invited to attend. Further information about the structure of the conference will be provided in a subsequent notice, including the agenda and a list of participating discussants, as plans evolve.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202-347-3700, or 800-336-6646. Transcripts will be placed in the public record ten days after the conference.

For additional information, please contact René Forsberg at 202-208-0425 or [René.Forsberg@ferc.gov](mailto:René.Forsberg@ferc.gov).

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-14880 Filed 6-12-02; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Sunshine Act Meeting

June 6, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** June 12, 2002. (30 Minutes Following Regular Commission Meeting).

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Non-Public; Investigations and Inquiries and Enforcement Related Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Magalie R. Salas, Secretary, Telephone (202) 208-0400.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02-15024 Filed 6-10-02; 4:28 pm]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

#### Regulations Governing Off-the-Record Communications; Public Notice

June 7, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should be come part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the

instructions (call 202-208-2222 for assistance). Exempt

Docket No.	Date filed	Presenter or requester
1. P-10942-001 .....	6-4-02	Robert Reed.
2. CPO-384-000 and CPO1-387-000 .....	6-4-02	David Schaffer.
3. CPO1-45-000 .....	6-7-02	Rep. William Carrico (Virginia House of Delegates).

**Linwood A. Watson, Jr.,**  
Deputy secretary.

[FR Doc. 02-14922 Filed 6-12-02; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7230-5]

### Agency Information Collection Activities: Proposed Collection; Comment Request; Voluntary Aluminum Industry Partnership (VAIP)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting Requirements under EPA's Voluntary Aluminum Industrial Partnership—EPA ICR No. 1967.02 for OMB Control number 2060-0411 which is due to expire on 07/31/2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 12, 2002.

**ADDRESSES:** US Environmental Protection Agency, Climate Protection Partnerships Division, 1200 Pennsylvania Avenue, NW (6202J), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Jerome Blackman, Tel. 202-564-8995/ Fax 202-565-2155, [blackman.jerome@epa.gov](mailto:blackman.jerome@epa.gov).

#### SUPPLEMENTARY INFORMATION:

*Affected entities:* Producers of primary aluminum.

*Title:* Reporting requirements under EPA's Voluntary Aluminum Industrial Partnership (VAIP)—OMB Control No. 2060-0411; EPA renewal ICR No. 1867.02) expiring 7/31/02.

**Abstract:** EPA's Voluntary Aluminum Industrial Partnership (VAIP) was initiated in 1995 and is an important voluntary program contributing to the overall reduction in emissions of greenhouse gases. This program focuses on reducing per fluorocarbon (PFC) emission from the production of primary aluminum. Eight of the nine U.S. producers of primary aluminum participate in this program. PFCs are very potent greenhouse gases with global warming potentials several thousand times that of carbon dioxide and they persist in the atmosphere for thousands of years. EPA has developed this ICR to renew authorization to collect information from companies in the VAIP. Participants voluntarily agree to the following: designating a VAIP liaison; undertaking technically feasible and cost-effective actions to reduce PFC emissions; and reporting to EPA, on an annual basis, the PFC emissions or production parameters used to estimate emissions. The information contained in the annual reports of VAIP members is used by EPA to assess the success of the program in achieving its goals. The information contained in the annual reports may be considered confidential business information and is maintained as such.

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.

The EPA would like to solicit comments to:

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

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Burden Statement:** The VAIP is a continuing program and, as such, the burden for collecting relevant information has decreased overtime as data collection processes have been improved and no new one-time cost activities are expected that would impact all respondents. VAIP participants sign a voluntary Memorandum of Understanding (MOU) which assigns responsibilities to EPA and participating companies. The MOU has been signed by 6 of the 8 participating companies under the initial ICR for this program. The remaining companies are expected to sign of the course of the re-newed MOU and, therefore, will be subject to the one-time burden associated with completing and submitting the MOU to EPA.

The projected hour burden for this collection of information is as follows:

*Average annual reporting burden:* 73 hours plus 94.5 hours (one time for the 2 of 8 respondents that have not signed voluntary program MOU).

*Average annual record keeping burden:* 0 hours.

*Average burden hours/response:* 56.5 hours for the annual tracking report; and 16.5 hours associated with additional activities. 94.5 if MOU has not been signed.

*Frequency of response:* one per respondent per year.

*Estimated number of respondents per year:* 8.

*Cost burden to respondents:*  
*Estimated total annualized cost burden:* \$64,767.

*Total labor cost:* \$64,767.

*Total capital and start-up costs:* \$0.

*Estimated total operation and maintenance costs:* \$0.

*Purchase of services costs:* \$0.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose

or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 7, 2002.

**Karl Schultz,**

*Acting for Chief, Methane and Sequestration Branch.*

[FR Doc. 02-14995 Filed 6-12-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-7231-2]

### Meeting of the Clean Diesel Independent Review Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92-463, notice is hereby given that the Clean Diesel Independent Review Panel of the Clean Air Act Advisory Committee will hold its second meeting on June 27 and 28. All panel meetings are open to the public. The preliminary agenda for this meeting will be available on the panel's website in mid-June: [http://www.epa.gov/air/caaac/clean\\_diesel.html](http://www.epa.gov/air/caaac/clean_diesel.html).

**DATES:** Thursday, June 27, 2002, from 10:00 a.m. to 5:30 p.m. Registration begins at 9:30 a.m. Friday, June 28, 2002, from 8:30 a.m. to 4:00 p.m.

**ADDRESSES:** The meeting will be held at the Radisson Hotel Old Town, 901 N. Fairfax Street, Alexandria, VA 22314, (703) 683-6000.

**FOR FURTHER INFORMATION CONTACT:**

*Technical Information:* Ms. Mary Manners, Designated Federal Official, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214-4873, fax: (734) 214-4051, e-mail: [manners.mary@epa.gov](mailto:manners.mary@epa.gov).

*Logistical and Administrative Information:* Ms. Julia MacAllister, FACA Management Officer, National

Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214-4131, fax: (734) 214-4816, e-mail: [macallister.julia@epa.gov](mailto:macallister.julia@epa.gov).

*Current Information:* <http://www.epa.gov/air/caaac/subcommittees.html>. Individuals or organizations wishing to provide comments to the panel should submit them to Ms. Manners at the address above by September 30, 2002. The Clean Diesel Independent Review Panel expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Dated: June 10, 2002.

**Margo Tsirigotis Oge,**

*Director, Office of Transportation and Air Quality.*

[FR Doc. 02-15072 Filed 6-12-02; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0070; FRL-7178-4]

### Notice of Receipt of Requests for Amendments to Delete Uses in certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

**DATES:** The deletions are effective on December 10, 2002, unless the Agency receives a withdrawal request on or before December 10, 2002. The Agency will consider withdrawal requests postmarked December 10, 2002.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before December 10, 2002.

**ADDRESSES:** Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as

provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number [OPP-2002-0070] in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5761; e-mail address: [hollins.james@epa.gov](mailto:hollins.james@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket ID number [OPP-2002-0070]. 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 this official record, which includes printed, paper versions of any electronic comments submitted during as applicable comment period, is

available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

### C. How and to Whom Do I Submit Withdrawal Requests?

You may submit withdrawal requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number [OPP-2002-0070] in the subject line on the first page of your response.

1. *By mail.* Submit your withdrawal request to: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your withdrawal request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP),

Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your withdrawal request electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All withdrawal requests in electronic form must be identified by docket ID number [OPP-2002-0070]. Electronic withdrawal requests may also be filed online at many Federal Depository Libraries.

### D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that

you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the withdrawal request that includes any information claimed as CBI, a copy of the withdrawal request that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration no.	Product	Chemical Name	Delete From Label
000264-00456	Ethoprop Technical	Ethoprop	Nonbearing citrus trees
000264-00458	MOCAP EC Nematicide-Insecticide	Ethoprop	Nonbearing citrus trees
000264-00599	Ethoprop Technical	Ethoprop	nonbearing citrus trees
001386-00609	Trifluralin 4EC Herbicide	Trifluralin	Clover
002217-00362	Gordon's MCPA Amine 4	MCPA, dimethylamine salt	Rice in California
008660-00050	1% Rotenone Garden Dust	Rotenone; Cube resins other than rotenone	All food uses
010163-00099	Gowan Trifluralin 5	Trifluralin	Flax
010163-00101	Gowan Trifluralin 4	Trifluralin	Flax
010163-00120	Gowan Trifluralin 10G	Trifluralin	Flax
040083-00001	Lindane Technical	Lindane	Broccoli, brussels sprouts, cabbage, cauliflower, celery, collards, lettuce, kale, kohlrabi, mustard greens, radish, spinach, and swiss chard
042750-00038	Butyrac 200 Broadleaf Herbicide	Dimethylamine dichlorophenoxy)butyrate	4-(2,4- Clover
062719-00386	Stam F-34	Propanil	Spring barley, oats, durum wheat, and spring (hard red) wheat
062719-00403	Stam Technical 98% DCA	Propanil	Cereals (spring barley, oats, durum wheat, spring (hard red) wheat)
062719-00413	Stam 80 EDF	Propanil	Cereal grains
067760-00036	Dimethoate 2.67 EC	Dimethoate	Residential and housefly uses

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration no.	Product	Chemical Name	Delete From Label
067760-00044	Dimethoate 4 E	Dimethoate	Residential and housefly uses
068156-00004	Dintec HFP Trifluralin	Trifluralin	Rapeseed

EPA company numbers 000264, 002217, 040083, 042750 and 067760 have requested a 30-day comment period for registrations listed.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant listed in Table 2 below before December 10, 2002, to discuss

withdrawal of the application for amendment. This 180-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000264	Aventis Cropscience USA LP, 2 T.W. Alexander Drive Box 12014, Research Triangle Park, NC 27709.
001386	Universal Cooperatives Inc., 1300 Corporate Center Curve, Eagan, MN 55121.
002217	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
008660	Earth Care, Division of United Industries Corporatio, Box 142642, St. Louis, MO 63114.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
040083	Inquinosa Internacional, S.A., Paseo De La Castellance, 123, 9 B, 28046 Mardr, .
042750	Pyxis Regulatory Consulting, Agent For: Albaugh Inc., 11324 17th Ave.Ct. NW, Gig Harbor, WA 98332.
062719	Dow AgroSciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268.
067760	Cheminova Inc., Oak Hill Park 1700 Route 23 - Ste 210, Wayne, NJ 07470.
068156	Dintec Agrichemicals, 9330 Zionsville Rd, Indianapolis, IN 46268.

**III. What is the Agency Authority for Taking This Action?**

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

**IV. Procedures for Withdrawal of Request**

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before December 10, 2002.

**V. Provisions for Disposition of Existing Stocks**

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling

for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: May 29, 2002.

**Linda Vlier Moos,**

*Acting Director, Information Resources and Services Division.*

[FR Doc. 02-14997 Filed 6-12-02; 8:45 a.m.]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-2002-0069; FRL-7177-9]

**Methodology for Lower Toxicity Pesticide Chemicals; Notice of Availability**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is soliciting comments on a document entitled "Methodology for Determining the Data Needed and the Types of Assessments Necessary to Make FFDC Section 408 Safety Pesticide Chemicals." Interested parties may request a copy of the Agency's proposed guidance document as set forth in Unit IB of this Notice.

**DATES:** Comments, identified by docket ID number OPP-2002-0069, must be received on or before September 11, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the

**SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP-2002-0069 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-305-6304; fax number: 703-305-0599; e-mail address: boyle.kathryn@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances - under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register"—Environmental Documents. You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP-2002-0069. 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy.,

Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-2002-0069 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: PIRIB, Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: PIRIB Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov), or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP-2002-0069. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

The Agency is announcing the availability of a methodology for assessing the hazards and risks of lower toxicity pesticide chemicals for public comment and review. This paper describes how lower toxicity pesticide chemicals, including inert ingredients, would be evaluated for use in pesticide products. The OPP is the Office within the Environmental Protection Agency (EPA or the Agency) that evaluates pesticide products. OPP's responsibilities (all of which could be affected by the use of this new methodology) include: registration of new active ingredients, reregistration of older active ingredients, reassessment of both tolerances and tolerances exemptions, approval of new inert ingredients, and list reclassification of inert ingredients.

Development of this methodology began as a result of OPP's need to (1) develop a new methodology for assessing inert ingredients to comply with the requirements of the Food Quality Protection Act (FQPA) of 1996 which amended both the FFDCA and the FIFRA, and (2) to improve the efficiency and effectiveness of the inert review process. In many instances, a chemical can be used as an inert ingredient in some pesticide products and as an active ingredient in other

pesticide products. Since FFDCA section 408 makes no distinction between active and inert ingredients of a pesticide product, EPA may use this tiered data screening methodology when evaluating any pesticide chemical of apparent low or low/moderate toxicity, regardless of whether it might be characterized as an active or inert ingredient.

At this time, EPA has completed review of two tolerance exemption petitions and over 200 tolerance reassessments for low or low/moderate toxicity chemicals using essentially the process described in this paper. More reviews are underway. Based on these experiences, OPP intends to continue its chemical-by-chemical reviews of pesticide chemicals according to the process described herein for the foreseeable future. However, EPA remains interested in further improvements in the efficiency and reliability of its process, and therefore welcomes comments from interested persons.

After evaluating several alternatives, OPP believes that a screening methodology is the most appropriate way to handle the variety of hazard and exposure issues posed by inert ingredients. This screening methodology will allow OPP to make decisions in a streamlined manner for low or low/moderate toxicity chemical substances. By being able to quickly review and approve the use of these chemical substances, more low or low/moderate toxicity chemical substances will be available for use in pesticide products. OPP will also be able to focus its resources on those chemical substances of potentially higher toxicity requiring in-depth evaluation.

OPP has incorporated elements of a tiered data approach into this methodology. For these lower toxicity chemicals, OPP would use existing information on the hazard potential (both human health and ecological) of a chemical substance as the basis for deciding if additional data are needed to support the use of the chemical. The hazard potential - the toxicity - is the driving force in determining tier placement. Chemical substances that are of low or low/moderate toxicity may be appropriately placed in a lower tier, with fewer data needed to make the safety finding. Chemicals of higher toxicity that can not be appropriately addressed in the lower tiers would be evaluated in a manner substantially similar to that of an active ingredient.

The process described in this paper has three tiers, with the first tier being subdivided into Tiers 1a and 1b. The process begins with a preliminary Tier

determination that is based on widely available information on chemical families and categories which includes the hazards associated with these chemicals. Later as the Agency begins to review chemical-specific or surrogate information in the open literature, the preliminary Tier determination may be revised.

The methodology is intended to provide guidance to EPA personnel and decision-makers, and to pesticide registrants. The policies and process described in this methodology are not binding on either EPA or pesticide registrants, and EPA may modify or disregard the process described herein where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that this process is not appropriate generally or not applicable to a specific pesticide chemical or situation.

### III. Questions/Issues for Public Comment

- A significant challenge faced in developing a methodology for a comprehensive assessment program for chemicals of low or low/moderate toxicity is determining the most appropriate procedure for evaluating such a diverse group of substances, with a very wide range of physical/chemical characteristics. Does the screening approach as described in the methodology paper reflect a workable, logical approach?

- It is likely that a large percentage of inert ingredients are not likely to be of significant toxicological concern. The Agency's expectation is that on the order of 50% of inert ingredients would be of low or low/moderate risk. At the same time, EPA must be able to identify problematic inert ingredients and then have the resources to take appropriate action to analyze and reduce these risks. Would this methodology give the Agency the necessary flexibility while allowing for an efficient and productive process?

- Several sources for credible, scientifically valid chemical information are given in the policy paper. What other possible sources of readily available credible, scientifically valid chemical information are available?

- The Agency has described, as best possible at this beginning stage, the process that would be used to evaluate inert ingredients as well as the role played by a petitioner for a tolerance or tolerance exemption or those seeking to support a chemical during tolerance reassessment. What additional information would be helpful to the regulated community?

### List of Subjects

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

Dated: June 7, 2002.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 02-14996 Filed 6-12-02; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7230-6]

### Persistent Organic Pollutants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a final technical report titled, The Foundation for Global Action on Persistent Organic Pollutants: A United States Perspective (EPA/600/P-01/003F, March 2002), which was prepared by the Office of Research and Development's (ORD) National Center for Environmental Assessment (NCEA). The purpose of this report is to inform decision makers, general academia, and the public on the scientific foundation and relevance to the United States of the Stockholm Convention on Persistent Organic Pollutants (POPs).

**ADDRESSES:** The document is available electronically on NCEA's Web site at [www.epa.gov/ncea](http://www.epa.gov/ncea), under the What's New or Publications menus. The CD-ROM version and a limited number of paper copies will be available shortly from the EPA's National Service Center for Environmental Publications (NSCEP), PO Box 42419, Cincinnati, OH 45242; telephone: 1-800-490-9198 or 513-489-8190; facsimile: 513-489-8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

**FOR FURTHER INFORMATION CONTACT:** For further information on The Foundation for Global Action on Persistent Organic Pollutants: A United States Perspective, please contact Dr. Bruce Rodan, National Center for Environmental Assessment (8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Telephone: 202-564-3329; facsimile: (202) 565-0090; e-mail: [rodan.bruce@epa.gov](mailto:rodan.bruce@epa.gov); or the Technical Information Staff, National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency,

1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202-564-3261; facsimile: 202-565-0050; e-mail: [nceadc.comment@epa.gov](mailto:nceadc.comment@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Foundation for Global Action on Persistent Organic Pollutants: A United States Perspective, developed by scientists from EPA, other federal and state agencies, and the academic community, is a technical support document aimed at informing decision makers, general academia, and the public on the scientific foundation and relevance to the United States of the Stockholm Convention on Persistent Organic Pollutants (POPs). POPs are a small group of organic chemicals exhibiting the combined properties of persistence, bioaccumulation, toxicity, and long-range environmental transport. The report, which has been through internal review, independent external peer review, and public review and comment, summarizes data available in the peer reviewed literature on the 12 POPs chemicals initially included in the Stockholm Convention and provides an overview of the risks posed to U.S. ecosystems and the public. This small group of chemicals have been major contributors to toxic environmental pollution in the United States and worldwide. The 12 POPs included in the Convention are: aldrin, dieldrin, endrin, DDT, chlordane, heptachlor, mirex, toxaphene, hexachlorobenzene, polychlorinated biphenyls (PCBs), polychlorinated dibenzo-p-dioxins, and polychlorinated dibenzofurans. The Stockholm Convention on POPs was signed by EPA Administrator Christine Todd Whitman on behalf of the United States in May 2001, and has been submitted to Congress for ratification.

Dated: June 7, 2002.  
**Art Payne,**  
*Acting Director, National Center for Environmental Assessment.*  
 [FR Doc. 02-14993 Filed 6-12-02; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7227-3]

**Clean Water Act Section 303(d): Final Agency Action on 98 Total Maximum Daily Loads (TMDLs) and Final Agency Action on 20 Determinations That TMDLs Are Not Needed**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces final agency action on 98 TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Calcasieu and Ouachita river basins, under section 303(d) of the Clean Water Act (CWA). This notice also announces final agency action removing 20 waterbody/pollutant combinations from the Louisiana 303(d) list because TMDLs are not needed. The EPA evaluated these waters and prepared the 98 TMDLs needed in response to a consent decree entered in the lawsuit *Sierra Club, et al. v. Clifford et al.*, No. 96-0527, (E.D. La.). Documents from the administrative record files for the 20 determinations that TMDLs are not needed and for the 98 TMDLs, including TMDL calculations and the responses to comments, may be viewed at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm).

EPA believes that the public notice and comment period provided for these TMDLs was adequate. During the comment period, EPA received over 400

pages of comments from numerous commenters, including the parties requesting more time. EPA believes that it has appropriately responded to the comments received. Furthermore, EPA is establishing these TMDLs pursuant to deadlines established in a consent decree in the case styled *Sierra Club, et al. v. Clifford et al.*, No. 96-0527, (E.D. La.) which does not at this late date permit EPA to grant additional time for public comment, absent relief from the court, which the Agency does not believe is necessary to seek here. However, EPA will continue to accept information submitted regarding potential errors in the TMDL, and/or to meet with parties to discuss potential errors. If the Agency determines that errors were made, it will issue a correction notice or revise the TMDL, as appropriate.

The administrative record files may be obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665-7513.

**SUPPLEMENTARY INFORMATION:** In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al. v. Clifford et al.*, No. 96-0527, (E.D. La.). Among other claims, the plaintiffs alleged that the EPA failed to establish Louisiana TMDLs in a timely manner.

**EPA Takes Final Agency Action on 98 TMDLs**

By this notice EPA is taking final agency action on the following 98 TMDLs for waters located within the Calcasieu and Ouachita river basins:

Subsegment	Waterbody name	Pollutant
030301	Calcasieu River & Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Contaminated sediments (Mercury, PAHs, and toxicity).
030306	Bayou Verdine (Estuarine)	Contaminated sediments (4,4'-DDT, Methoxychlor, PAHs, Zinc, Calcium, and toxicity).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Contaminated sediments (Mercury, toxicity, and organics).
030305	Contraband Bayou (Estuarine)	Copper.
031201	Calcasieu River Basin—Coastal Bays and Gulf Waters to State 3 mile limit	Mercury.
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Metals (Copper, Lead, and Mercury).
030304	Moss Lake (Estuarine)	Metals (Copper, Mercury).
030306	Bayou Verdine (Estuarine)	Metals (Mercury, Nickel).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Metals (Copper, Nickel, and Mercury).
030305	Contraband Bayou (Estuarine)	Pathogen indicators.
030701	Bayou Serpent	Pesticides (Fipronil).
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (Includes Coon Island and Clooney Island Loops).	Priority organics (PAHs).

Subsegment	Waterbody name	Pollutant
030306	Bayou Verdine (Estuarine)	Priority organics (Phenols, and 1,2-Dichloroethane).
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Priority organics (PCBs, Tetrachloroethane, Hexachlorobenzene, Hexachlorobutadiene, and Bromoform).
030702	English Bayou—Headwaters to Calcasieu River	Suspended solids.
030702	English Bayou—Headwaters to Calcasieu River	Turbidity.
081501	Castor Creek—Headwaters to Little River	Chlorides.
0809(04)	Little Bayou Boeuf/Wham Brake (within segment 0809)	Dioxins.
080912	Tisdale Brake/Staulkinghead Creek from origin to Little Bayou Boeuf	Dioxins.
080101	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas State Line to intersection with Bayou Bartholomew—22 miles).	Mercury.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Nitrogen.
080102	Bayou Chauvin	Noxious aquatic plants.
080201	Ouachita River—Columbia Lock and Dam to Jonesville	Nutrients.
080302	Black River—Corps of Engineers Control Structure to Red River	Nutrients.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Nutrients.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia	Nutrients.
080910	Clear Lake	Nutrients.
081002	Joe's Bayou—Headwaters to Bayou Macon	Nutrients.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Nutrients.
081202	Lake St. Joseph (Oxbow Lake)	Nutrients.
080201	Ouachita River—Columbia Lock	Organic enrichment/low DO.
080501	Bayou de L'Outre—Arkansas State to Ouachita River (Scenic)	Organic enrichment/low DO.
080607	Corney Bayou—from Arkansas State Line to Corney Lake (Scenic)	Organic enrichment/low DO.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Organic enrichment/low DO.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia	Organic enrichment/low DO.
080910	Clear Lake	Organic enrichment/low DO.
081002	Joe's Bayou—Headwaters to Bayou Macon	Organic enrichment/low DO.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Organic enrichment/low DO.
081202	Lake St. Joseph (Oxbow Lake)	Organic enrichment/low DO.
080102	Bayou Chauvin—Headwaters to Ouachita River	Pathogen indicators.
080610	Middle Fork of Bayou D'Arbonne—From origin to Bayou D'Arbonne Lake (Scenic).	Pathogen indicators.
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Pathogen indicators.
080910	Clear Lake	Pathogen indicators.
081001	Bayou Macon	Pathogen indicators.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Pathogen indicators.
080901	Boeuf River—Arkansas State Line to Ouachita River	Pesticides (Carbofuran, DDT, and Toxaphene).
080903	Big Creek—Headwaters to Boeuf	Pesticides (Carbofuran, Atrazine, DDT, and Methyl Parathion).
081001	Bayou Macon	Pesticides (DDT).
081002	Joe's Bayou—Headwaters to Bayou Macon	Pesticides (Carbofuran, and DDT).
081201	Tensas River—Headwaters to Jonesville including Tensas Bayou	Pesticides (Carbofuran, Toxaphene, and DDT).
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Phosphorus.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia	Priority organics (Dioxins).
081501	Castor Creek—Headwaters to Little River	Salinity/TDS.
080202	Bayou Louis	Siltation.
080901	Boeuf River—Arkansas State Line to Ouachita River	Siltation.
080102	Bayou Chauvin	Suspended solids.
080901	Boeuf River—Arkansas State Line to Ouachita River	Suspended solids.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou)	Suspended solids.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia	Suspended solids.
080910	Clear Lake	Suspended solids.
081001	Bayou Macon—Arkansas State Line to Tensas River	Suspended solids.
081002	Joe's Bayou—Headwaters to Bayou Macon	Suspended solids.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Suspended solids.
081202	Lake St. Joseph (Oxbow Lake)	Suspended solids.
080102	Bayou Chauvin	Turbidity.
080901	Boeuf River—Arkansas State Line to Ouachita River	Turbidity.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou)	Turbidity.
080904	Bayou Lafourche—near Oakridge to Boeuf River near Columbia	Turbidity.
081001	Bayou Macon—Arkansas State Line to Tensas River	Turbidity.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Turbidity.

EPA requested the public to provide EPA with any significant data or information that may impact the 98 TMDLs in 67 FR 15196 (March 29, 2002). The comments received and EPA's response to comments may be found at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm).

**Final Agency Action Removing 20 Waterbody/Pollutant Combinations for Waters Located Within the Calcasieu and Ouachita Basins From the Louisiana 303(d) List Because TMDLs Are Not Needed**

Subsegment	Waterbody name	Pollutant
030301	Calcasieu River and Ship Channel—Saltwater Barrier to Moss Lake (Estuarine) (includes Coon Island and Clooney Island Loops).	Ammonia.
030302	Lake Charles (Estuarine)	Non-priority organics.
030306	Bayou Verdine	Non-priority organics.
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Non-priority organics.
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Other inorganics.
030302	Lake Charles (Estuarine)	Priority organics.
030303	Prien Lake	Priority organics.
030304	Moss Lake (Estuarine)	Priority organics.
030305	Contraband Bayou (Estuarine)	Priority organics.
030401	Calcasieu River—Calcasieu Ship Channel Below Moss Lake to the Gulf of Mexico (Estuarine) (Includes Monkey Island Loop).	Priority organics.
030402	Calcasieu Lake (Estuarine)	Priority organics.
080102	Bayou Chauvin—Headwaters to the Ouachita River	Ammonia.
080901	Boeuf River—Arkansas State Line to Ouachita River	Ammonia.
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Ammonia.
081401	Dugdemona River—Headwaters to junction with Big Creek	Dioxins.
081001	Bayou Macon—Arkansas State Line to Tensas River	Nutrients.
081402	Dugdemona River—From Big Creek to Little River	Organic enrichment/low DO.
081609	Hemphill Creek—Headwaters to Catahoula Lake (includes Hair Creek)	Organic enrichment/low DO.
080901	Boeuf River—Arkansas State Line to Ouachita River	Phosphorus.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou)	Phosphorus.

EPA requested the public to provide to EPA any significant data or information that may impact the determinations that 20 TMDLs are not needed in 67 FR 15196 (March 29, 2002). The comments received and EPA's response to comments may be found at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm).

Dated: May 31, 2002.

**Oscar Ramirez, Jr.,**  
Acting Director, Water Quality Protection Division, Region 6.  
[FR Doc. 02-14498 Filed 6-12-02; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7227-4]

**Clean Water Act Section 303(d): Final Agency Action on 11 Total Maximum Daily Loads (TMDLs) and Final Agency Action on 4 Determinations That TMDLs Are Not Needed**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces final agency action on 11 TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Ouachita river basin, under section 303(d) of the Clean Water Act (CWA). This notice also announces final agency action removing 4 waterbody/pollutant combinations from the Louisiana 303(d) list because TMDLs are not needed. The EPA evaluated these waters and prepared the 11 TMDL in response to a consent decree entered in the lawsuit *Sierra Club, et al. v. Clifford et al.*, No. 96-0527, (E.D. La.). Documents from the administrative record files for the 4 determinations that TMDLs are not needed and for 11 the TMDLs, including TMDL calculations and responses to comments, may be viewed at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm). The administrative record files may be obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665-7513.

**SUPPLEMENTARY INFORMATION:** In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al. v. Clifford et al.*, No. 96-0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

**EPA Takes Final Agency Action on 11 TMDLs**

By this notice EPA is taking final agency action on the following 11 TMDLs for waters located within the Ouachita river basin:

Subsegment	Waterbody name	Pollutant
080401	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew) (Scenic).	Mercury.
080402	Bayou Bartholomew—Dead Bayou (Lake Bartholomew) to Ouachita River	Mercury.
080302	Black River—Corps of Engineers Control Structure to Red River	Organic enrichment/low DO.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Siltation.

Subsegment	Waterbody name	Pollutant
080401 .....	Bayou Bartholomew—Arkansas State line to Dead Bayou Lake (Bartholomew) (Scenic).	Suspended solids.
080202 .....	Bayou Louis .....	Turbidity.
080401 .....	Bayou Bartholomew—Arkansas State line to Dead Bayou (Lake Bartholomew)(Scenic).	Turbidity.
081002 .....	Joe's Bayou—Headwaters to Bayou Macon .....	Turbidity.
081202 .....	Lake St. Joseph (Oxbow Lake) .....	Turbidity.
081601 .....	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Turbidity.
081602 .....	Little River—From Bear Creek to Catahoula Lake (Scenic) .....	Turbidity.

EPA requested the public to provide EPA with any significant data or information that may impact the 11 TMDLs in 67 FR 19575 (April 22, 2002). The comments received and EPA's

response to comments may be found at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm).

**Final Agency Action Removing 4 Waterbody/Pollutant Combinations for Waters Located Within the Calcasieu and Ouachita River Basins From the Louisiana 303(d) List Because TMDLs Are Not Needed**

Subsegment	Waterbody name	Pollutant
030201 .....	Calcasieu River—Confluence with Marsh Bayou to Saltwater Barrier (Scenic)	Lead.
081401 .....	Dugdemona River—Headwaters to junction with Big Creek .....	Nutrients.
081401 .....	Dugdemona River—Headwaters to .....	Organic enrichment/low DO.
081503 .....	Beaucoup Creek—Headwaters to Castor Creek .....	Organic enrichment/low DO (TMDL previously LDEQ established & EPA approved).

EPA requested the public to provide to EPA any significant data or information that may impact the determinations that 4 TMDLs are not needed in 67 FR 19575 (April 22, 2002). The comments received and EPA's response to comments may be found at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm).

**ACTION:** Notice of availability.

**SUPPLEMENTARY INFORMATION:** In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al. v. Clifford et al.*, No. 96-0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

Dated: May 30, 2002.

**Oscar Ramirez, Jr.,**  
Acting Director, Water Quality Protection Division, Region 6.  
[FR Doc. 02-14499 Filed 6-12-02; 8:45 am]  
BILLING CODE 6560-50-P

**SUMMARY:** This notice announces final agency action removing 151 waterbody/pollutant combinations listed in Louisiana's Calcasieu and Ouachita river basins, under section 303(d) of the Clean Water Act (CWA) because TMDLs are not needed. The EPA evaluated these waters in response to a consent decree entered in the lawsuit *Sierra Club, et al. v. Clifford et al.*, No. 96-0527, (E.D. La.). Documents from the administrative record files for the 151 determinations that TMDLs are not needed, including responses to comments, may be viewed at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm). The administrative record files may be obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

**Final Agency Action Removing 149 Waterbody/Pollutant Combinations for Waters Located Within the Calcasieu and Ouachita River Basins From the Louisiana 303(d) List Because TMDLs Are Not Needed**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-7227-5]

**Clean Water Act Section 303(d): Final Agency Action on 151 Determinations That TMDLs Are Not Needed**

**AGENCY:** Environmental Protection Agency (EPA).

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665-7513.

Subsegment	Waterbody name	Pollutant
030103 .....	Calcasieu—Rapides-Allen Parish line to confluence with Marsh Bayou (Scenic).	Cadmium.
030201 .....	Calcasieu River—Confluence with Marsh Bayou to Salt-water Barrier .....	Cadmium.
030801 .....	West Fork Calcasieu River—From confluence of Beckwith Creek and Hickory Branch to Calcasieu River.	Cadmium.
030103 .....	Calcasieu River—Rapides-Allen Parish line to confluence with Marsh Bayou (Scenic).	Copper.
030201 .....	Calcasieu River—Confluence with Marsh Bayou to Salt-water Barrier .....	Copper.

Subsegment	Waterbody name	Pollutant
030801	West Fork Calcasieu River—From confluence of Beckwith Creek and Hickory Branch to Calcasieu River.	Copper.
030702	English Bayou—Headwaters to Calcasieu River	Lead.
030801	West Fork Calcasieu River—From confluence of Beckwith Creek and Hickory Branch to Calcasieu River.	Lead.
030702	English Bayou—Headwaters to Calcasieu River	Mercury.
030306	Bayou Verdine (Estuarine)	Oil & Grease.
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Oil & Grease.
030301	Calcasieu River and Ship Channel—Salt-water Barrier to below Moss Lake (Estuarine, includes Coon Island and Clooney Island Loops).	Pathogen Indicators.
030302	Lake Charles (Estuarine)	Pathogen Indicators.
030401	Calcasieu River—Calcasieu Ship Channel below Moss Lake to the Gulf of Mexico (Estuarine, includes Monkey Island Loop).	Pathogen Indicators.
030402	Calcasieu Lake (Estuarine)	Pathogen Indicators.
030901	Bayou D'Inde—Headwaters to Calcasieu River (Estuarine)	Pathogen Indicators.
030201	Calcasieu River—Confluence with Marsh Bayou to Salt-water Barrier	Suspended Solids.
030103	Calcasieu River—Rapides-Allen Parish line to confluence with Marsh Bayou (Scenic).	Suspended Solids.
030201	Calcasieu River—Confluence with Marsh Bayou to Salt-water Barrier	Turbidity.
030103	Calcasieu River—Rapides-Allen Parish line to confluence with Marsh Bayou (Scenic).	Turbidity.
080301	Black River—Jonesville to Corps of Engineers Control Structure (at mile 25, Serena).	Cadmium.
081501	Castor Creek—Headwaters to Little River	Cadmium.
081401	Dugdemona River—Headwaters to junction with Big Creek	Cadmium.
081601	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Cadmium.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Cadmium.
080101	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas state line to intersection with Bayou Bartholomew—22 miles).	Cadmium.
080501	Bayou de L'Outre—Arkansas State Line to Ouachita River (Scenic)	Chlorides.
081611	Bayou Funny Louis	Chlorides.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou)	Chlorides.
080901	Boeuf River—Arkansas State Line to Ouachita River	Chlorides.
081603	Catahoula Lake	Chlorides.
080609	Corney Bayou—From Corney Lake to Bayou D'Arbonne Lake (Scenic)	Chlorides.
081402	Dugdemona River—From Big Creek to Little River	Chlorides.
081601	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Chlorides.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Chlorides.
080610	Middle Fork of Bayou D'Arbonne—From origin to Bayou D'Arbonne Lake (Scenic).	Chlorides.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Chlorides.
080301	Black River—Jonesville to Corps of Engineers Control Structure (at mile 25, Serena).	Copper.
081501	Castor Creek—Headwaters to Little River	Copper.
081604	Catahoula Lake Diversion Canal—Catahoula Lake to Black River	Copper.
081402	Dugdemona River—From Big Creek to Little River	Copper.
081401	Dugdemona River—Headwaters to junction with Big Creek	Copper.
081601	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Copper.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Copper.
080101	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas state line to intersection with Bayou Bartholomew—22 miles).	Copper.
080201	Ouachita River—Columbia Lock and Dam to Jonesville	Copper.
080101	Ouachita River—Arkansas State, Line to Columbia Lock and Dam (Scenic from the Arkansas state line to intersection with Bayou Bartholomew—22 miles).	Dioxins, Priority Organics.
080401	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Lead.
080605	Bayou D'Arbonne—From Bayou D'Arbonne Lake to Ouachita River (Scenic)	Lead.
080603	Bayou D'Arbonne—From Lake Claiborne to Bayou D'Arbonne Lake	Lead.
080604	Bayou D'Arbonne Lake	Lead.
080501	Bayou de L'Outre—Arkansas State Line to Ouachita River (Scenic)	Lead.
081503	Beaucoup Creek—Headwaters to Castor Creek	Lead.
080301	Black River—Jonesville to Corps of Engineers Control Structure (at mile 25, Serena).	Lead.
081501	Castor Creek—Headwaters to Little River	Lead.
081604	Catahoula Lake Diversion Canal—Catahoula Lake to Black River	Lead.
080609	Corney Bayou—From Corney Lake to Bayou D'Arbonne Lake (Scenic)	Lead.
081402	Dugdemona River—From Big Creek to Little River	Lead.
081401	Dugdemona River—Headwaters to junction with Big Creek	Lead.

Subsegment	Waterbody name	Pollutant
081601	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Lead.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Lead.
080610	Middle Fork of Bayou D'Arbonne—From origin to Bayou D'Arbonne Lake (Scenic).	Lead.
080101	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas state line to intersection with Bayou Bartholomew—22 miles).	Lead.
080201	Ouachita River—Columbia Lock and Dam to Jonesville	Lead.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Lead.
080605	Bayou D'Arbonne—From Bayou D'Arbonne Lake to Ouachita River (Scenic)	Mercury.
080501	Bayou de L'Outre—Arkansas State Line to Ouachita River (Scenic)	Mercury.
080904	Bayou Lafourche—Near Oakridge to Boeuf River near Columbia	Mercury.
080301	Black River—Jonesville to Corps of Engineers Control Structure (at mile 25, Serena).	Mercury.
080901	Boeuf River—Arkansas State Line to Ouachita River	Mercury.
081501	Castor Creek—Headwaters to Little River	Mercury.
081402	Dugdemona River—From Big Creek to Little River	Mercury.
081401	Dugdemona River—Headwaters to junction with Big Creek	Mercury.
080201	Ouachita River—Columbia Lock and Dam to Jonesville	Mercury.
081401	Dugdemona River—Headwaters to junction with Big Creek	Non-Priority Organics.
081601	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Non-Priority Organics.
081203	Lake Bruin (Oxbow Lake)	Nutrients.
081501	Castor Creek—Headwaters to Little River	Oil & Grease.
081601	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Oil & Grease.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Oil & Grease.
081611	Bayou Funny Louis	Oil & Grease.
081603	Catahoula Lake	Oil & Grease.
081001	Bayou Macon—Arkansas State Line to Tensas River	Organic Enrichment/Low DO.
081203	Lake Bruin (Oxbow Lake)	Organic Enrichment/Low DO.
080401	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Other Inorganics.
080603	Bayou D'Arbonne—From Lake Claiborne to Bayou D'Arbonne Lake	Other Inorganics.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Other Inorganics.
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Other Inorganics.
080401	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Pathogen Indicators.
080904	Bayou Lafourche—Near Oakridge to Boeuf River near Columbia	Pathogen Indicators.
081501	Castor Creek—Headwaters to Little River	Pathogen Indicators.
081609	Hemphill Creek—Headwaters to Catahoula Lake (includes Hair Creek)	Pathogen Indicators.
080902	Bayou Bonne Idee—Headwaters to Boeuf River	Pesticides.
080301	Black River—Jonesville to Corps of Engineers Control Structure (at mile 25, Serena).	Pesticides.
080302	Black River—Corps of Engineers Control Structure to Red River	Pesticides.
080910	Clear Lake	Pesticides.
080909	Crew Lake	Pesticides.
081202	Lake St. Joseph (Oxbow Lake)	Pesticides.
080101	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas state line to intersection with Bayou Bartholomew—22 miles).	Pesticides.
080201	Ouachita River—Columbia Lock and Dam to Jonesville	Pesticides.
080905	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Pesticides.
080401	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Pesticides.
080904	Bayou Lafourche—Near Oakridge to Boeuf River near Columbia	Pesticides.
080202	Bayou Louis	Pesticides.
081203	Lake Bruin (Oxbow Lake)	Pesticides.
080102	Bayou Chauvin	pH.
080501	Bayou de L'Outre—Arkansas State Line to Ouachita River (Scenic)	Salinity/TDS.
080903	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou)	Salinity/TDS.
081603	Catahoula Lake	Salinity/TDS.
080609	Corney Bayou—From Corney Lake to D'Arbonne Lake	Salinity/TDS.
081402	Dugdemona River—From Big Creek to Little River	Salinity/TDS.
081601	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Salinity/TDS.
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	Salinity/TDS.
080610	Middle Fork of Bayou D'Arbonne—From origin to Bayou D'Arbonne Lake (Scenic).	Salinity/TDS.
081201	Tensas River—Headwaters to Jonesville (including Tensas Bayou)	Salinity/TDS.
080901	Boeuf River—Arkansas State Line to Ouachita River	Salinity/TDS.

Subsegment	Waterbody name	Pollutant
081611 .....	Bayou Funny Louis .....	Salinity/TDS.
080302 .....	Black River—Corps of Engineers Control Structure to Red River .....	Siltation.
081602 .....	Little River—From Bear Creek to Catahoula Lake (Scenic) .....	Siltation.
080201 .....	Ouachita River—Columbia Lock and Dam to Jonesville .....	Siltation.
080501 .....	Bayou de L'Outre—Arkansas State Line to Ouachita River (Scenic) .....	Sulfates.
081611 .....	Bayou Funny Louis .....	Sulfates.
080903 .....	Big Creek—Headwaters to Boeuf River (including Big Colewa Bayou) .....	Sulfates.
080901 .....	Boeuf River—Arkansas State Line to Ouachita River .....	Sulfates.
081501 .....	Castor Creek—Headwaters to Little River .....	Sulfates.
081603 .....	Catahoula Lake .....	Sulfates.
080609 .....	Corney Bayou—From Corney Lake to Bayou D'Arbonne Lake (Scenic) .....	Sulfates.
081402 .....	Dugdemona River—From Big Creek to Little River .....	Sulfates.
081601 .....	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Sulfates.
081602 .....	Little River—From Bear Creek to Catahoula Lake (Scenic) .....	Sulfates.
080610 .....	Middle Fork of Bayou D'Arbonne— From origin to Bayou D'Arbonne Lake (Scenic).	Sulfates.
081201 .....	Tensas River—Headwaters to Jonesville (including Tensas Bayou) .....	Sulfates.
080401 .....	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Suspended Solids.
080902 .....	Bayou Bonne Idee—Headwaters to Boeuf River .....	Suspended Solids.
080605 .....	Bayou D'Arbonne—From Bayou D'Arbonne Lake to Ouachita River (Scenic) ...	Suspended Solids.
080603 .....	Bayou D'Arbonne—From Lake Claiborne to Bayou D'Arbonne Lake .....	Suspended Solids.
081501 .....	Castor Creek—Headwaters to Little River .....	Suspended Solids.
080609 .....	Corney Bayou—From Corney Lake to Bayou D'Arbonne Lake (Scenic) .....	Suspended Solids.
080905 .....	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Suspended Solids.
080101 .....	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas state line to intersection with Bayou Bartholomew—22 miles).	Suspended Solids.
081402 .....	Dugdemona River—From Big Creek to Little Creek .....	Turbidity.
081601 .....	Little River—Confluence of Castor Creek and Dugdemona River to junction with Bear Creek (Scenic).	Turbidity.
081602 .....	Little River—From Bear Creek to Catahoula Lake (Scenic) .....	Turbidity.
080905 .....	Turkey Creek—Headwaters to Turkey Creek Cutoff and Turkey Creek Cutoff to Big Creek including Glade Slough.	Turbidity.
080401 .....	Bayou Bartholomew—Arkansas State Line to Dead Bayou (Lake Bartholomew Scenic).	Turbidity.
081611 .....	Bayou Funny Louis .....	Turbidity.
080610 .....	Middle Fork of Bayou D'Arbonne—From origin to Bayou D'Arbonne Lake (Scenic).	Turbidity.
080101 .....	Ouachita River—Arkansas State Line to Columbia Lock and Dam (Scenic from the Arkansas state line to intersection with Bayou Bartholomew—22 miles).	Turbidity.
080301 .....	Black River—Jonesville to Corps of Engineers Control Structure (at mile 25, Serena).	Unknown Toxicity.

EPA requested the public to provide EPA with any significant data or information that may impact the determinations that 149 TMDLs are not needed in 67 FR 6922 (February 14, 2002). The comments received and EPA's response to comments may be

found at [www.epa.gov/region6/water/tmdl.htm](http://www.epa.gov/region6/water/tmdl.htm).

**Final Agency Action Removing 2 Waterbody/Pollutant Combinations for Waters Located Within the Calcasieu River Basin From the Louisiana 303(d) List Because TMDLs Have Been Previously Received from the Louisiana Department of Environmental Quality and approved by EPA**

Subsegment	Waterbody name	Pollutant
030702 .....	English Bayou—Headwaters to Calcasieu River .....	Organic enrichment/low DO, Nutrients.

Dated: May 30, 2002.

**Oscar Ramirez, Jr.,**

*Acting Director, Water Quality Protection Division, Region 6.*

[FR Doc. 02-14500 Filed 6-12-02; 8:45 am]

**BILLING CODE 6560-50-P**

## EXECUTIVE OFFICE OF THE PRESIDENT

### Submission for OMB Review; Comment Request

**AGENCY:** Office of National Drug Control Policy.

**SUMMARY:** The National Youth Anti-Drug Media Campaign invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 15, 2002.

**ADDRESSES:** Written comments should be addressed to the Office of National Drug Control Policy, Attention: Gem Benozza, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to [Gbenozza@ondcp.eop.gov](mailto:Gbenozza@ondcp.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

*Type of Review:* New.

*Title:* Customer Satisfaction Survey of Community Coalitions with Community

Drug Prevention Public Service Advertising Campaign.

*Frequency:* Two times in one year.

*Affected Public:* Community Anti-Drug Coalitions.

*Reporting and Recordkeeping Hour Burden:* None.

*Responses:* Estimate 520.

*Burden Hours:* 52 hours.

*Abstract:* ONDCP and the Advertising Council will use the information to ascertain whether the PSA campaign and related activities increase participation in local coalitions and to identify changes that could improve ONDCP's service to its member coalitions. Such information might reveal that certain sectors of the community (i.e., faith groups, businesses, etc.) are under-targeted, and thus guide ONDCP to re-focus outreach efforts. All information will be distributed internally only.

Dated: June 7, 2002.

**Alan Levitt,**

*Director, National Youth Anti-Drug Media Campaign.*

[FR Doc. 02-14897 Filed 6-12-02; 8:45 am]

**BILLING CODE 3180-02-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 6, 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:** Written comments should be submitted on or before August 12, 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 Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1-C804 or Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) or [lesmith@fcc.gov](mailto:lesmith@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith Boley Herman at 202-418-0214 or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-0075.

*Title:* Application for Consent to Assign Construction Permit or License for TV or FM Translator Station or Low Power Television Station or to Transfer Control of Entity Holding TV or FM Translator or Low Power Television Station.

*Form No.:* FCC Form 345.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 320.

*Estimated Time Per Response:* 8 hours (1 hour applicant burden; 7 hours contract costs).

*Frequency of Response:*

Recordkeeping requirement; on occasion reporting requirement, third party disclosure requirement.

*Total Annual Burden:* 320 hours.

*Total Annual Cost:* \$516,140.

*Needs and Uses:* Filing of the FCC Form 345 is required when applying for authority for assignment of license or permit, or for consent to transfer of control of corporate licensee or permittee for an FM or TV translator station, or low power TV station. This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for assignment of license/permit. This notice must be completed within 30 days of the tendering of the application. A copy of this notice must be placed in the public inspection file along with the application. The form has been revised to include inadvertently omitted information. The

data is used by FCC staff to determine if the applicant meets basic statutory requirements to operate the station.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-14912 Filed 6-12-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[DA 02-1321]

### Consumer/Disability Telecommunications Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the date, time, and agenda for the next meeting of the Consumer/Disability Telecommunications Advisory Committee (hereinafter "the Committee"), whose purpose is to make recommendations to the Commission regarding consumer and disability issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations) in proceedings before the Commission.

**DATES:** The meeting of the Committee will take place on Friday, June 28, 2002, from 9 a.m. to 5 p.m.

**ADDRESSES:** The Committee will meet at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Room TW-C305.

**FOR FURTHER INFORMATION CONTACT:** Scott Marshall, Designated Federal Officer, Consumer/Disability Telecommunications Advisory Committee, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Telephone 202-418-2809 (voice) or 202-418-0179 (TTY); Email: [cdtac@fcc.gov](mailto:cdtac@fcc.gov).

**SUPPLEMENTARY INFORMATION:** By Public Notice dated and released June 7, 2002, the Federal Communications Commission announced the next meeting of its Consumer/Disability Telecommunications Advisory Committee. The establishment of the Committee had been announced by Public Notice dated November 30, 2000, 15 FCC Rcd 23798, as published in the **Federal Register** (65 FR 76265, December 6, 2000). At the June 28, 2002

meeting, the Committee will receive and consider a report of its disability subcommittee and will also entertain a report from its ad hoc working group on the Commission's informal consumer complaint processes and outreach efforts. The Committee will also consider a report of its ad hoc working group on Committee operations and structure, which will address primarily issues relating to the Committee's re-chartering. The Committee will make recommendations to the Federal Communications Commission as appropriate, and may also consider other matters within the mandate of its Charter.

### Availability of Copies and Electronic Accessibility

A copy of the June 28, 2002 Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's website at [www.fcc.gov/cgb/cdtac](http://www.fcc.gov/cgb/cdtac). The Committee meeting will be broadcast on the Internet in Real Audio/Real Video format with captioning at [www.fcc.gov/cgb/cdtac](http://www.fcc.gov/cgb/cdtac). The meeting will be sign language interpreted and realtime transcription and assistive listening devices will also be available. The meeting site is fully accessible to people with disabilities. Copies of meeting agendas and handout material will also be provided in accessible formats. Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's web site at [www.fcc.gov/cgb/cdtac](http://www.fcc.gov/cgb/cdtac).

Committee meetings will be open to the public and interested persons may attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall. Notices of future meetings of the Committee will be published in the **Federal Register**.

Federal Communications Commission.

**Robert N. Mirelson,**

*Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. 02-14911 Filed 6-12-02; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2556]

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

June 7, 2002.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY-A257, 445 12th Street, SW, Washington, DC, or may be purchased from the Commission's copy contractor, Qualex International (202) 863-2893. Oppositions to these petitions must be filed by June 28, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Telephone Number Portability (CC Docket No. 95-116), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), Numbering Resource Optimization (CC Docket No. 99-200).

*Number of Petitions Filed:* 7.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-14909 Filed 6-12-02; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, June 20, 2002, meeting open to the public. This meeting has been cancelled.

**DATE AND TIME:** Tuesday, June 18, 2002 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Wednesday, June 19, 2002 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and approval of minutes.  
Final rules and explanation and justification on soft money.  
Administrative matters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Harris, Press Officer, Telephone: (202) 694-1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 02-15088 Filed 6-11-02; 2:19 pm]

**BILLING CODE 6715-01-M**

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 2002.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Thomas A. Vann*, Washington, North Carolina, individually and together with the following members of his immediate family: Lee M. Vann, Washington, North Carolina; Edward W. Vann, Rocky Mount, North Carolina; Emily D. Vann, Rocky Mount, North Carolina; Richard S. Vann, Winston-Salem, North Carolina; Patricia H. Vann, Winston-Salem, North Carolina; Lynn M. Forbes, Greenville, North Carolina; and Elizabeth W. Honeycutt, Greenville, North Carolina; to acquire voting shares of First South Bancorp, Inc., Washington, North Carolina, and thereby indirectly acquire voting shares of First South Bank, Washington, North Carolina.

Board of Governors of the Federal Reserve System, June 7, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02-14858 Filed 6-12-02; 8:45 am]

**BILLING CODE 6210-01-S**

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2002.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *CenterState Banks of Florida, Inc.*, Winter Haven, Florida; to acquire 100 percent of the voting shares of CenterState Bank of Florida, Winter Haven, Florida.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Pinnacle Bancorp, Inc.*, Central City, Nebraska; to acquire 100 percent of

the voting shares of Keene Bancorp, Inc., Keene, Texas, and thereby indirectly acquire Nichols Bancshares, Inc., Dover, Delaware, and its subsidiary First State Bank, Keene, Texas.

Board of Governors of the Federal Reserve System, June 7, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02-14859 Filed 6-12-02; 8:45 am]

**BILLING CODE 6210-01-S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Meeting of the National Human Research Protections Advisory Committee (NHRPAC)

**AGENCY:** Office of Public Health and Science, Office for Human Research Protections.

**ACTION:** Notice of July 30-31, 2002 meeting.

**SUMMARY:** 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 Human Research Protections Advisory Committee (NHRPAC).

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. Individuals planning on attending the meeting and who want to ask questions must submit their requests in writing in advance of the meeting to the contact person listed below.

**DATES:** The Committee will hold its next meeting on July 30-31, 2002. The meeting will convene EST from 8:30 a.m. to its recess at approximately 5:30 p.m. on July 30 and resume at 8:30 a.m. to 5:00 p.m. on July 31.

**ADDRESSES:** Four Points Sheraton, 1201 K Street, N.W., Washington, D.C. 20005 (202) 289-7600.

**FOR FURTHER INFORMATION CONTACT:** Keisha Johnson, Program Assistant, National Human Research Protections Advisory Committee, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 435-4917. The electronic mail address is: [kjohnson@osophs.dhhs.gov](mailto:kjohnson@osophs.dhhs.gov).

**SUPPLEMENTARY INFORMATION:** The National Human Research Protections Advisory Committee was established on June 6, 2000, to provide expert advice

and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Information about NHRPAC, and the draft agenda for the Committee's July 2002 meeting, will be posted on the NHRPAC website at: <http://ohrp.osophs.dhhs.gov/nhrpac/nhrpac.htm>.

Dated: June 5, 2002.

**Greg Koski,**

*Executive Secretary, National Human Research Protections Advisory Committee.*

[FR Doc. 02-14948 Filed 6-12-02; 8:45 am]

BILLING CODE 4150-28-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60Day-02-61]

**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 Anne O'Connor, 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**

Youth Media Campaign Awareness and Reaction Tracking Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). CDC's National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Youth Media Campaign, proposes to conduct ongoing monitoring of the awareness and reaction to the brand and messages of the Youth Media Campaign. In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages. CDC, working in collaboration with federal partners, is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help kids develop habits that foster good health over a lifetime.

The Campaign will be based on principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and

other influencers; tracking the Campaign's effectiveness and revising Campaign messages and strategies as needed.

For the Campaign to be successful, ongoing monitoring of the campaign's penetration with the target audiences is essential. Campaign planners must have mechanisms to determine the targets' awareness of, and reaction to, the campaign brand and messages as the campaign evolves. Campaign planners also need to identify which messages are likely to have the greatest impact on attitudes and desired behaviors. The purpose of this monitoring strategy is to continually assess and improve the effectiveness of the targeted communication and other marketing variables throughout the evolution of the campaign. Another important objective is to determine which media channels are most effective to optimize communication variables such as weight levels, frequency and reach components, programming formats, etc. that will have the greatest effect upon communicating the desired message to the target audiences. As the marketing efforts are implemented in selected cities, the Campaign planners also want to evaluate which strategies are most effective in which locales.

The Youth Media Campaign will use a tracking methodology using age-targeted samples. Tracking methods may include, but are not limited to telephone surveys, telephone or in-person focus groups, web-based surveys, or intercept interviews with tweens, parents, other teen influencers and adult influencers nationally and in cities with +YMC-hosted events. Continuous tracking of awareness of the brand and the advertising messages are standard tools in advertising and marketing. The commitment of resources to YMC's marketing efforts mandates that campaign planners be able to respond quickly to changes needed in message execution or delivery as is standard practice in the advertising industry. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response	Total burden (in hours)
Tweens (ages 9-13) .....	20,000	1	15/60	5,000
Parents .....	10,000	1	15/60	2,500
Adult influencers .....	7,500	1	15/60	1,875
Older teen influencers .....	4,000	1	15/60	1,000
<b>Total .....</b>				<b>10,375</b>

Dated: June 4, 2002.

Julie Fishman,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02-14854 Filed 6-12-02; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Fiscal Year (FY) 2002 Funding Opportunities**

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration

(SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreements for State Data Infrastructure (SDI) TI 02-010*, before preparing and submitting an application.

Activity	Application Deadline	Est. Funds FY 2002	Est. Number of Awards	Project Period
Cooperative Agreements for State Data Infrastructure Program ...	July 24, 2002 .....	\$5.0 million	50	3 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106-310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

**General Instructions**

Applicants must use application form PHS 5161-1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161-1 which includes Standard Form 424 (Face Page), and other documentation and forms. Complete application kits for this GFA will be mailed directly from SAMHSA/CSAT by the Government Project Officer (GPO) to SSAs for the States. For additional copies please contact:

Richard Thoreson, GPO, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 443-5325. E-mail: [rthoreso@samhsa.gov](mailto:rthoreso@samhsa.gov).

The PHS 5161-1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web home page: <http://www.samhsa.gov>.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline

instructions, are included in the application kit.

*Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of fiscal year FY 2002 funds for cooperative agreements with States to upgrade State Data Infrastructure (SDI). The primary goal of this program is to help Single State Authorities (SSAs) report performance measures for planned Substance Abuse Prevention and Treatment Block Grant Performance Partnerships (PPG). Funds will assist States, in collaboration with each other and with CSAT, to develop administrative data infrastructure for collecting and reporting PPG and related information. Funds can also be used to upgrade State staff needed to collect and analyze performance data.

*Eligibility:* The statutory authority for this program limits eligibility to the States. Applicants are limited to the Single State Authorities (SSAs) because of their responsibility to submit performance data for the planned Performance Partnership Grants (PPGs). For the purpose of this GFA, the term "State(s)" includes SSAs for all 50 States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

*Availability of Funds:* In FY 2002, approximately \$5,000,000 will be available. Annual awards available to the 50 States, the District of Columbia and Puerto Rico will be approximately \$100,000 in total costs (direct and indirect). Annual awards available to U.S. territories will be approximately \$50,000 in total costs (direct or indirect). Actual funding levels will depend upon the number or scored

applications and the availability of funds.

In accordance with section 1971(d) of the PHS Act, awardees must agree to make available (directly or through donations from public or private entities) non-Federal contributions of at least 50 percent of total project costs. For example, if the award is \$100,000, then the non-Federal contribution must also be \$100,000, which is 50 percent of total project costs (\$200,000). A non-Federal contribution may be in cash or in kind, fairly evaluated, including plant, equipment or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

*Period of Support:* An award may be requested for a project period of up to 3 years.

*Criteria for Review and Funding:* General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

*Award Criteria for Scored Applications:* Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

*Catalog of Federal Domestic Assistance Number:* 93.238.

**Program Contact:** For questions concerning program issues, contact: Richard Thoreson, GPO, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 443-5325. E-mail: [rthoreso@samhsa.gov](mailto:rthoreso@samhsa.gov).

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management OPS, SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443-9666. E-mail: [shudak@samhsa.gov](mailto:shudak@samhsa.gov).

**Public Health System Reporting Requirements:** The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- a. A copy of the face page of the application (Standard form 424).
- b. A summary of the project (PHSIS), not to exceed one page, which provides:
  - (1) A description of the population to be served.
  - (2) A summary of the services to be provided.
  - (3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are

not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

**PHS Non-use of Tobacco Policy Statement:** The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**Executive Order 12372** Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to:

Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: June 7, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02-14905 Filed 6-12-02; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Fiscal Year (FY) 2002 Funding Opportunities**

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreement for State Treatment Needs Assessment Program (TI 02-004)*, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002 (millions)	Est. number of awards	Project period; (years)
Cooperative Agreement for State Treatment Needs Assessment Program.	July 24, 2002 .....	\$3.0	10-12	3

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106-310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications

were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

**General Instructions**

Applicants must use application form PHS 5161-1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161-1 which includes Standard Form 424 (Face Page), and other documentation and

forms. Complete application kits for STNAP cooperative agreements will be mailed directly from SAMHSA/CSAT by the Government Project Officer (GPO) to SSAs for the States. For additional copies please contact: Nita Fleagle, GPO, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 443-8572. E-mail: [nfleagle@samhsa.gov](mailto:nfleagle@samhsa.gov).

The PHS 5161-1 application form and the full text of the activity are also

available electronically via SAMHSA's World Wide Web home page: <http://www.samhsa.gov>.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

**Purpose:** The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of fiscal year FY 2002 funds for cooperative agreements to develop and implement the State Treatment Needs Assessment Program (STNAP). The STNAP provides assistance to States for conducting evaluations of their substance abuse treatment services needs to determine ways to improve the availability and quality of treatment services.

**Eligibility:** Applications are limited to the Single State Authorities (SSAs) because the States have statutory responsibility to develop and submit services needs assessment estimates in order to receive a SAPT Block Grant award. The term "State(s)" includes SSAs (or equivalent to) for all 50 States, the District of Columbia, Guam, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

States may have only one active STNAP award (grant/cooperative agreement/contract) at any given time. However, an application under this GFA may be submitted during the last year of an existing award with the understanding that such an application, if approved, will not be considered for award unless all work on the prior award has been completed. For contracts, "completed" is defined as all deliverables have been received and approved by the GPO. For grants or cooperative agreements, "completed" is defined as all reporting and data submission requirement have been met and approved by the GPO.

**Availability of Funds:** In FY 2002, approximately \$3,000,000 will be available for the total costs (direct and indirect) for 10 to 12 awards. Annual awards may not exceed \$300,000 in total costs (direct and indirect). Actual funding levels will depend on the availability of funds. Awards may be requested for up to three years. Annual continuation awards are subject to continued availability of funds and progress achieved.

**Period of Support:** An award may be requested for a project period of up to 3 years.

**Criteria for Review and Funding:**  
**General Review Criteria:** Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

**Award Criteria for Scored Applications:** Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

**Catalog of Federal Domestic Assistance Number:** 93.238.

**Program Contact:** For questions concerning program issues, contact: Nita Fleagle, GPO, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 443-8572. E-mail: [nfleagle@samhsa.gov](mailto:nfleagle@samhsa.gov).

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  - (3) A description of the coordination planned with the appropriate State or local health agencies.

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**PHS Non-use of Tobacco Policy Statement:** The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

#### **Executive Order 12372**

Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100.

Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17-89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: June 5, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02-14904 Filed 6-12-02; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Notice of a Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in June 2002.

The SAMHSA National Advisory Council meeting will be open and will include a discussion on SAMHSA's Science to Services Initiative and updates from the Council's workgroups on co-occurring disorders and HIV/AIDS.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

*Committee Name:* SAMHSA National Advisory Council.

*Date/Time:* Thursday, June 20, 2002, 2:30 p.m. to 5:30 p.m. (Open).

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

*Contact:* Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C-15, Rockville, MD 20857. Telephone: (301) 443-7016; FAX: (301) 443-7590 and e-mail: [tv Vaughn@samhsa.gov](mailto:tv Vaughn@samhsa.gov).

Dated: June 7, 2002.

**Toian Vaughn,**

*Committee Management Officer, SAMHSA.*  
[FR Doc. 02-14903 Filed 6-12-02; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Colorado River Management Plan, Environmental Impact Statement, Grand Canyon National Park, AZ

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for the Colorado River Management Plan, Grand Canyon National Park.

**SUMMARY:** Under the provisions of the National Environmental Policy Act of

1969, the National Park Service (NPS) is preparing an environmental impact statement (EIS) for the Colorado River Management Plan (CRMP) for Grand Canyon National Park. The purpose of this EIS/CRMP is to update management guidelines for the Colorado River corridor through Grand Canyon National Park. Grand Canyon National Park's 1995 General Management Plan provides a high level of direction for the park's developed areas. Additional guidance is needed to effectively manage the Colorado River corridor.

Completion of the EIS process will fulfill an agreement reached through a negotiated settlement of recent litigation between several organization and individuals and the federal government. The settlement requires the NPS to complete the EIS/CRMP by December 31, 2004.

This effort will identify and evaluate alternative for visitor use and levels of motorized and non-motorized trips, the allocation and distribution of use for user groups, and a permit distribution system for noncommercial users. During this process, the NPS will develop and evaluate alternative to address resource protection issues, potential resource impacts, user capacities, and mitigation measures necessary or desirable to avoid or minimize impairment of natural and cultural resources. The NPS will conduct the environmental impact process in consultation with the U.S. Fish and Wildlife Service; the State Historic Preservation Officer; federal and state natural resource management agencies; federally recognized, culturally affiliated American Indian tribes; and other interested parties. The NPS will give attention to resource issues outside of the park's boundaries that affect the integrity of the Grand Canyon. Finally, the NPS will consider alternatives that include no-action (status quo), no motorized use, and varying levels of motorized and non-motorized use.

Major issues include the following: Appropriate levels of visitor use consistent with natural and cultural resource protection and preservation mandates; allocation of use between commercial and non-commercial groups; the permitting system; the level of motorized versus non-motorized raft use; the range of services provided to the public; and, in consultation with the Hualapai Indian Tribe and other appropriate parties, the continued use of helicopters to transport river passengers from the Colorado River near Whitmore Wash.

The public scoping process will involve distribution of a newsletter or scoping brochure for public response

and comment. Public meetings will be held at a minimum in Denver, Colorado; Phoenix, Arizona; Flagstaff, Arizona; and Salt Lake City, Utah. In addition to providing specific meeting dates and locations, the newsletter or brochure will describe the proposed project, the issues identified to date, the dates of public scoping meetings, and alternative concepts. Copies of that information may be obtained from CRMP Project Leader, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023, 928-638-7945.

**DATES:** The scoping period will be 60 days from the date this notice is published in the **Federal Register**.

**ADDRESSES:** Information will be available for public review and comment in the Office of the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023; 928-638-7945.

**FUR FURTHER INFORMATION CONTACT:** Joseph Alston, Superintendent, Grand Canyon National Park, 928-638-7945.

**SUPPLEMENTARY INFORMATION:** If you wish to comment on the scoping brochure, you may submit your comments by any one of several methods. You may mail comments to CRMP Project, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023. You may also comment via electronic mail (e-mail) to [grca\\_crmp@nps.gov](mailto:grca_crmp@nps.gov). Please submit e-mail comments as a text file avoiding the use of special characters and any form of encryption. Please also include your name, e-mail address, and return address in your e-message. If you do not receive a confirmation from the system that we have received your Internet message, contact Linda Jalbert at 928-638-7909. Finally, you may hand-deliver comments to Grand Canyon National Park. 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 record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the 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. 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.

**FOR FURTHER INFORMATION CONTACT:**  
Superintendent, Grand Canyon National  
Park, 928-638-7945.

Dated: May 3, 2002.

**Michael D. Synder,**  
*Director, Intermountain Region, National  
Park Service.*

[FR Doc. 02-14977 Filed 6-12-02; 8:45 am]

**BILLING CODE 4310-70-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held on at 9 a.m., June 28, 2002 at Kaloko-Honokohau National Historical Park headquarters, 73-4786 Kanalani St. Suite 14, Kailua-Kona, Hawaii.

The agenda will include Update on the Park Brochure, Proposed Location and Plans for Live-In Cultural/Educational Center, and Proposed Locations for Halau Wa'a at Kaloko. The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329-6881.

Dated: April 29, 2002.

**Lester T. Inafuku,**  
*Acting Superintendent, Kaloko-Honokohau  
National Historical Park.*

[FR Doc. 02-14976 Filed 6-12-02; 8:45 am]

**BILLING CODE 4310-70-M**

## DEPARTMENT OF JUSTICE

#### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States v. Allied Waste Products, Inc. et al.*, Civ. No. 00cv3520, was lodged with the United States District Court for the District of New Jersey on July 20, 2000, ("De Minimis Consent Decree"). The De Minimis Consent Decree was amended by a Consent Order on May 9, 2002,

("Consent Order"), which corrected certain errors in the De Minimis Consent Decree. The De Minimis Consent Decree and Consent Order will resolve the liability of 49 parties against whom the United States asserted a claim on behalf of the United States Environmental Protection Agency under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607(a), for injunctive relief and recovery of costs incurred by the United States in connection with the NL Industries Superfund Site in Pedricktown, New Jersey. The De Minimis Consent Decree requires 49 generators of hazardous substances to pay \$740,000, which will be deposited into a special account to pay for response activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed De Minimis Consent Decree and Consent Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Allied Waste Products, Inc., et al.*, DOJ Ref. # 90-11-2-1075/1.

The proposed De Minimis Consent Decree and Consent Order may be examined at the office of the United States Attorney for the District of New Jersey, 502 Federal Building, 970 Broad Street (contact Assistant United States Attorney Susan Cassell); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866 (contact Assistant Regional Counsel, Damaris Cristiano). A copy of the proposed De Minimis Consent Decree and Consent Order may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$23.50 (25 cents per page reproduction costs) for the De Minimis Consent Decree and Consent Order, payable to the U.S. Treasury.

**Ronald Gluck,**

*Assistant Section Chief, Environmental  
Enforcement Section, Environment and  
Natural Resources Division.*

[FR Doc. 02-14849 Filed 6-12-02; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

#### Notice of Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 29, 2002, a Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States v. Boston Sand and Gravel Co., et al.*, Civil Action No. 02-10999-JLT. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendants Boston Sand & Gravel Co. ("BS&G") and two of its wholly-owned subsidiaries, Ossipee Aggregates Corporation ("Ossipee"), and Southeastern Concrete, Inc. ("Southeastern"), violated the Clean Water Act, 33 U.S.C. 1251, *et seq.*, ("CWA") at several facilities owned and operated by the defendants in Massachusetts. The violations alleged in the complaint include discharges of process waste water without a permit; violations of EPA storm water permitting requirements; and failure to comply with requirements relating to Spill Prevention Control and Countermeasure Plans. The consent decree requires BS&G to pay a civil penalty of \$897,983; achieve compliance with applicable provisions of the CWA; expend at least \$445,000 on a supplemental environmental project; and undertake compliance audits and an environmental management systems audit with respect to the defendants' Massachusetts facilities.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States v. Boston Sand and Gravel Co.*, D.J. Ref. 90-5-1-1-07134.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a

check there is a 25 cent per page reproduction cost) in the amount of \$16.50 payable to the "U.S. Treasury."

**Ronald G. Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 02-14845 Filed 6-12-02; 8:45 am]

**BILLING CODE 4401-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. ExxonMobil Corporation and Green Bluff Development, Inc.*, Civil Action No. 1:01CV15 (N.D.W.V.), was lodged on May 28, 2002 with the United States District Court for the Northern District of West Virginia. The consent decree resolves the United States' claims against defendants ExxonMobil Corporation and Green Bluff Development, Inc. with respect to past response costs incurred through September 30, 1998, in connection with the Fairmont Cokeworks Site ("Site"), located in Marion County, West Virginia. Defendant ExxonMobil is the successor at law to Domestic Coke Corporation ("DCC"), which owned and operated the Site property prior until 1948, and defendant Green Bluff, a wholly-owned subsidiary of ExxonMobil, which took title to the property in 1998.

Under the consent decree, defendants will pay the United States \$1,500,00 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to Thomas L. Sansonetti, Assistance Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. ExxonMobil Corp. and Green Bluff Dev., Inc.*, DOJ Reference No. 90-11-3-06663.

The proposed consent decree may be examined at the Office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia, 26003-0011; and the Region III Office of the

Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$6.25 (25 cents per page production costs), payable to the Consent Decree Library.

**Robert D. Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02-14848 Filed 6-12-02; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Lead-Based Paint Hazard Act

Notice is hereby given that on June 4, 2002, a proposed consent decree in *United States v. Ausencia Hinojosa*, Civil Action No. 02 C 3963, was lodged with the United States District Court for the Northern District of Illinois.

The consent decree settles claims against Ausencia Hinojosa as owner of three residential apartment buildings in Chicago, Illinois, which were brought on behalf of the Department of Housing and Urban Development and the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in its complaint that the defendant failed to provide information to tenants concerning lead-based paint hazards, and failed to disclose to tenants the presence of any known lead-based paint or any known lead-based paint hazards.

Under the consent decree, the defendant has agreed to provide the required notice and disclosures, to perform inspections at the buildings for the presence of lead-based paint, to perform lead-based paint abatement, and to pay the United States an administrative penalty in the amount of \$2,000. The defendant owns 3 buildings with 70 residential units.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ausencia Hinojosa*, D.J. # 90-5-2-1-07009/1.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of Lead Hazard Control, attention: Matthew E. Ammon, 490 L'Enfant Plaza SW, Room 3206, Washington, DC 20410, (202) 755-1785; at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, 5th Floor, Chicago, Illinois 60604, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$8.75 (25 cents per page reproduction costs), payable to the U.S. Treasury.

**William D. Brighton,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 02-14846 Filed 6-12-02; 8:45 am]

**BILLING CODE 4410-15-M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Seattle Disposal Co., et al.*, Civil Action No. CV-02-1126-R was lodged on May 23, 2002, with the United States District Court for the Western District of Washington. The consent decree requires defendants Seattle Disposal Company, John Banchemo, Joan Razore and the Estate of Josie Razore to pay \$583,000 in natural resource damages into an account managed by natural resource damages trustees the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Seattle Disposal Co., et al.*, DOJ Ref. # 90-11-3-1412/10.

The proposed consent decrees may be examined at the office of the United States Attorney, 601 Union Street, Seattle, WA 98101, and at the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$8.00 (25 cents per page reproduction costs), payable to the U.S. Treasury.

**Bruce S. Gelber,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*  
[FR Doc. 02-14847 Filed 6-12-02; 8:45 am]  
**BILLING CODE 4410-15-M**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated August 23, 2001, and published in the **Federal Register** on September 6, 2001, (66 FR 46654), Houba Inc., P.O. Box 190, 16235 State Road 17, Culver, Indiana 46511, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050) .....	II
Oxycodone (9143) .....	II
Hydrocodone (9193) .....	II

The firm plans to bulk manufacture the controlled substances for the production of finished dosage form products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Houba Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Houba Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of

Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 29, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02-14940 Filed 6-12-02; 8:45 am]

**BILLING CODE 4410-09-M**

**DEPARTMENT OF JUSTICE**

**Foreign Claims Settlement Commission**

**Privacy Act of 1974; Systems of Records Notice**

**AGENCY:** Foreign Claims Settlement Commission; Justice.

**ACTION:** Notice of deletion of systems of records.

**SUMMARY:** The Foreign Claims Settlement Commission (FCSC) hereby publishes notice of the deletion of two records systems from its Privacy Act Systems of Records Notice last published on June 10, 1999 (64 FR 31296). The systems in question are "Poland, Claims Against-Justice/FCSC-15 and "General War Claims Program-Justice/FCSC-22." The reason for this deletion is to reflect the transfer of the two records systems to the control of the National Archives as permanent historical records.

**EFFECTIVE DATE:** The systems of records designated "Poland, Claims Against-Justice/FCSC-15 and "General War Claims Program-Justice/FCSC-22", Claims of less than \$250,000 Against" shall be deleted effective June 13, 2002. The existing systems of records otherwise continue in effect.

**FOR FURTHER INFORMATION CONTACT:**

Judith H. Lock, Administrative Officer, Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC 20579, telephone (202) 616-6975, fax (202) 616-6993.

Dated at Washington DC, June 7, 2002.

**Mauricio J. Tamargo,**

*Chairman.*

[FR Doc. 02-14844 Filed 6-12-02; 8:45 am]

**BILLING CODE 4410-BA-P**

**DEPARTMENT OF JUSTICE**

**National Institute of Corrections**

**Solicitation for a Cooperative Agreement—"A Guide to Preparing for and Managing Prison Emergencies"**

**AGENCY:** National Institute of Corrections, Department of Justice.

**ACTION:** Solicitation for a cooperative agreement.

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2002 for a cooperative agreement to fund the project "A Guide to Preparing for and Managing Prison Emergencies". NIC will award a one year cooperative agreement to develop a document which will assist correctional agencies in assessing and managing prisons during emergencies, including prison disturbances, work actions and natural and environmental disasters.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award will be made to an organization that will produce a document that can be distributed to state correctional agencies to use in the assessment and management of emergencies that would include but not be limited to managing natural and environmental disasters, riots, work stoppages, and other disturbances that may impact on normal operation of an institution and possibly the correctional system.

**Background**

The National Institute of Corrections has offered special interest seminars, "Managing Prisons During Natural and Environmental Disasters" and "Emergency Preparedness Assessment" over the last several years. Many agencies have taken numerous ideas back to their home agencies to implement during these challenging situations. The manuals used in the seminars are available to the field; however, a compilation of the materials into one document would be of benefit to practitioners as a centralized resource for an internal assessment of these issues and discussion of strategies for effective management in these situations.

Numerous changes in the correctional environment, such as budget reductions, changes in the characteristics of the workforce and changes in the demographics and characteristics of the inmate population, have created an even more pronounced need for assessing the current policies and procedures that

systems have in place for managing emergencies.

Since the September 11 terrorist attacks, the need to effectively manage prisons during emergencies has taken on new urgency and a set of incidents previously not dealt with in the institutional setting. One example is a correctional system that was faced with a major rumor in the inmate population throughout the state that in the case of terrorist attacks, inmates would be considered a dispensable population and would be the last to receive assistance and their demise was likely. The same fears that have raised concern in the general public are multiplied in the prison setting when it comes to the distribution of resources during times of emergency coupled with the divided focus of staff due to their concern over the welfare of their families in these tense situations.

It is the goal of the Prisons Division to provide the most current information available to correctional managers in a practical and user-friendly format.

#### **Purpose**

To provide a Guide to assist correctional agencies in managing various emergencies and to make information regarding strategies which have proven successful available to all correctional agencies. To provide an assessment tool by which a correctional agency can assess their readiness to handle any emergency.

#### **Scope of Work**

The awardee will research the NIC training materials and other sources of information regarding emergencies and obtain specific information from various adult state and federal correctional agencies to complete the following tasks:

1. Update the assessment tool used in previous NIC programs as an example, not a model, of a comprehensive tool for assessing a correctional agency's preparedness for emergencies. Examples of assessment instruments from other correctional systems should also be considered and included in the Guide if awardee thinks advisable.

2. Provide a comprehensive list of the range of issues that a correctional agency should address in their emergency plans. Provide sample policies and procedures and examples of Memorandums of Understanding and other mutual aid documents that readers could use to improve their own Emergency Plans.

3. Develop an assessment protocol that systems can use in preparing for natural and environmental disasters and emergencies.

4. Identify emergencies which have occurred in all of the following areas: riots, disturbances, staff strikes, infectious disease contaminations, inmate work stoppages and hunger strikes, floods, ice storms, hurricanes, tornadoes, chemical spills, and other emergencies possibly not identified.

5. Provide a synopsis of one or more emergency situations in each category described above which occurred in an adult prison setting and describe how they were managed; provide information available from After—Action reports; and provide a detailed discussion of the "Lessons Learned" by the DOC that might help other systems.

6. Identify technology that could assist correctional agencies in preparing for emergency situations, such as simulation systems, communication systems for coordinating with external agencies, etc. This does *not* include basic radio or telephone systems, weaponry, chemical agents, etc. that are utilized in daily operations. The intent of this task is to identify technologies, especially newer technologies, which could assist agencies in preparing for and managing emergencies, but is *not* intended to occupy a major focus in the award.

#### **Specific Requirements**

1. The applicant must propose a project team which includes a person(s) with emergency preparedness expertise and correctional management and operations experience. Documentation of the principal's and all team members relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application.

2. The person designated as *project director* needs to be the person who will manage the project on a day-to-day basis and who has full decision-making authority to work with the NIC project manager. This person *must* have enough time dedicated to the project to assure they are available to direct the day-to-day activities of the project and to be available for collaboration with the NIC project manager.

3. Applicants should identify in the proposal specific strategies for assuring a collaborative effort between their project team and NIC.

#### **Application Requirements**

The applicant must provide goals, objectives, and methods of implementation for the project that are consistent with this announcement. Objectives should be clear, measurable, attainable, and focused on the methods used to conduct the project. Applicants should provide an implementation plan for the project and include a schedule

which will demonstrate milestones for significant tasks in chart form. The project must be completed within one year of its start date.

The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement. The narrative portion of this cooperative agreement application should include, at a minimum:

1. A Brief paragraph that indicates the applicant's understanding of the purpose of the document;

2. A brief paragraph that summarizes the project goals and objectives;

3. A clear description of the methodology that will be used to complete the project and achieve its goals with clearly identified tasks to achieve the project goals;

4. A statement or chart of measurable project milestones and time lines for the completion of each;

5. A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;

6. A statement from all project staff indicating that they will be available to work on this project;

7. A brief description of the qualifications of the applicant organization and each project staff;

8. A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

**Authority:** Public Law 93-415.

**Funds Available.** The award will be limited to a maximum of \$120,000 (direct and indirect costs). Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local governments. This project will be a collaborative venture with the NIC Prisons Division.

**Application Procedures:** Applicants must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

**Deadline for Receipt of Applications:** Applications must be received by 4:00

p.m. Eastern Standard Time on Tuesday, July 23, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by due date as the mail at the National Institute of Corrections is still being delayed due to recent decontamination procedures implemented after recent events. Applications mailed or express delivery should be sent to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534, Attn: Director. Hand delivered applications can be brought to 500 First Street, NW, Washington, DC 20534. The security officer will call our front desk at 307-3106 to come to the security desk for pickup. Faxed or e-mailed applications will not be accepted.

*Addresses and Further Information:* A copy of this announcement and applications forms may be obtained through the NIC web site: <http://www.nicic.org> (under "Additional Opportunities" click on the title of this cooperative agreement.) Requests for a hard copy of the application forms, and announcement should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling (800) 995-6423, extension 44222 or (202) 307-3106, extension 44222. She can also be contacted by E-mail via [jevens@bop.gov](mailto:jevens@bop.gov).

All technical and or programmatic questions concerning this announcement should be directed to BeLinda P. Watson at the above address or by calling (800) 995-6423, extension 30483 or (202) 353-0483, or by E-mail via [bpwatson@bop.gov](mailto:bpwatson@bop.gov).

*Eligible Applicants:* An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individuals or team with expertise in requested areas.

*Review Considerations:* Applications received under this announcement will be subjected to a 3 to 5 person Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number:* 021P11. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424 and outside the envelope in which the application is sent.

*Executive Order 12372:* This program is not subject to the provisions of Executive Order 12372.

The Catalog of Federal Domestic Assistance number is 16.601: Corrections—Training and Staff Development.

Dated: June 7, 2002.

**Larry Solomon,**

*Deputy Director, National Institute of Corrections.*

[FR Doc. 02-14852 Filed 6-12-02; 8:45 am]

**BILLING CODE 4410-36-M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### Susan Harwood Training Grant Program, FY 2002 Budget; Revised Notice

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Extension of grant application deadline.

**SUMMARY:** This notice extends the Susan Harwood Training Grant Program application deadline from June 21, 2002, to July 5, 2002.

The notice of availability of funds and request for grant applications was originally published in the **Federal Register**, 67 FR 36024, May 22, 2002. Organizations interested in submitting a grant application should refer to the May 22 **Federal Register** notice which describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining detailed grant application instructions.

**DATES:** Grant application deadline is Friday, July 5, 2002. Grant applications must be received in the Des Plaines, Illinois, office by 4:30 p.m. Central Time, Friday, July 5, 2002.

**ADDRESSES:** Submit one signed original and three copies of each grant application to the attention of Grants Officer, U. S. Department of Labor, OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Ernest Thompson, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297-4810. This is not a toll-free number. E-mail [cindy.bencheck@osha.gov](mailto:cindy.bencheck@osha.gov).

The Occupational Safety and Health Act of 1970 and the Departments of Labor, Health and Human Services, and

Education, and Related Agencies Appropriation Act, Pub. L. 107-116, authorize this program.

Signed at Washington, DC, this 7th day of June 2002.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 02-14953 Filed 6-12-02; 8:45 am]

**BILLING CODE 4510-26-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

### Florida Power and Light Company, Turkey Point Nuclear Generating Units Nos. 3 and 4; Notice of Issuance of Renewed Facility Operating Licenses Nos. DPR-31 and DPR-41 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating Licenses Nos. DPR-31 and DPR-41 to Florida Power and Light Company (the licensee), the operator of the Turkey Point Nuclear Generating Units Nos. 3 and 4 (Turkey Point Units 3 and 4). Renewed Facility Operating License No. DPR-31 authorizes operation of the Turkey Point Unit 3, by the licensee at reactor core power levels not in excess of 2300 megawatts thermal in accordance with the provisions of the Unit 3 renewed license and its Technical Specifications. Renewed Facility Operating License No. DPR-41 authorizes operation of the Turkey Point Unit 4, by the licensee at reactor core power levels not in excess of 2300 megawatts thermal in accordance with the provisions of the Unit 4 renewed license and its Technical Specifications.

The Turkey Point Units 3 and 4 are pressurized water nuclear reactors located in Miami-Dade County east of Florida City, Florida.

The application for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on October 12, 2000 (65 FR 60693).

For further details with respect to this action, see (1) the Florida Power and Light Company's License Renewal Application for Turkey Point, Units 3 and 4, dated September 8, 2000, as supplemented by letters dated January 19, February 8, February 16, February 26, March 22 (two letters), March 30 (four letters), April 19 (three letters), May 3, May 11 (two letters), May 29 (two letters), June 25, July 18, August 13, November 1, November 7, and December 17, 2001, and April 19, 2002; (2) the Commission's Safety Evaluation Report, dated February 27, 2001, and April 2002 (NUREG-1759), and Supplement 1 thereto, dated May 2002; (3) the licensee's updated final safety analysis report; and (4) the Commission's Final Environmental Impact Statement (NUREG-1437, Supplement 5), dated January 2002. These documents are available at the NRC's Public Document Room, at One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>.

Copies of Renewed Facility Operating Licenses Nos. DPR-31 and DPR-41 may be obtained by writing to U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the Safety Evaluation Report (NUREG-1759), and Supplement 1 thereto, and the Final Environmental Impact Statement (NUREG-1437, Supplement 5) may be purchased from the National Technical Information Service, Springfield, Virginia 22161-0002 at 1-800-553-6847, (<http://www.ntis.gov>), or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 at 202-512-1800, ([http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs)). All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 6th day of June, 2002.

For the Nuclear Regulatory Commission.

**Rajendar Auluck,**

*Senior Project Manager, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 02-14907 Filed 6-12-02; 8:45 am]

**BILLING CODE 7590-01-P**

**OFFICE OF MANAGEMENT AND BUDGET**

**Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Management and Budget**

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of guidelines and request for comments.

**SUMMARY:** The Office of Management and Budget (OMB) is extending the comment period regarding its draft Information Quality Guidelines from June 14, 2002, to July 1, 2002. OMB is also announcing an extension of the date by which agencies have to submit their draft final information quality guidelines to OMB from no later than July 1, 2002, to no later than August 1, 2002. OMB encourages agencies to use this extra time to provide the public with additional time to comment on their draft guidelines.

**DATES:** Written comments regarding OMB's draft Information Quality Guidelines are due by July 1, 2002.

**ADDRESSES:** Please submit comments to Jefferson B. Hill of the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments can also be e-mailed to [informationquality@omb.eop.gov](mailto:informationquality@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Jefferson B. Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-3176.

**SUPPLEMENTARY INFORMATION:** On May 1, 2002 (67 FR 21779), OMB announced it was seeking comments on its draft Information Quality Guidelines by June 14, 2002. OMB is now extending that comment period to July 1, 2002. These Information Quality Guidelines describe OMB's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OMB. The draft Information Quality Guidelines are posted on OMB's Web site, <http://www.whitehouse.gov/omb/inforeg/index.html>.

On January 3, 2002 (67 FR 369), with a correction published on February 22, 2002 (67 FR 8452), OMB published government-wide Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies. Paragraph IV.5 of these Guidelines calls upon each agency "no later than July 1, 2002," to submit the

agency's draft final information quality guidelines to OMB for review regarding the consistency of its guidelines with OMB's January 3 government-wide Guidelines. OMB is extending this deadline to no later than August 1, 2002.

This extension of the July 1 deadline to August 1 provides agencies additional time to seek public comment on their proposed information quality guidelines, and to reconsider their draft guidelines in light of the public comments they do receive.

Dated: June 6, 2002.

**John D. Graham,**

*Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 02-14843 Filed 6-12-02; 8:45 am]

**BILLING CODE 3110-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IC-25606 ; 812-12766]

**Touchstone Investment Trust, et al.; Notice of Application**

June 6, 2002.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

*Summary of Application:* Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval. *Applicants:* Touchstone Investment Trust ("TINT"), Touchstone Strategic Trust ("TST"), Touchstone Tax-Free Trust ("TTFT") and Touchstone Variable Series Trust ("TVST") (TINT, TST, TTFT and TVST each a "Trust", and collectively, the "Trusts") and Touchstone Advisors, Inc. (the "Adviser").

*Filing Dates:* The application was filed on January 29, 2002 and amended on June 5, 2002.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary 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 July 1, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Jill T. McGruder, Touchstone Advisors, Inc., 221 E. 4th Street, Suite 300, Cincinnati, OH 45202.

**FOR FURTHER INFORMATION CONTACT:** Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Todd F. Kuehl, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549-0102 (tel. 202-942-8090).

#### Applicants' Representations

1. Each Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. Each Trust is comprised of one or more series (each a "Fund", and collectively, the "Funds"), each with its own investment objectives and policies.<sup>1</sup> Shares of TVST Funds are offered solely to separate accounts established by The Western and Southern Life Insurance Company and its life insurance affiliates.

2. The Adviser, an Ohio corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Each Trust has entered into an investment advisory agreement with the Adviser with respect to each of the Funds of such Trust (each, an "Advisory Agreement"), which was approved by the board of trustees of the Trust ("Board"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act (the "Independent Trustees"),

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to future series of the Trust and any other registered open-end management investment company or series thereof the Trust and any other registered open-end management investment company or series thereof that: (a) Are advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser (included in the term "Adviser"); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (together, "Future Funds", included in the term "Funds"). All entities that currently intend to rely on the requested relief are named as applicants. If the name of any Fund should, at any time, contain the name of a Subadviser, it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

and by each Fund's shareholders. Under the terms of the Advisory Agreement, the Adviser manages the assets of the Funds and may hire one or more subadvisers ("Subadvisers") to exercise day-to-day portfolio management of each of the Funds pursuant to separate investment advisory agreements ("Subadvisory Agreements"). All current and future Subadvisers will be registered or exempt from registration under the Advisers Act. Subadvisers are recommended to the Board by the Adviser and selected and approved by the Board, including a majority of the Independent Trustees. The Adviser compensates each Subadviser out of the fees paid to the Adviser by the applicable Fund.

3. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation, and reallocation, of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

4. Applicants request an order to permit the Adviser, subject to the oversight of the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Subadviser").<sup>2</sup>

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such

<sup>2</sup> Two of the current Subadvisers, Fort Washington Investment Advisors, Inc. and Todd Investment Advisors, Inc., are Affiliated Subadvisers.

exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that each Fund's shareholders are relying on the Adviser's experience to select, monitor and replace Subadvisers. Applicants assert that, from the prospective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or in the case of a Fund whose public shareholders (or variable contract owners through a separate account) purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders prior to the offering of shares of the Fund to the public (or the variable contract owners through a separate account).

2. Each Fund's prospectus will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus with respect to each Fund will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee each Subadviser to the Fund and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Subadviser, the Adviser will

furnish the shareholders of the applicable Fund (or, if the Fund serves as a funding medium for a sub-account of a registered separate account, the unitholders of the sub-account who have allocated assets to that sub-account) all the information about the new Subadviser that would be included in a proxy statement. Such information will include any changes in such information caused by the addition of a new Subadviser. To meet this obligation, the Adviser will provide the shareholders of the applicable Funds (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as well as the requirements of Item 22 of Schedule 14A under that Act.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such Subadvisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

5. At all times, a majority of each Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the applicable Board, including a majority of the Independent Trustees, will make a separate finding, reflected in such Board's minutes, that the change is in the best interests of the applicable Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each of the Funds relying on the requested order, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio, and, subject to Board review and approval, will: (a) Set each Fund's overall investment strategies; (b) recommend and select Subadvisers; (c) when appropriate, allocate and reallocate each Fund's

assets among Subadvisers; (d) monitor and evaluate Subadviser performance; and (e) implement procedures reasonably designed to ensure Subadvisers comply with the related Fund's investment objectives, policies and restrictions.

8. No director, trustee or officer of a Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the director, trustee or officer) any interest in a Subadviser except for ownership of (a) interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-14945 Filed 6-12-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25607; 812-12592]**

### **Pioneer America Income Trust, et al.; Notice of Application**

June 7, 2002.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

*Applicants:* Pioneer America Income Trust, Pioneer Balanced Fund, Pioneer Bond Fund, Pioneer Emerging Markets Fund, Pioneer Equity Income Fund, Pioneer Europe Fund, Pioneer Europe Select Fund, Pioneer Fund, Pioneer Global Consumers Fund, Pioneer Global Energy and Utilities Fund, Pioneer Global Financials Fund, Pioneer Global Health Care Fund, Pioneer Global High Yield Fund, Pioneer Global Industrials Fund, Pioneer Global Telecoms Fund, Pioneer Global Value Fund, Pioneer

Growth Shares, Pioneer High Yield Fund, Pioneer Independence Fund, Pioneer Interest Shares, Pioneer International Equity Fund, Pioneer International Value Fund, Pioneer Large Cap Value Fund, Pioneer Mid Cap Growth Fund, Pioneer Mid Cap Value Fund, Pioneer Money Market Trust, Pioneer Real Estate Shares, Pioneer Science & Technology Fund, Pioneer Small Cap Value Fund, Pioneer Small Company Fund, Pioneer Strategic Income Fund, Pioneer Tax Free Income Fund, Pioneer Tax Managed Fund, Pioneer Value Fund, and Pioneer Variable Contracts Trust (each an "Investment Company" and collectively, the "Investment Companies"), and Pioneer Investment Management, Inc. ("PIM") and Pioneer Funds Distributor, Inc.

### *Summary of Application:*

The applicants request an order that would permit (a) certain registered management investment companies and certain entities that are excluded from the definition of investment company by section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act to invest uninvested cash and cash collateral in (i) affiliated money market funds and/or short-term bond funds or (ii) one or more affiliated entities that operate as cash management investment vehicles and that are excluded from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act, and (b) the registered investment companies and the affiliated entities to continue to engage in purchase and sale transactions involving portfolio securities in reliance on rule 17a-7 under the Act.

### *Filing Dates:*

The application was filed on August 8, 2001 and amended on June 4, 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 Commission's Secretary 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 July 2, 2002, and should be accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609; Applicants, c/o Martin J.

Wolin, *Esq.*, Pioneer Investment Management, Inc., 60 State Street, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Jean E. Minarick, Senior Counsel, at (202) 942-0527 or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. Each Investment Company is organized as a Massachusetts business trust or a Delaware business trust. Each Investment Company, other than Pioneer Interest Shares, is registered under the Act as an open-end management investment company. Pioneer Interest Shares is registered under the Act as a closed-end management investment company. Some of the Investment Companies have multiple series, each with separate investment objective and policies. PIM is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser to each Investment Company (PIM and entities controlling, controlled by, or under common control with PIM, collectively, "PIM").<sup>1</sup>

2. Each Fund that is not a money market fund (a "Participating Fund") has, or may be expected to have cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments or money from investors.

<sup>1</sup> Applicants request that any relief granted also apply to (a) any other registered investment company or series thereof for which PIM currently is or in the future may act as investment adviser and (b) any entity excluded from the definition of investment company under section 3(c)(1), section 3(c)(7) or section 3(c)(11) of the Act, now existing or established in the future, for which PIM currently is or in the future may serve as investment adviser of trustee exercising investment discretion, that operates as a cash management investment vehicle ("Funds," and together with the "Investment Companies" and any existing or future series of the Investment Companies, the "Funds"). All Funds that currently intend to rely on the requested order are named as applicants. Any other existing or future Fund will rely on the order only in accordance with the terms and conditions of the application.

Certain Participating Funds also may participate in a securities lending program ("Securities Lending Program") under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are secured by collateral, including cash collateral ("Cash Collateral" and together, with Uninvested Cash, "Cash Balances"), equal at all times to at least the market value of the securities loaned. Currently, the Participating Funds can invest Cash Balances directly in money market instruments or other short-term debt obligations. Applicants state that Participating Funds will either be management investment companies or their series that are registered under the Act ("Registered Participating Funds") or investment vehicles that are excluded from the definition of investment company under section 3(c)(1), 3(c)(7) or 3(c)(11) of the Act (the "Non-Registered Participating Funds") for which PIM acts as trustee or investment adviser.

3. Applicants request an order to permit: (i) The Participating Funds to use their Cash Balances to purchase shares of one or more of the Funds that are money market funds or short-term bond funds (the "Registered Central Funds") or shares of one or more future entities for which PIM acts as trustee or investment adviser that operate as cash management investment vehicles and that are excluded from the definition of investment company pursuant to section 3(c)(1) and 3(c)(7) of the Act (the "Non-Registered Central Funds") (the Registered Central Funds and the Non-Registered Central Funds, collectively, the "Central Funds"); (ii) the Central Funds to sell their shares to and purchase (redeem) such shares from the Participating Funds; (iii) the Participating Funds and Central Funds to continue to engage in interfund purchase and sale transactions ("Interfund Transactions"); and (iv) PIM to effect the above transactions.

4. The investment by each Registered Participating Fund in shares of the Central Funds will be in accordance with that Registered Participating Fund's investment policies and restrictions as set forth in its registration statement. The Registered Central Funds are or will be taxable or tax-exempt money market funds that comply with rule 2a-7 under the Act or short-term bond funds that invest in fixed-income securities and maintain a dollar-weighted average maturity of three years or less. The Non-Registered Central Funds will comply with rule 2a-7 under the Act.

### Applicants' Legal Analysis

#### *I. Investment of Cash Balances by the Participating Funds in the Central Funds*

##### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Any entity that is excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for the purposes of the 3% limitation specified in sections 12(d)(1)(A) and (B) with respect to purchases by and sales to such company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Participating Funds to use their Cash Balances to acquire shares of the Registered Central Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases a Registered Participating Fund's aggregate investment of Uninvested Cash in shares of the Central Funds will not exceed 25% of the Registered Participating Fund's total assets at any time. Applicants also request relief to permit the Registered Central Funds to sell their securities to the Participating Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that there is no threat of redemption to gain undue influence over the Registered Central Funds due

to the highly liquid nature of each Registered Central Fund's portfolio. Applicants state that the proposed arrangement will not result in inappropriate layering of fees. Shares of the Central Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers Inc. Conduct Rules ("NASD Conduct Rules"). If a Central Fund offers more than one class of shares in which a Registered Participating Fund may invest, the Registered Participating Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. In addition, if PIM collects a fee from a Central Fund for acting as its investment adviser with respect to assets invested by a Registered Participating Fund, when approving an investment advisory contract under section 15 of the Act, the board of trustees of each Registered Participating Fund ("Board"), including a majority who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by PIM should be reduced to account for reduced services provided to the Registered Participating Fund as a result of the investment of Uninvested Cash in the Central Fund. Applicants represent that no Central Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

#### B. Section 17(a) of the Act

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Because the Participating Funds and the Central Funds have PIM as investment adviser

or trustee exercising investment discretion, they may be deemed to be under common control and thus affiliated persons of each other. In addition, if a Participating Fund purchases more than 5% of the voting securities of a Central Fund, the Central Fund and the Participating Fund may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Central Funds to the Participating Funds, and the redemption of the shares by the Participating Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Central Funds by the Participating Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Central Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Registered Participating Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies. Applicants state that a Registered Central Fund has the right to discontinue selling shares to any of the Participating Funds if the Central Fund's Board or PIM determines that such sale would adversely affect the Central Fund's portfolio management and operations.

#### C. Section 17(d) of the Act and Rule 17d-1 Under the Act

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the

Commission has approved the joint arrangement. Applicants state that the Participating Funds and the Central Funds, by participating in the proposed transactions, and PIM, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d-1.

2. In considering whether to approve a joint transaction under rule 17d-1, the Commission considers whether the investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that the investment by the Participating Funds in shares of the Central Funds would be on the same basis and no different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d-1.

#### II. Interfund Transactions

1. Applicants state that certain Funds currently rely on rule 17a-7 under the Act to conduct Interfund Transactions. Rule 17a-7 under the Act provides an exemption from section 17(a) for a purchase or sale of certain securities between a registered investment company and an affiliated person (or an affiliated person of an affiliated person), provided that certain conditions are met, including that the affiliation between the registered investment company and the affiliated person (or an affiliated person of the affiliated person) must exist solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that the Participating Funds and Central Funds may not be able to rely on rule 17a-7 when purchasing or selling portfolio securities to each other, because some of the Participating Funds may own 5% or more of the outstanding voting securities of a Central Fund and, therefore, an affiliation would not exist solely by reason of the transacting Funds having a common investment adviser, common directors and/or common officers.

2. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. The Interfund Transactions for which relief is requested are transactions between Registered Participating Funds and Non-Registered Central Funds and between Non-Registered Participating Funds and Registered Central Funds. Applicants submit that the requested relief satisfies

the standards for relief in sections 6(c) and 17(b). Applicants state that the Funds will comply with rule 17a-7 under the Act in all respects, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser, common directors and/or common officers. Applicants state that the additional affiliation created under sections 2(a)(3)(A) and (B) does not affect the other protections provided by rule 17a-7, including the integrity of the pricing mechanism employed and oversight by each Fund's Board.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Shares of the Central Funds sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. If PIM collects a fee from a Central Fund for acting as investment adviser with respect to assets invested by a Registered Participating Fund, before the next meeting of the Board of the Registered Participating Fund that invests in the Central Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, PIM will provide the Board with such information as the Board may request to evaluate the effect of the investment of Uninvested Cash in the Central Funds upon the direct and indirect compensation to PIM. Such information will include specific information regarding the approximate cost to PIM of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Registered Participating Fund that can be expected to be invested in the Central Funds. In connection with approving any advisory contract for a Registered Participating Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Registered Participating Fund by PIM should be reduced to account for reduced services provided to the Registered Participating Fund by PIM as a result of the Uninvested Cash being invested in the Central Funds. The minute books of the Registered Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Registered Participating Fund will invest Uninvested Cash in, and hold shares of, the Central Funds only to the extent that the Registered Participating Fund's aggregate investment of Uninvested Cash in the Central Funds does not exceed 25% of the Registered Participating Fund's total assets. For purposes of this limitation, each Registered Participating Fund or series thereof will be treated as a separate investment company.

4. Investment by a Registered Participating Fund in shares of the Central Funds will be in accordance with each Registered Participating Fund's respective investment restrictions and will be consistent with each Registered Participating Fund's investment policies as set forth in its prospectus and statement of additional information.

5. Each Fund that may rely on the order will be advised by PIM or will have PIM as its trustee.

6. No Central Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. The Non-Registered Central Funds will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Non-Registered Central Funds were registered open-end investment companies. With respect to all redemption requests made by a Participating Fund, the Non-Registered Central Funds will comply with section 22(e) of the Act. PIM will adopt procedures designed to ensure that each Non-Registered Central Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. PIM will also periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), and 31a-1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

8. Each Non-Registered Central Fund will comply with rule 2a-7 under the Act. With respect to such Non-Registered Central Fund, PIM will adopt and monitor the procedures described in rule 2a-7(c)(7) and will take such other actions as are required to be taken under those procedures. A Participating Fund may only purchase shares of a Non-Registered Central Fund if PIM

determines on an ongoing basis that the Non-Registered Central Fund is in compliance with rule 2a-7. PIM will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

9. Each Participating Fund will purchase and redeem shares of any Non-Registered Central Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Non-Registered Central Fund. A separate account will be established in the shareholder records of each Non-Registered Central Fund for the account of each Participating Fund that invests in such Non-Registered Central Fund.

10. To engage in Interfund Transactions, the Participating Funds and the Central Funds will comply with rule 17a-7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser, or investment advisers which are affiliated persons of each other, common directors and/or common officers, solely because a Participating Fund and a Central Fund might become affiliated persons within the meaning of section 2(a)(3)(A) and (B) of the Act.

11. The net asset value per share with respect to shares of a Non-Registered Central Fund will be determined separately for each Non-Registered Central Fund by dividing the value of the assets belonging to that Non-Registered Central Fund, less the liabilities of that Non-Registered Central Fund, by the number of shares outstanding with respect to that Non-Registered Central Fund.

12. Before a Registered Participating Fund may participate in the Securities Lending Program, a majority of the Board (including a majority of the Independent Trustees) will approve the Registered Participating Fund's participation in the Securities Lending Program. No less frequently than annually, the Board also will evaluate, with respect to each Registered Participating Fund, any securities lending arrangement and its results and determine that any investment of Cash Collateral in the Central Funds is in the best interests of the Registered Participating Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-14946 Filed 6-12-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [67 FR 40034, June 11, 2002].

**STATUS:** Open Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Wednesday, June 12, 2002, at 10:00 a.m.

**CHANGE IN THE MEETING:** Change in Subject Matter.

The subject matter of the previously announced item to be considered at the Open Meeting scheduled for Wednesday, June 12, 2002 has been changed to:

The Commission will consider whether to publish in the **Federal Register** a notice that the Evangelical Christian Credit Union has submitted an application for an exemption to permit it to offer to sweep account balances into no-load money market funds without being registered as a broker-dealer. The notice would request public comment on whether the relief requested should be granted pursuant to Sections 15(a)(2) and 36(a)(1) of the Securities Exchange Act of 1934, whether such relief should be extended to all credit unions with deposits insured by the National Credit Union Share Insurance Fund, and whether such an exemption would raise issues that should be considered in connection with amendments to the May 11, 2001 interim final rules implementing the functional regulation exceptions from broker-dealer registration of the Gramm-Leach-Bliley Act.

Commissioner Glassman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: June 11, 2002.

**Jill M. Peterson,**  
*Assistant Secretary.*

[FR Doc. 02-15056 Filed 6-11-02; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46044; File No. SR-CHX-2002-14]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Delete Rule Provisions Relating to the Trading of Options

June 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 26, 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 CHX. 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 the CHX rules to delete provisions governing or relating to the trading of options on the CHX. The text of the proposed rule change is available from the Office of the Secretary of the Commission or the CHX.

#### 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 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 proposes to amend certain provisions of the CHX rules which govern or make reference to the trading of options on the CHX. In 1980, the Commission approved changes to the Exchange's bylaws and rules that

deleted most references to the Exchange's operation of an options market.<sup>3</sup> Since that time, the Exchange has not operated an options market, but has served as a self-regulatory organization participant on the Options Self-Regulatory Council ("OSRC") for essentially informational purposes.

Given changes in the options market and obligations of OSRC participants, the Exchange believes that it is no longer advisable, from either a regulatory or economic perspective, to continue serving on the OSRC.<sup>4</sup> Accordingly, the Exchange believes that it is appropriate to delete from the CHX rules all remaining references to the trading of options and handling of options orders. Removal of these remaining options rules will then excuse the Exchange from any obligation to serve on the OSRC.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

<sup>3</sup> See Securities Exchange Act Release No. 17075 (August 19, 1980), 45 FR 56486 (August 25, 1980).

<sup>4</sup> If the CHX were to continue to serve, it would be responsible for a *pro rata* share of OSRC member examination costs, which are significant. CHX believes that there is no rationale that supports CHX payment of examination costs attributable to exchanges that are actively trading options, given that CHX does not presently trade options and would have to propose significant rule changes should it elect to commence options trading in the future.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 at 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-CHX-2002-14 and should be submitted by July 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-14944 Filed 6-12-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46043; File No. SR-MSRB-2002-05]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to the Proposed Rule Change Relating to Electronic Mail Contacts

June 6, 2002.

On April 30, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-05). The proposed rule change relating to electronic mail contacts.

The Commission published the proposed rule change for comment in the **Federal Register** on May 6, 2002.<sup>3</sup> The Commission did not receive comment letters relating to the forgoing proposed rule change. This order approves the Board's proposal.

#### I. Description of the Proposed Rule Change

The events of September 11th, as well as the weeks that followed, emphasized the importance of, and need for, a formalized business continuity plan that includes an efficient and reliable means of official communication between regulators and the industry. The Board's establishment of a reliable method for electronic communication will allow it to efficiently alert dealers to official communications, including time-sensitive developments, rule changes, notices, etc., and will facilitate dealers' internal distribution of such information. To ensure that all MSRB communications continue to reach each broker, dealer and municipal securities dealer, the MSRB proposed the creation of Rule G-40, on Electronic Mail Contacts, and amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers, and Rule G-9, on Preservation of Records.

Paragraph (a) of Rule G-40 requires that each dealer appoint an "Electronic Mail Contact" to serve as its official contact person for purposes of communicating with the MSRB, and that such person be a registered municipal securities principal of the dealer. Paragraph (b) requires that each dealer, upon completion of its Rule A-12 submissions and assignment of an MSRB Registration Number,<sup>4</sup> submit by

mail to the MSRB a completed Form G-40 setting forth the dealer's name, date, MSRB Registration Number, name of its E-mail Contact and his/her e-mail address, telephone number and Individual Central Registration Depository (CRD) Number, and the name, title, signature and telephone number of the person who prepared the Form G-40.<sup>5</sup> Paragraph (b) also provides that the dealer may change its E-mail Contact or other information previously submitted by sending an amended Form G-40 to the MSRB by e-mail. Paragraph (c) requires each dealer to update information on its E-mail Contact as periodically requested and prescribed by the MSRB and to submit such information to the MSRB by e-mail.

The proposed rule change also amends Rule G-8, on books and records, to require that dealers maintain records reflecting copies of Form G-40 and any amended forms, as required by Rule G-40. The proposed rule change amends Rule G-9, on preservation of records, to require that dealers retain these records for a period of three years.

#### II. Summary of Comments

The Commission did not receive comment letters relating to this proposal.

#### III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Exchange Act and the rules and regulations thereunder, which govern the MSRB.<sup>6</sup> The language of section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general,

will be required to send its initial Form G-40 by mail when the dealer completes its Rule A-12 submissions, as noted above.

<sup>5</sup> The MSRB will assign passwords in order to limit access to each dealer's Form G-40 and to maintain the integrity of the information contained therein. Therefore, each dealer will be required to submit its *initial* Form G-40 by mail. The MSRB will then issue a password to the designated E-mail Contact that will be used to electronically submit to the MSRB any required updates and amendments to the form.

<sup>6</sup> Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Release No. 34-45881 (May 14, 2002), 67 FR 34507.

<sup>4</sup> Rule A-12, on initial fee, requires each dealer, prior to effecting any transaction in or inducing or attempting to induce the purchase or sale of any municipal security, to pay to the MSRB an initial fee of \$100, accompanied by a written statement setting forth the dealer's name, address and SEC registration number.

Upon Commission approval of the proposed rule change, the MSRB will contact its current list of dealers (since these dealers will have previously satisfied their Rule A-12 submissions) to obtain completed Forms G-40. Thereafter, any new dealer

<sup>7</sup> 17 CFR 200.30-3(a)(12).

to protect investors and the public interest.<sup>7</sup>

After careful review, the Commission finds that the Board's proposed rule change consisting of the creation of Rule G-40, on Electronic Mail Contacts, and amendments to Rule G-8, on Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers, and Rule G-9, on Preservation of Records, meets the requisite statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, as set forth above.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. MSRB-2002-05) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-14947 Filed 6-12-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46046; File No. SR-NYSE-2002-16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding an Interpretation to NYSE Rule 345 ("Employees-Registration, Approval, Records") and Registered Persons Who Volunteer or Are Called Into Active Military Duty, and Deletion of a Provision Regarding Verbal Transfer Approvals

June 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 5, 2002, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 an interpretation to NYSE Rule 345 ("Employees-Registration, Approval, Records") to provide relief from the Rule's registration requirements, annual registration maintenance fees, compensation prohibitions, and continuing education requirements as prescribed by NYSE Rule 345A, for registered persons who volunteer or are called into active military duty. Further, and as a separate matter, the NYSE proposes to delete Interpretation /01 to NYSE Rule 345(a)(i) of the NYSE Interpretation Handbook, which provides for verbal transfer approvals for registered persons, as such approvals are administered through the National Association of Securities Dealers, Inc.'s ("NASD") Web-based Central Registration Depository ("CRD") system. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

NYSE Interpretation Handbook

Rule 345 Employees—Registration, Approval, Records

(a) Registration.  
/01 Exceptions.  
No change.  
/02 "Independent Contractors."  
No change.  
/03 *Registered Persons Who Volunteer or Are Called to Active Military Duty* The Exchange will grant specific relief to registered employees of members or member organizations who volunteer or are called into active military duty. Such registered employees will be placed in a specifically designated "inactive" status upon notification to the Exchange of their volunteering or military call-up. However, such employees will remain registered with the Exchange, and, therefore are eligible to receive transaction-based compensation. Since such employees are "inactive," they may not perform any of the duties

performed by a registered representative. However, his or her member or member organization may make arrangements with another registered representative of the member or member organization to have the accounts of such registered person serviced and to provide for a sharing of the commissions such accounts generate.

Further, members and member organizations shall be waived from remitting to the Exchange the annual maintenance fees for such registered employees as prescribed in Rule 345.14.

Such registered employees who volunteer or are called into active military duty shall receive a deferment from the Regulatory Element and Firm Element of the Continuing Education Program as prescribed in Exchange Rule 345A. Continuing Education requirements will be reinstated upon the registered person's return from active military duty.

Dual members or member organizations of the NYSE and NASD should notify the NASD of their registered employees who volunteer or are called into active military duty by mailing or faxing to the CRD/Public Disclosure Department of the NASD a letter (on firm letterhead) identifying the name and CRD number of the registered person called into active duty, the name and CRD number of the firm, or firms, with whom such person is associated, and a copy of the official call-up notification.

NYSE-only members or member organizations should notify the Exchange of their registered employees who volunteer or are called into active duty by mailing or faxing to the Exchange's Qualifications and Registrations Department, a letter (on firm letterhead) identifying the name and CRD number of person(s) who volunteer or are called into active duty, the name and CRD number of the firm, or firms, with whom such person is associated, and a copy of the official call-up notification.

\* \* \* \* \*

NYSE Interpretation Handbook

Rule 345 Employees—Registration, Approval, Records

(a)(i) Transfer of registered representatives

/01 Verbal Transfer Approvals  
Members and member organizations requesting verbal transfer approval for registered representatives of dual NYSE/NASD member organizations must contact the Central Registration Depository ("CRD") and request such approval through the Temporary Agent

<sup>7</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>8</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). The NYSE provided the Commission with written notice of its intention to file this proposed rule change on April 25, 2002. The Exchange has asked the Commission to waive the 30-day operative delay.

Transfer program (TAT). Applicants and member organizations that meet the established criteria of the TAT program will be granted NYSE temporary approval through the CRD in accordance with that criteria.

Requests for verbal transfer approvals for registered representatives of NYSE-only members and member organizations should be made directly to the Exchange.]

[/02]/01 Compensation to Non-Registered Persons.

No change.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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

As a result of the tragic events of September 11, 2001, some employees of members and member organizations have volunteered or have been, or may in the future be, called into active military duty.

The Exchange is working with other self-regulatory organizations to establish a uniform policy that will provide specific relief to such registered persons, as follows:

- Continued registration with placement into a special inactive status;
- Continued eligibility for receipt of commission income;
- Deferment of continuing education requirements; and
- Waiver of annual registration maintenance fees.

By way of background, NYSE Rule 345 provides, in part, that no members or member organizations shall permit any natural person to perform regularly the duties performed by a registered representative, unless such person shall have been registered with, qualified by, and acceptable to the Exchange. As proposed, the Exchange will grant specific relief as described above to registered employees of members or member organizations who volunteer or

are called into active military duty. Such registered employees will be placed in a specifically designated "inactive" status upon notification to the Exchange of their volunteering or military call-up. However, such employees will remain registered with the Exchange, and, therefore, be eligible to receive transaction-based compensation. Since such employees are "inactive," they may not perform any of the duties performed by a registered representative. However, a member or member organization may permit arrangements with another registered representative of the member or member organization to have the accounts of such registered person serviced and to provide for a sharing of the commissions such accounts generate.

Further, members and member organizations shall be waived from paying the annual maintenance fees for such registered employees as prescribed in NYSE Rule 345.14. The NYSE's annual registration maintenance fee is \$52 per registered person.

Dual members or member organizations of the NYSE and NASD should notify the NASD of their registered employees being called into active military duty by mailing or faxing to the CRD/Public Disclosure Department of the NASD, a letter (on firm letterhead) identifying the name and CRD number of the person(s) who volunteer or are called into active duty, the name and CRD number of the firm, or firms, with whom such person is associated, and a copy of the official call-up notification.

NYSE-only members or member organizations shall notify the Exchange of their registered employees who volunteer or are called into active duty by mailing or faxing to the Exchange's Qualifications and Registration Department, a letter (on firm letterhead) identifying the name and CRD number of the registered person(s) who volunteer or are called into active duty, the name and CRD number of the firm, or firms, with whom such person is associated, and a copy of the official call-up notification.

NYSE Rule 345A provides, in part, that no member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the Regulatory Element of the Continuing Education requirements of this Rule. As proposed, such registered employees who volunteer or are called into active military duty shall receive a deferment from the Regulatory Element and Firm

Element of the Continuing Education requirement provided their member or member organization has notified the Exchange of their volunteering or military call up in the manner prescribed above. Continuing Education requirements will be reinstated upon the registered person's return from active military duty.

*Web Based CRD Approval of Transfers.* In June 1999, the Commission approved the NASD's planned implementation of a Web-based CRD,<sup>5</sup> along with revisions to Forms U-4 and U-5.<sup>6</sup> The CRD is an industry-wide automated system, which provides efficient and expeditious review and tracking of registered persons in the securities industry, and changes in employment and disciplinary histories.

In proposing implementation of this Web-based CRD, the NASD intended to modernize and streamline the registration process of individuals employed in the securities industry.

In connection with the proposal, the Forms U-4 and U-5 were amended so that they could be submitted electronically through the Web-based CRD. As a result, individuals seeking registration were required to fill out and submit an electronic Form U-4. In addition, when an associated person terminates his association with a broker-dealer, the broker-dealer would be required to complete and submit an electronic Form U-5. Accordingly, the NASD no longer processes paper-based submission of such forms. In August 1999, the Exchange filed SR-NYSE-99-37 with the Commission, seeking approval for the use of amended Forms U-4 and U-5, to be used in connection with the Web-based CRD. Its intended purpose was to assist the Exchange in its registration and oversight functions by providing more detailed reporting concerning persons associated with members and member organizations, and to permit non-NASD members and member organizations of the Exchange to file the forms electronically. The Commission approved the filing in October 1999.<sup>7</sup> As a result, verbal transfer approvals for registered persons are no longer administered in such a manner. Therefore, the Exchange

<sup>5</sup> See Securities Exchange Act Release No. 41560 (June 25, 1999), 64 FR 36059 (July 2, 1999) (SR-NASD-98-96).

<sup>6</sup> Form U-4 is the "Uniform Application for Securities Industry Registration or Transfer." Form U-5 is the "Uniform Termination Notice of Securities Industry Registration."

<sup>7</sup> Securities Exchange Act Release No. 41984 (October 6, 1999), 64 FR 56005 (October 15, 1999) (SR-NYSE-99-37).

proposes to delete the interpretation relating to verbal transfer approvals.

## 2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the provisions of section 6(b)(4) of the Act,<sup>8</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members, issuers and other persons using its services. In addition, the Exchange believes that the proposed rule is consistent with the provisions of section 6(b)(5) of the Act,<sup>9</sup> which require the rules of an exchange to foster cooperation and coordination with persons engaged in regulating securities transactions.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4<sup>11</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal both effective and operative upon filing with the Commission because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure that the benefits of the interpretation to NYSE Rule 345 and the deletion of the provision regarding verbal transfer approvals are not

needlessly delayed. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.<sup>12</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 NYSE. All submissions should refer to file number SR-NYSE-2002-16 and should be submitted by July 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-14943 Filed 6-12-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### Federal and State Technology Partnership Program To Provide Outreach and Technical Assistance to Small Technology-Based Businesses Interested in Becoming Involved or Presently Involved in Federal R&D Programs

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Program Announcement No. FAST-02-R-0002.

**SUMMARY:** The U.S. Small Business Administration (SBA) plans to issue Program Announcement No. FAST-02-0002 to invite applicants from the 50

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

states, the District of Columbia, American Samoa, Guam, Virgin Islands and the Commonwealth of Puerto Rico to conduct outreach and provide technical assistance services to technology-based small business owners. This program is authorized by Public Law 106-554 §§ 111 & 112 codified at 15 U.S.C. 631 *et seq.* There is a one proposal per state limitation on this competition. Only one proposal from each state may be submitted to SBA for consideration, and this application must have an original signed Letter of Endorsement from the State Governor (Mayor for the District of Columbia). Prospective recipients of SBA funding under this Program Announcement include both new applicants and current FAST Program service providers. Eligible applicants include, but are not limited to, state and local Economic Development Agencies, colleges and universities and Small Businesses Development Centers. Funds will be provided to conduct programs for a 12-month budget and performance period. Applications/proposals must be postmarked by 4 p.m., Eastern Daylight Time, July 25, 2002. If using a delivery service other than the U.S. Postal Service, the application must be delivered and accepted by the Office of Procurement and Grants Management or mailroom staff by the deadline specified above. SBA will select successful applicants using a competitive process. Applications will be reviewed and awarded simultaneously for new and incumbent applicants under this Announcement. Applicants must plan to target women and minority small businesses as well as those small businesses not traditionally involved in the SBIR/STTR programs. Applicants' technical proposal must contain information about its current status and past performance (incumbent applicant's only), and a plan describing how the effort will be sustained once the grant expires. The FAST Program is authorized through Fiscal Year 2005 and will be competed annually, subject to availability of funds. There is a cascading non-Federal match requirement for this program. The non-Federal match requirement ratios are based on state rankings derived from FY 2000 Phase I SBIR awards. These ratios are 1:1, 2:1 and 3:4. The program announcement will be available at <http://www.sba.gov/sbir>.

**DATES:** The application period will be from June 10, 2002 until July 25, 2002.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

**FOR FURTHER INFORMATION CONTACT:**  
Cherina Hunter, (202) 205-7344 or Mina  
Bookhard (202) 205-7080.

**Maurice Swinton,**

*Assistant Administrator, SBA Office of  
Technology.*

[FR Doc. 02-14895 Filed 6-12-02; 8:45 am]

**BILLING CODE 0025-01-M**

## **SMALL BUSINESS ADMINISTRATION**

### **Announcement of the Extension of the SBAExpress Pilot Loan Program**

**AGENCY:** U.S. Small Business  
Administration.

**ACTION:** Notice of pilot extension.

**SUMMARY:** The U.S. Small Business Administration (SBA) announces extension of the SBAExpress Loan program as a pilot until September 30, 2002. This extension will allow time for the Agency to develop, implement and test significant changes to the program. These changes are the product of discussions with SBA field offices, SBA lenders, and the small business community.

The SBAExpress Pilot Loan program was established in 1995 to streamline and expedite the SBA's loan application, processing and approval procedures for smaller loans and to substantially increase the number of those loans approved by the Agency. While the program has grown to represent 29 percent of the SBA's current loan volume, the Agency has identified a number of changes and enhancements that would make the program more attractive to its lending partners and better meet the needs of small businesses. The extension of SBAExpress as a pilot until September 30, 2005, will allow the Agency to implement those changes and test their implications for the Agency's portfolio. It will also allow SBA to further consult with regulatory and lending institutions, lenders and the small business community about the program.

**FOR FURTHER INFORMATION CONTACT:**  
Charles Thomas, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Suite 8300, Washington, DC 20416; telephone (202) 205-6490.

Dated: June 7, 2002.

**Jane Palsgrove Butler,**

*Associate Administrator for Financial Assistance.*

[FR Doc. 02-14894 Filed 6-12-02; 8:45 am]

**BILLING CODE 8025-01-P**

## **DEPARTMENT OF STATE**

**[Public Notice 4050]**

### **Request for Proposals**

The Office of Crime Programs, Bureau for International Narcotics and Law Enforcement Affairs (INL/C) is seeking proposals from qualified U.S. Organizations and Institutions with the requisite capability and experience to develop a methodology for assessing the effectiveness of anticorruption policies and actions being taken by national governments. The methodology should include a process to identify deficiencies in such policies and actions for the purpose of providing constructive input and targeting technical assistance to address deficiencies. Organizations will also be asked to test this methodology on four sample countries. Current plans are to award up to a total of \$200,000 to be available to develop this International Anticorruption Assessment Process (IAAP). Applications are due 7/12/02 at 4 p.m. EST. Interested applicants may obtain detailed application instructions from the following website: [www.statebuy.gov](http://www.statebuy.gov); click on grant opportunities.

For questions, please contact Linda Gower, Grants Officer, at (202) 776-8774 or [gowerlg@state.gov](mailto:gowerlg@state.gov).

Dated: June 6, 2002.

**Steve Peterson,**

*Director, Office of Crime Programs, Bureau for International Narcotics and Law Enforcement Affairs, Department of State.*

[FR Doc. 02-14990 Filed 6-12-02; 8:45 am]

**BILLING CODE 4710-17-P**

## **DEPARTMENT OF STATE**

**[Public Notice 3988]**

### **Notice of Meeting; United States International Telecommunication Advisory Committee Telecommunication Development Sector**

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC-D). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to the International Telecommunication Union (ITU). This meeting will address preparations for the ITU-D Study Group and Telecommunication Development Advisory Group meetings.

The ITAC-D will meet from 2:30 to 4:30 on June 18, 2002 at the Department of State Room 1406. Admittance of

public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. People intending to attend the meeting should send a fax to (202) 647-7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at 202 647-2592 or e-mail to [worsleydm@state.gov](mailto:worsleydm@state.gov). Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: May 30, 2002.

**Doreen McGirr,**

*Director, ITU-D Affairs, Department of State.*

[FR Doc. 02-14991 Filed 6-12-02; 8:45 am]

**BILLING CODE 4710-45-P**

## **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**[Docket No. WTO/DS-260]**

### **WTO Consultations Regarding EC Provisional Safeguard Measures Against Imports of Certain Steel Products**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on May 30, 2002, the United States requested consultations with the European Communities (EC) under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding the imposition of provisional safeguard measures against imports of certain steel products. These measures appear to be inconsistent with the EC's obligations under the provisions of the GATT 1994 and of the WTO *Agreement on Safeguards*, and, in particular, Article XIX of the GATT 1994 and Articles 2, 3, 4, 6, and 12 of the *Agreement on Safeguards*. Pursuant to Article 4.3 of the WTO Dispute Settlement Understanding (DSU), such consultations are to take place within a period of 30 days from the date of the request, or within a period otherwise mutually agreed between the United States and the EC. USTR invites written

comments from the public concerning the issues raised in this dispute.

**DATES:** Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 21, 2002, to be assured of timely consideration by USTR.

**ADDRESSES:** Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Dispute on EC Safeguard Measures on Steel, Telephone: (202) 395-3581.

**FOR FURTHER INFORMATION CONTACT:** L. Daniel Mullaney, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-3581.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

### Major Issues Raised by the United States

On March 28, 2002, the EC published Commission Regulation No. 560/2002 of 27 March 2002, imposing provisional safeguard measures on certain steel products, effective March 29, 2002. These products are non alloy hot rolled coils, non alloy hot rolled sheets and plates, non alloy hot rolled narrow strip, alloy hot rolled flat products, cold rolled sheets, electrical sheets (other than GOES), tin mill products, quarto plates, wide flats, non alloy merchant bars and light sections, alloy merchant bars and light sections, rebars, stainless steel wire, fittings (<609,6mm) and flanges (other than of stainless steel). These measures appear to be inconsistent with at least the following provisions of the GATT 1994 and the WTO #Agreement on Safeguards:

- Article 6 of the *Agreement on Safeguards*, in conjunction with Articles 2.1, 4.1 and 4.2 of the *Agreement on Safeguards* and Article XIX of the GATT 1994, which permits the taking of a provisional safeguard measure only pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry that produces like or directly competitive products.

- Article 6 of the *Agreement on Safeguards* and Article XIX of the GATT 1994, which provide that Members may take provisional safeguard measures only in critical circumstances, where delay would cause damage which it would be difficult to repair.

- Articles 3 and 6 of the *Agreement on Safeguards*, which, *inter alia*, (1) require that any provisional safeguard measure be taken only pursuant to a preliminary determination based on clear evidence; (2) require that any safeguard measure be taken only following an investigation by the competent authorities of the Member pursuant to procedures previously established and made public in consonance with Article X of the GATT 1994; (3) require notice and opportunity for all interested parties to be heard; and (4) require the publication of a report setting forth findings and reasoned conclusions reached on all pertinent issues of fact and law.

- Article 12.1 of the *Agreement on Safeguards*, which requires Members immediately to notify the Committee on Safeguards upon (a) initiating an investigation relating to serious injury or threat thereof and the reasons for it, (b) upon making a finding of serious injury or threat thereof caused by increased imports, and (c) taking a decision to apply or extend a safeguard measure.

- Article 2.2 of the *Agreement on Safeguards*, and Article I of the GATT 1994, by applying its safeguard measures to the goods of some WTO Members, while excluding the goods of other countries whose territories are not part of a free trade area or a customs union and who are not developing country WTO Members.

- Article XIX:1(a) of the GATT 1994, which allows a WTO Member to impose a safeguard measure only if, as a result of unforeseen developments, a product is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of the like or directly competitive products.

### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS-260, Dispute on EC Safeguard Measures on Steel) may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**Bruce R. Hirsh,**

*Acting Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 02-14896 Filed 6-12-02; 8:45 am]

**BILLING CODE 3190-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration**

[FTA Docket No. FTA-2002-12459]

**Agency Information Collection Activity Under OMB Review****AGENCY:** Federal Transit Administration, DOT.**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on February 22, 2002.

**Customer Service Surveys**

**DATES:** Comments must be submitted before (Insert date 30 days after publication. A comment to OMB is most effective if OMB receives in within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:**

Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366-6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* Customer Service Surveys (OMB Number: 2132-0559).

*Abstract:* Executive Order 12862, "Setting Customer Service Standards," requires FTA to identify its customers and determine what they think about FTA's service. The surveys covered in this request for a blanket clearance will provide FTA with a means to gather data directly from its customers. The information obtained from the surveys will be used to assess the kind and quality of services customers want and their level of satisfaction with existing services. The surveys will be limited to data collections that solicit voluntary opinions and will not involve information that is required by regulations.

*Estimated Total Annual Burden:* 511 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance

of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: June 7, 2002.

**Dorrie Y. Aldrich,**

*Associate Administrator for Administration.*  
[FR Doc. 02-14956 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-57-M****DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****Pipeline Safety: Gas and Hazardous Liquid Pipeline Mapping****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice; issuance of advisory bulletin.

**SUMMARY:** The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is issuing this advisory to gas distribution, gas transmission, and hazardous liquid pipeline systems. Owners and operators should review their information and mapping systems to ensure that the operator has clear, accurate, and useable information on the location and characteristics of all pipes, valves, regulators, and other pipeline elements for use in emergency response, pipe location and marking, and pre-construction planning. This includes ensuring that construction records, maps, and operating history are readily available to appropriate operating, maintenance, and emergency response personnel.

**FOR FURTHER INFORMATION CONTACT:**

Richard Huriaux, (202) 366-4565; Steve Fischer, (202) 366-6267; or by e-mail, [steve.fischer@rspa.dot.gov](mailto:steve.fischer@rspa.dot.gov). This document can be viewed at the OPS home page at <http://ops.dot.gov>.

**SUPPLEMENTARY INFORMATION:****I. Background**

The need for accurate maps of pipeline systems has been highlighted by pipeline accidents in which the lack of accurate maps contributed to an accident or inhibited effective emergency response. The National Transportation Safety Board's (NTSB) Safety Recommendation P-87-34 urged

RSPA to revise the pipeline safety regulations "to require that gas company system maps and records be maintained accurately to identify the locations, size, and operation[al] pressure of all their pipelines." Most recently, in Safety Recommendation P-97-19, NTSB emphasized the need for RSPA/OPS to "develop mapping standards for a common [pipeline] mapping system, with a goal to actively promote its widespread use." NTSB recommends that pipeline mapping should consider the amount of detail and the accuracy of information necessary for effective use.

These recommendations resulted from a series of accidents in which a lack of accurate maps played a role. A typical problem described by the NTSB included workers at a college campus in Connecticut that searched for more than a half hour to find the shut-off valve after excavation damage to a telephone cable. The gas line and valves were not marked on maps. Another was the 1996 gas explosion in San Juan, Puerto Rico, which resulted in 33 fatalities and 69 injuries. A lack of accurate information on and maps of the underground piping system was cited as a factor contributing to this excavation-caused accident.

NTSB noted that damage prevention programs often use many different types of maps, ranging from city road maps to grid systems based on State coordinate systems. Pipeline engineers, maintenance workers, repair crews, and emergency responders are forced to use a variety of data sources to locate underground piping and facilities, including land use maps, zoning maps, tax assessor maps, easement descriptions, highway and transportation network maps, topographic maps, construction permit drawings, construction plans, and aerial photographs.

NTSB also noted that different utilities and pipeline companies may use maps that vary in scale, resolution, data formats, notational systems, and accuracy. Some pipelines have imaged older paper-based diagrams and maps and some have developed fully digitized mapping systems. The accuracy of the underlying information on these maps is often problematical. For example, the digital maps may not reflect the uncertainties inherent in the original paper source maps. In addition, many mapping systems lack any information on abandoned facilities, without which excavators may mistake the abandoned facility for an active, potentially dangerous, pipeline.

Maps and other locational records maintained by gas companies and other underground facility operators are the most common source of information

about these facilities. The pipeline safety regulations for both gas and hazardous liquid operators require operators to (1) Maintain current records and maps of the location of their facilities for use in operations, maintenance, and emergency response activities (e.g., surveillance, leak surveys, cathodic protection, abnormal operations response, *etc.*); (2) establish active damage prevention programs, including participation in local one-call notification programs, outreach to local construction and excavation companies, ensuring accurate location and marking of pipeline facilities, and explanation of this system of markings to persons who give notice of their intent to excavate near a pipeline; and, (3) hire and train employees and contractors to safely perform their duties, including both routine and emergency operations.

All gas and hazardous liquid pipeline operators must maintain an operating and maintenance plan that includes procedures for making construction records, maps, and operating history available to appropriate operating personnel to enable them to safely and effectively perform their duties (49 CFR 192.605 and 195.402). Furthermore, the hazardous liquid pipeline regulations at 49 CFR 195.404 explicitly require that the maps and records must include, at a minimum, the following information:

- (1) Location and identification of pipeline facilities.
- (2) All crossings of public roads, railroads, rivers, buried utilities, and foreign pipelines.
- (3) The maximum operating pressure of each pipeline.
- (4) The diameter, grade, type, and nominal wall thickness of all pipe. Not all this information need be on maps, but must be readily available to appropriate personnel.

Operators also need to ensure that abandoned facilities are not inadvertently identified as active. This is especially important in locating gas mains and service lines in congested urban environments. Operator maps that are used for one-call response and pipeline location and marking should clearly distinguish pipelines that do or could contain gas or hazardous liquids (pipeline that have not been purged and cleaned and are available for service on short notice) from those lines that are abandoned (purged, cleaned, and pipe ends sealed) and do not contain gas or hazardous liquids.

Operators have a responsibility to maintain construction records, maps, and operating history and to make this information available to appropriate operating personnel to enable them to safely and effectively perform their

duties. Therefore, RSPA/OPS is issuing this advisory bulletin to all pipeline operators to emphasize the operator's responsibility to: (1) Accurately locate and clearly mark key pipeline features and other information needed for effective emergency response on company maps and records; (2) keep these maps and records up-to-date as pipeline construction and modifications take place; (3) be knowledgeable about their abandoned lines and to keep data on their location to further eliminate confusion with active lines during construction or emergency response activities; and (4) communicate pipeline information and maps to appropriate operating, maintenance, and emergency response personnel.

RSPA/OPS has been working to develop a national mapping system for use by Federal and State pipeline inspectors. The National Pipeline Mapping System (NPMS) collects selected data on natural gas transmission and hazardous liquid pipelines. The NPMS data standards are consistent with the policies of the Federal Geographic Data Committee (FGDC) and the mapping application uses commercial mapping software. Although the data submissions to the NPMS are limited in comparison to the requirements for the detailed maps used by pipeline operators, these standards emphasize the importance of using accurate geospatial data, multiuser access, and standardized pipeline mapping data. RSPA's/OPS's intention in creating a mapping standard is to harmonize efforts across federal and state agencies to set criteria for map quality and to have a uniform standard for various mapping purposes.

Another initiative to improve the accuracy of information in pipeline location is RSPA's/OPS's issuance of a Broad Agency Announcement (BAA) for research and development proposals on damage prevention and leak detection, including development of advanced pipe location technologies. Furthermore, RSPA/OPS is finalizing a Cooperative Agreement with the Common Ground Alliance (CGA) to assist with public education at the national, state, and local levels and to provide state and local officials with information and tools to help their residents live safely with pipelines, and to become familiar with pipeline locations. The CGA is examining and promoting practices that have proven to effectively reduce the risk of damage to underground facilities, including pipeline data and mapping systems. We urge all pipeline operators to contribute to pipeline research and development on location technologies and to work

with CGA to improve and standardize pipeline mapping systems. This includes the promotion of consistent mapping symbols for pipeline components and common notational systems.

We are also working with our inspectors and our pipeline safety partners in the National Association of Pipeline Safety Representatives to focus during standard inspections on ensuring that operators are maintaining clear and current records and maps. Moreover, we are also ensuring during inspections of operator qualification programs that pipeline operations and maintenance workers have demonstrated their ability to use company maps and records for timely and decisive emergency response, as well as to support accurate underground facility marking. We recognize that operators and excavators should never rely solely on maps before beginning an excavation near a buried utility, but should fully comply with state underground excavation laws and pipe locating technologies.

## II. Advisory Bulletin (ADB-02-03)

To: Owners and Operators of Gas Distribution Systems.

Subject: Gas and Hazardous Liquid Pipeline Mapping.

Purpose: To advise owners and operators of gas distribution, gas transmission, and hazardous liquid pipeline systems of the need to maintain and review construction records, maps, and operating history, and to make this information available to operating, maintenance, and emergency response personnel.

Advisory: Owners and operators of gas distribution, gas transmission, and hazardous liquid pipeline systems should ensure that accurate construction records, maps, and operating history are available to appropriate operating, maintenance, and emergency response personnel. The maps or associated records should provide the following information:

- (1) Location and identification of pipeline facilities, including key features needed in emergency response.
- (2) Crossings of roads, railroads, rivers, buried utilities, and pipelines.
- (3) The maximum operating pressure of each pipeline.
- (4) The diameter, grade, type, and nominal wall thickness of pipe.

RSPA urges every pipeline operator to (1) accurately locate and clearly mark on company maps and records key pipeline features and other information needed for effective emergency response; (2) keep these maps and records up-to-date as pipeline construction and modifications take place; (3) ensure that

its personnel are knowledgeable about the location of abandoned pipelines and to keep data on their location in order to further eliminate confusion with active pipelines during construction or emergency response activities; and (4) communicate pipeline information and maps to appropriate operating, maintenance, and emergency response personnel. Operators are also encouraged to collaborate with the Common Ground Alliance and the Federal and State pipeline safety programs to improve all phases of underground facility damage prevention, including improved mapping standards; and to work toward developing and using, to the maximum feasible extent, consistent mapping symbols and notational systems.

Issued in Washington, DC, on June 6, 2002.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*  
[FR Doc. 02-14955 Filed 6-12-02; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 7, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 12, 2002, to be assured of consideration.

#### U.S. Customs Service (CUS)

*OMB Number:* 1515-0087.

*Form Number:* Customs Form 255.

*Type of Review:* Extension.

*Title:* Declaration of Unaccompanied Articles.

*Description:* This collection is completed by each arriving passenger for each parcel or container which is being sent from an insular possession at a later date. This declaration allows that traveler to claim their appropriate allowable exemption.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government.

*Estimated Number of Respondents:* 7,500.

*Estimated Burden Hours Per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1,250 hours.

*OMB Number:* 1515-0193.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Report of Loss, Detention, or Accident by Bonded Carrier, Cartman, Lighterman, Foreign Trade Zone Operator, or Centralized Examination Station Operator.

*Description:* This collection is required to ensure that any loss of detention of bonded merchandise, or any by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator are properly reported to the port director.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 325.

*Estimated Burden Hours Per*

*Respondent/Recordkeeper:* 37 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/*

*Recordkeeping Burden:* 200 hours.

*OMB Number:* 1515-0208.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* NAFTA Duty Deferral.

*Description:* The "North American Free Trade Agreement" (NAFTA) Duty Deferral Program prescribes the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program for exportation to another NAFTA country.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government.

*Estimated Number of Respondents:* 50.

*Estimated Burden Hours Per Respondent:* 12 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 280 hours.

*OMB Number:* 1515-0220.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Lay Order Period—General Order Merchandise.

*Description:* This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse owner of the presence of merchandise that has

remained at the place of arrival or unloading without entry beyond the time period provided for by regulations.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 390.

*Estimated Burden Hours Per*

*Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 12,675 hours.

*Clearance Officer:* Tracey Denning (202) 927-1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, DC 20229.

*OMB Reviewer:* Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 02-14941 Filed 6-12-02; 8:45 am]

**BILLING CODE 4820-02-P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0028]

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Office of Information and Technology, Department of Veterans Affairs

**ACTION:** Notice.

**SUMMARY:** The Office of Information and Technology (IT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from service organizations requesting to be placed on VA's mailing lists for specific publications; to request additional information from the correspondent to identify a veteran; to request for and consent to release of information from claimant's records to a third party; and to determine an applicant's eligibility to receive a list of names and addresses of veterans and their dependents.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 12, 2002.

**ADDRESSES:** Submit written comments on the collection of information to Dolly Jackson (045A4), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC 20420 or e-mail: [dolly.jackson@mail.va.gov](mailto:dolly.jackson@mail.va.gov). Please refer to "OMB Control No. 2900-0028" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Dolly Jackson at (202) 273-8022 or FAX (202) 273-5981.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, IT invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of IT's functions, including whether the information will have practical utility; (2) the accuracy of IT's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

#### Titles

a. Application of Service Representative for Placement on Mailing List, VA Form 3215.

b. Request to Correspondent for Identifying Information, VA Form Letter 70-2.

c. Request for and Consent to Release of Information from Claimant's Records, VA Form 3288.

d. 38 CFR(A) 1.519 Lists of Names and Addresses.

*OMB Control Number:* 2900-0028.

*Type of Review:* Extension of a currently approved collection.

#### Abstract

a. VA operates an outreach services program to ensure veterans and beneficiaries have information about benefits and services to which they may be entitled. To support the program, VA distributes copies of publications to veterans service organizations' representatives to use in rendering

services and representation of veterans, their spouses and dependents. The information collected on VA Form 3215 is used to process a request from a service organization to be placed on the mailing list for specific VA publications.

b. VA Form Letter 70-2 is used to obtain additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify a veteran. VA personnel use the information to identify the veteran, determine the location of a specific file, and to accomplish the action requested by the correspondent such as; process a benefit claim or file material in the individual's claims folder. Completion of the form is voluntary and failure to furnish the requested information has no adverse effect on either the veteran or the correspondent.

c. VA Form 3288 is completed by veterans or beneficiaries to provide VA with a written consent to release records or information to third parties such as insurance companies, physicians and other individuals.

d. Title 38, U.S.C., 5701(f)(1) authorizes VA to disclose mailing lists of veterans and their dependents to nonprofit organizations, but only for certain specific and narrow purposes. Criminal penalties are provided for improper use of the list by the organization in violation of subsection (f) limitations. The information collection in this regulation ensures that any disclosure of a list under this subsection is authorized by law. VA must ascertain that the applicant is a nonprofit organization and intends to use the list for a proper purpose; if not, Title 38, U.S.C., 5701(a) prohibits disclosure.

*Affected Public:* Individuals or households, not for profit institutions, and State, local or tribal government.

*Estimated Annual Burden:* 22,700 hours.

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—25 hours.

b. Request to Correspondent for Identifying Information, VA Form Letter 70-2—3,750 hours.

c. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—18,875 hours.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—50 hours.

#### Estimated Average Burden Per Respondent

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—10 minutes.

b. Request to Correspondent for Identifying Information, VA Form Letter 70-2—5 minutes.

c. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—7.5 minutes.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—60 minutes.

*Frequency of Response:* On occasion.

#### Estimated Number of Respondents

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—150.

b. Request to Correspondent for Identifying Information, VA Form Letter 70-2—45,000.

c. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—151,000.

d. 38 CFR(A) 1.519 Lists of Names and Addresses—50.

Dated: June 4, 2002.

By direction of the Secretary:

**Barbara H. Epps,**

*Management Analyst, Information Management Service.*

[FR Doc. 02-14861 Filed 6-12-02; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0324]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 15, 2002.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, FAX (202) 273-5981 or e-mail: [denise.mclamb@mail.va.gov](mailto:denise.mclamb@mail.va.gov). Please refer to "OMB Control No. 2900-0324."

Send comments and recommendations concerning any

aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0324" in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Titles:* Supplemental Physical Examination Reports.

a. Supplemental Physical Examination Report, VA Form 29-8146.

b. Attending Physician's Statement, VA Form 29-8158.

c. Supplemental Physical Examination Report (Diabetes—Physicians Report), VA Form 29-8160.

*OMB Control Number:* 2900-0324.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The forms are used by VBA to obtain complete information as to the physical and/or mental condition of a veteran who has submitted an application for Government Life Insurance or reinstatement of eligibility. The information is used to process the insured's request.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 29, 2002, at page 15287.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,080 hours.

a. VA Form 29-8146—750 hours.

b. VA Form 29-8158—165 hours.

c. VA Form 29-8160—165 hours.

*Estimated Average Burden Per*

*Respondent:* 45 minutes.

a. VA Form 29-8146—45 minutes.

b. VA Form 29-8158—45 minutes.

c. VA Form 29-8160—45 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,440.

- a. VA Form 29-8146—220.
- b. VA Form 29-8158—1,000.
- c. VA Form 29-8160—220.

Dated: May 29, 2002.

By direction of the Secretary.

**Genie McCully,**

*Acting Director, Information Management Service.*

[FR Doc. 02-14862 Filed 6-12-02; 8:45 am]

**BILLING CODE 8320-01-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**[OMB Control No. 2900-0040]**

**Agency Information Collection Activities Under OMB Review**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 15, 2002.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, FAX (202) 273-5981 or e-mail: [denise.mclamb@mail.va.gov](mailto:denise.mclamb@mail.va.gov). Please refer to "OMB Control No. 2900-0040."

Send comments and recommendations concerning any

aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395-7316. Please refer to "OMB Control No. 2900-0040" in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan, VA Form 26-1847.

*OMB Control Number:* 2900-0040.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The form serves as the lender's and veteran's request to VA for acceptance of escrow or other arrangement to permit the veteran to occupy a property for which offsite or exterior onsite improvements are incomplete. This procedure makes it possible for loans to be guaranteed with adequate protection for the veteran and VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 29, 2002, at pages 15285-15286.

*Affected Public:* Individuals or households, Business or other for-profit.

*Estimated Annual Burden:* 2,500 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 5,000.

Dated: May 28, 2002.

By direction of the Secretary.

**Genie McCully,**

*Acting Director, Information Management Service.*

[FR Doc. 02-14863 Filed 6-12-02; 8:45 am]

**BILLING CODE 8320-01-P**



# Federal Register

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**Thursday,  
June 13, 2002**

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## **Part II**

### **Department of Housing and Urban Development**

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**24 CFR Parts 1006 and 1007**

**Housing Assistance for Native Hawaiians:  
Native Hawaiian Housing Block Grant  
Program and Loan Guarantees for Native  
Hawaiian Housing; Interim Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Parts 1006 and 1007**

[Docket No. FR-4668-I-01]

RIN 2577-AC27

**Housing Assistance for Native  
Hawaiians: Native Hawaiian Housing  
Block Grant Program and Loan  
Guarantees for Native Hawaiian  
Housing; Interim Rule**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Interim rule.

**SUMMARY:** The purpose of this interim rule is to implement HUD's Office of Public and Indian Housing (PIH) procedures and requirements for two new programs to address the housing needs of Native Hawaiians. The Native Hawaiian Housing Block Grant Program will provide housing block grants to fund affordable housing activities. The Section 184A Loan Guarantees for Native Hawaiian Housing Program will provide Native Hawaiian families with greater access to private mortgage resources by guaranteeing loans for one- to four-family housing located on Hawaiian Home Lands.

**DATES:** *Effective Date:* July 15, 2002.

*Comments Due Date:* August 12, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Sherone Ivey, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 401-7914. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The Hawaiian Homelands Homeownership Act of 2000 (HHH Act) was enacted as both Title II of the Omnibus Indian Advancement Act (Public Law 106-568, 114 Stat. 2868, approved December 27,

2000) and Subtitle B of Title V of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569, 114 Stat. 2944, approved December 27, 2000). Because the Office of the Law Revision Counsel of the U.S. House of Representatives, which prepares and publishes the United States Code (U.S.C.), bases its codification of the HHH Act on Public Law 106-569, and for convenience of reference, the discussion of the HHH Act in this preamble will refer only to sections of Public Law 106-569.

The HHH Act consists of four sections. The first two sections, 511 and 512, provide the short title and the Congressional findings for the legislation, respectively. Section 513 of the HHH Act establishes a block grant program to provide housing assistance for Native Hawaiians (25 U.S.C. 4221 *et seq.*). Section 514 establishes a program of loan guarantees for Native Hawaiian Housing (12 U.S.C. 1715z-13b). This rule will implement these two new programs that address the housing needs of Native Hawaiians.

Section 513 of the HHH Act amends the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) by adding to it a new "Title VIII—Housing Assistance for Native Hawaiians". Title VIII establishes a program of block grant assistance to provide affordable housing for Native Hawaiians that is closely modeled on the Indian Housing Block Grant (IHBG) Program under NAHASDA, which is implemented at 24 CFR part 1000. This rule will implement Title VIII of NAHASDA at 24 CFR part 1006 as the Native Hawaiian Housing Block Grant (NHHBG) Program.

Readers of this rule will encounter references to NAHASDA in the rule text, even though this program is exclusively for Native Hawaiians rather than Native Americans. That is because the single section 513 of the HHH Act adds sections 801 through 824, which authorize this NHHBG Program, as Title VIII of NAHASDA. To avoid possible confusion arising from references to NAHASDA, this rule uses the term "the Act" when referring to Title VIII of NAHASDA. Therefore, when it is necessary to cite an authorizing statutory section in section 1006 of this rule, the reference will be to a section of "the Act" rather than to Title VIII of NAHASDA. For example, the environmental requirements in § 1006.350 of this rule cite section 806 of the Act as their authority. Also because the NHHBG Program is authorized under the same statute as the IHBG Program, there are overlapping

requirements that apply to both programs, such as the definitions that appear in section 4 of NAHASDA. The *Definitions* section of this NHHBG rule, at § 1006.10, includes relevant definitions from section 4 of NAHASDA, although section 4 is not specifically identified as their source. The definitions provided by the Act are also listed in § 1006.10. The Act definitions have section 801 of NAHASDA, which lists the specific definitions applicable to the Native Hawaiian program, as their source.

As noted above, the NHHBG Program is modeled after the IHBG Program. In broad outline, the Department of Hawaiian Home Lands (DHHL) is required to submit annually to HUD a housing plan with a one-year and a five-year component in order to qualify for an annual grant, just as each Tribe or its tribally designated housing entity (TDHE) is required to submit an annual Indian Housing Plan. Grant funds are then made available to the DHHL by HUD to be used in accordance with the housing plan. In the IHBG Program, the total amount of funding made available annually is divided among Tribes according to an allocation formula under section 302 of NAHASDA. Section 817 of NAHASDA similarly provides for an allocation formula for Native Hawaiian funding. However, since the DHHL is the sole recipient of funds under this NHHBG Program, a formula to allocate funds is not necessary, and this rule does not include an allocation formula.

In other respects, 24 CFR part 1006 implemented by this interim rule closely follows Title VIII of NAHASDA with some clarifications added, such as specific references to cross-cutting requirements that are generally applicable to Federal assistance (*see*, for example, § 1006.370, Federal administrative requirements, and § 1006.375, Other Federal requirements), or an explicit statement of how a requirement applies in a particular situation (for example, the clarification in § 1006.345(a)(2) of how Davis-Bacon wage rates apply when NHHBG funds are used to assist homebuyers to acquire single family housing).

Not every section of Title VIII of NAHASDA or every requirement necessary for the full implementation of the NHHBG Program is addressed in this rule. Some provisions of the statute, such as the formula discussed above, do not require implementation. Another statutory provision not addressed in this rule is section 811(b)(1) of the Act. Section 811(b)(1) states: "The Director shall, using amounts of any grants

received under this title, reserve and use for operating under 810 such amounts as may be necessary to provide for the continued maintenance and efficient operation of *such* housing.” (Emphasis added.) HUD believes that this provision does not impose a requirement on the DHHL to provide operating assistance for housing assisted with NHHBG funds for several reasons. First, the language of section 811(b)(1) does not contain any reference to housing to which “such” housing refers. Second, unlike the Indian Housing Block Grant statute (at section 202(1) of NAHASDA), section 810—the eligible affordable housing activities section—does not expressly list operating assistance as an eligible activity. In addition, the statutory language for the Indian Housing Block Grant program upon which section 811(b)(1) is based (section 203(b) of NAHASDA), expressly imposes the requirement for continued maintenance and efficient operation of “such” housing on “housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority pursuant to the United States Housing Act of 1937” in order to assure continued operating assistance for this housing after termination (pursuant to title V of NAHASDA) of operating assistance for low-rent Indian housing under the United States Housing Act of 1937. However, project-based rental assistance for rental housing assisted with NHHBG funds is eligible under section 810(5) as a model activity.

In addition, there are certain statutory provisions (such as section 802(d)(1), which requires HUD, by regulation, to authorize the DHHL to use a percentage of grant amounts for reasonable administrative and planning expenses) and additional non-statutory, discretionary requirements (such as additional program administration requirements) that must be implemented by proposed rulemaking to give interested parties an opportunity for public comment before they become effective. HUD intends to issue a

proposed rule to address such additional requirements. This interim rule implements the NHHBG program to a sufficient extent to permit HUD to make available to the DHHL the funds already appropriated for this significant program in an expeditious manner.

Because the statutes authorizing the IHBG Program and the NHHBG Program are nearly identical, the requirements in the proposed rule HUD will issue for the NHHBG Program will closely follow the requirements of the IHBG rule at 24 CFR part 1000. During the interim period before the requirements of the NHHBG proposed rule are implemented in a final rule, HUD will allow the DHHL to undertake activities authorized by the Act and awaiting implementation through the proposed rule upon the DHHL’s written agreement to follow the relevant requirements in part 1000. For example, the DHHL would be permitted to invest NHHBG funds, as authorized by section 812(b) of the Act, before the effective date of the rule implementing section 812(b), upon agreeing in writing to follow the requirements of 24 CFR 1000.58, which governs the investment of IHBG funds. If the DHHL chooses to exercise this option, HUD will advise the public through notice published in the **Federal Register**.

Section 514 of the HHH Act adds a new section 184A to the Housing and Community Development Act of 1992 to authorize a new program of housing loan guarantees for Native Hawaiians. Just as the NHHBG Program under section 513 of the HHH Act is closely modelled on the IHBG Program under NAHASDA, the Section 184A Loan Guarantee for Native Hawaiian Housing Program is based upon the Section 184 Loan Guarantee for Indian Housing Program, which is implemented at 24 CFR part 1005. This rule proposes to implement the Native Hawaiian Housing Loan Guarantee Program at 24 CFR part 1007 in accordance with the basic statutory requirements provided for Section 184A with the discretionary aspects, such as identifying eligible collateral, following the requirements

adopted in the Indian Housing Loan Guarantee Program.

**Findings and Certifications**

*Justification for Interim Rule*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is “impracticable, unnecessary, or contrary to the public interest”. The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment. Prior public procedure is contrary to the public interest in that it will unduly delay the availability of funding already appropriated to address the pressing housing needs of Native Hawaiians. In addition, prior public procedure is unnecessary because the interim rule closely follows the statutory requirements for the programs to be implemented, and any subsequent adjustments and additions to the rule, including provisions resulting from the public comment that is here requested, can be timely implemented through proposed rulemaking, if necessary, without disrupting program implementation.

*Paperwork Reduction Act Statement*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting and Recordkeeping Burden:

Section reference	Number of respondents	Annual time for freq. of requirement	Est. avg. requirement (hrs.)	Est. annual burden (hrs.)
1007.50 .....	250	1	0.18	46
1007.75 .....	3	1	1.00	3
Total Reporting and Recordkeeping Burden (Hours) .....	.....	.....	.....	49

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public

and affected agencies concerning this 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 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.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4668) and must be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and Mildred Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 4244, Washington, DC 20410.

Additional information on these information collection requirements may be obtained from the Reports Liaison Officer.

#### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

#### *Regulatory Planning and Review*

The Office of Management and Budget has reviewed this interim rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order, although not an economically significant regulatory action under the Order. Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel,

Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

#### *Regulatory Flexibility Act*

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this interim rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

#### **List of Subjects**

##### *24 CFR Part 1006*

Community development block grants, Grant programs—housing and community development, Grant programs—Native Hawaiians, Low and moderate income housing, Native Hawaiians, Reporting and recordkeeping requirements.

##### *24 CFR Part 1007*

Loan programs—Native Hawaiians, Native Hawaiians, Reporting and recordkeeping requirements.

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number is 14.873 for the Native Hawaiian Housing Block Grant Program, and 14.874 for the Loan Guarantees for Native Hawaiian Housing Program.

Accordingly, chapter IX of title 24 of the Code of Federal Regulations is amended by adding new parts 1006 and 1007 as follows:

#### **PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM**

##### **Subpart A—General**

Sec.

1006.1 Applicability.

1006.10 Definitions.

1006.20 Grants for affordable housing activities.

1006.30 Waivers.

##### **Subpart B—Housing Plan**

1006.101 Housing plan requirements.

1006.110 Review of plans.

##### **Subpart C—Eligible Activities**

1006.201 Eligible affordable housing activities.

1006.205 Development.

1006.210 Housing services.

1006.215 Housing management services.

1006.220 Crime prevention and safety activities.

1006.225 Model activities.

1006.230 Administrative and planning costs.

1006.235 Types of investments.

##### **Subpart D—Program Requirements**

1006.301 Eligible families.

1006.305 Low-income requirement and income targeting.

1006.310 Rent and lease—purchase limitations.

1006.315 Lease requirements.

1006.320 Tenant or homebuyer selection.

1006.325 Maintenance, management and efficient operation.

1006.330 Insurance coverage.

1006.335 Use of nonprofit organizations and public-private partnerships.

1006.340 Treatment of program income.

1006.345 Labor standards.

1006.350 Environmental review.

1006.355 Nondiscrimination requirements.

1006.360 Conflict of interest.

1006.365 Program administration responsibilities.

1006.370 Federal administrative requirements.

1006.375 Other Federal requirements.

##### **Subpart E—Monitoring and Accountability**

1006.401 Monitoring of compliance.

1006.410 Performance reports.

1006.420 Review of DHHL's performance.

1006.430 Corrective and remedial action.

1006.440 Remedies for noncompliance.

**Authority:** 25 U.S.C. 4221 *et seq.*; 42 U.S.C. 3535(d).

##### **Subpart A—General**

###### **§ 1006.1 Applicability.**

The requirements and procedure of this part apply to grants under the Native Hawaiian Housing Block Grant (NHHBG) Program, authorized by the Hawaiian Homelands Homeownership Act of 2000 (HHH Act), which adds Title VIII—Housing Assistance For Native Hawaiians (25 U.S.C. 4221 *et seq.*), to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*).

###### **§ 1006.10 Definitions.**

The following definitions apply in this part:

*Act* means title VIII of NAHASDA, as amended.

*Adjusted income* means the annual income that remains after excluding the following amounts:

(1) *Youths, students, and persons with disabilities*. \$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household):

- (i) Who is under 18 years of age; or
- (ii) Who is:

- (A) 18 years of age or older; and
- (B) A person with disabilities or a full-time student.

(2) *Elderly and disabled families*. \$400 for an elderly or disabled family.

(3) *Medical and attendant expenses*. The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of:

(i) Medical expenses, in the case of an elderly or disabled family; and

(ii) Reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(4) *Child care expenses*. Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(5) *Earned income of minors*. The amount of any earned income of any member of the family who is less than 18 years of age.

(6) *Travel expenses*. Excessive travel expenses, not to exceed \$25 per family per week, for employment—or education-related travel.

(7) *Other amounts*. Such other amounts as may be provided in the housing plan for Native Hawaiians.

*Affordable Housing* means housing that complies with the requirements of the Act and this part. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

*Assistant Secretary* means HUD's Assistant Secretary for Public and Indian Housing.

*Department of Hawaiian Home Lands (DHHL)* means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (HHCA 1920) (42 Stat. 108 *et seq.*).

*Director* means the Director of the Department of Hawaiian Home Lands.

*Drug-Related Criminal Activity* means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or

use a controlled substance (as such term is defined in section 102 of the Controlled Substances Act).

*Elderly families; near-elderly families* means:

(1) *In general*. The term “elderly family” or “near-elderly family” means a family whose head (or his or her spouse), or whose sole member, is:

- (i) For an elderly family, an elderly person; or
- (ii) For a near-elderly family, a near-elderly person.

(2) *Certain families included*. The term “elderly family” or “near-elderly family” includes:

- (i) Two or more elderly persons or near-elderly persons, as the case may be, living together; and
- (ii) One or more persons described in paragraph (2)(i) of this definition living with one or more persons determined under the housing plan to be essential to their care or well-being.

*Elderly person* means an individual who is at least 62 years of age.

*Family* includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the DHHL.

*Hawaiian Home Lands* means lands that:

(1) Have the status as Hawaiian home lands under section 204 of the HHCA 1920 (42 Stat. 110); or

(2) Are acquired pursuant to the HHCA 1920.

*Homebuyer payment* means the payment of a family purchasing a home pursuant to a long-term lease purchase agreement.

*Housing area* means an area of Hawaiian Home Lands with respect to which the DHHL is authorized to provide assistance for affordable housing under the Act and this part.

*Housing plan* means a plan developed by the DHHL pursuant to the Act and this part, particularly § 1006.101.

*HUD* means the Department of Housing and Urban Development.

*Low-income family* means a family whose income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of HUD or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

*Median income* means, with respect to an area that is a housing area, the greater of:

(1) The median income for the housing area, which shall be determined by HUD; or

(2) The median income for the State of Hawaii.

*Native Hawaiian* means any individual who is:

- (1) A citizen of the United States; and
- (2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

- (i) Genealogical records;
- (ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or
- (iii) Birth records of the State of Hawaii.

*Native Hawaiian Housing Block Grant (NHHBG) Funds* means funds made available under the Act, plus program income.

*Near-elderly person* means an individual who is at least 55 years of age and less than 62 years of age.

*Nonprofit* means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

*Secretary* means the Secretary of Housing and Urban Development.

*Tenant-based rental assistance* means a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

*Transitional housing* means housing that:

- (1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and
- (2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the DHHL or project owner before occupancy.

#### **§ 1006.20 Grants for affordable housing activities.**

(a) *Annual grant*. Each fiscal year, HUD will make a grant (to the extent that amounts are made available) under the Act to the DHHL to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, if:

- (1) The Director has submitted to HUD a housing plan for that fiscal year; and

(2) HUD has determined that the housing plan complies with the requirements of § 1006.101.

(b) *Waiver.* HUD may waive housing plan requirements if HUD finds that the DHHL has not complied or cannot comply with those requirements due to circumstances beyond the control of the DHHL.

#### § 1006.30 Waivers.

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

### Subpart B—Housing Plan

#### § 1006.101 Housing plan requirements.

The DHHL must submit a housing plan for each Federal Fiscal Year grant. The housing plan has two components, a five-year plan and a one-year plan, as follows:

(a) *Five-year plan.* Each housing plan must contain, for the 5-year period beginning with the fiscal year for which the plan is first submitted, the following information:

(1) *Mission statement.* A general statement of the mission of the DHHL to serve the needs of the low-income Native Hawaiian families eligible to live on the Hawaiian Home Lands to be served by the DHHL;

(2) *Goals and objectives.* A statement of the goals and objectives of the DHHL to enable the DHHL to serve the needs identified in paragraph (a)(1), of this section during the 5-year period; and

(3) *Activities plans.* An overview of the activities planned during the 5-year period including an analysis of the manner in which the activities will enable the DHHL to meet its mission, goals, and objectives.

(b) *One-year plan.* The housing plan must contain the following information for the fiscal year for which the assistance under the Act is to be made available:

(1) *Goals and objectives.* A statement of the goals and objectives to be accomplished by the DHHL with its annual grant allocation that are measurable in a quantitative way.

(2) *Statement of needs.* A statement of the housing needs of the low-income families served by the DHHL and the means by which those needs will be addressed during the period covered by the plan, including:

(i) A description of the estimated housing needs and the need for assistance for the low-income families

to be served by the DHHL, including a description of the manner in which the geographical distribution of assistance is consistent with:

(A) The geographical needs of those families; and

(B) Needs for various categories of housing assistance; and

(ii) A description of the estimated housing needs for all families to be served by the DHHL.

(3) *Financial resources.* An operating budget for the DHHL that includes an identification and a description of:

(i) The NHHBG funds and other financial resources reasonably available to the DHHL to carry out eligible activities, including an explanation of the manner in which NHHBG funds will be used to leverage additional resources; and

(ii) Eligible activities to be undertaken and their projected cost, including administrative expenses.

(4) *Affordable housing resources.* A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including:

(i) A description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources and private market housing;

(ii) The effect of the characteristics identified under paragraph (b)(4)(i) of this section, on the DHHL's decision to use the NHHBG for:

(A) Rental assistance;

(B) The production of new units;

(C) The acquisition of existing units;

or

(D) The rehabilitation of units;

(iii) A description of the structure, coordination, and means of cooperation between the DHHL and any other governmental entities in the development, submission, or implementation of the housing plan, including a description of:

(A) The involvement of private, public, and nonprofit organizations and institutions;

(B) The use of loan guarantees under section 184A of the Housing and Community Development Act of 1992; and

(C) Other housing assistance provided by the United States, including loans, grants, and mortgage insurance;

(iv) A description of the manner in which the plan will address the needs identified pursuant to paragraph (b)(2) of this section;

(v) A description of:

(A) Any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and

(B) The requirements and assistance available under the programs referred to in paragraph (b)(4)(v)(A) of this section;

(vi) A description of:

(A) Any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of housing to be carried out during the period covered by the plan; and

(B) The requirements and assistance available under the programs referred to in paragraph (b)(4)(vi)(A) of this section;

(vii) A description of:

(A) All other existing or anticipated housing assistance provided by the DHHL during the period covered by the plan, including transitional housing; homeless housing; college housing; and supportive services housing; and

(B) The requirements and assistance available under such programs; (viii) A description of:

(A) Any housing to be demolished or disposed of;

(B) A timetable for that demolition or disposition;

(C) A financial analysis of the proposed demolition/disposition; and

(D) Any additional information HUD may request with respect to that demolition or disposition.

(ix) A description of the manner in which the DHHL will coordinate with welfare agencies in the State of Hawaii to ensure that residents of the affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(x) A description of the requirements established by the DHHL to:

(A) Promote the safety of residents of the affordable housing;

(B) Facilitate the undertaking of crime prevention measures;

(C) Allow resident input and involvement, including the establishment of resident organizations; and

(D) Allow for the coordination of crime prevention activities between the DHHL and local law enforcement officials; and

(xi) A description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities.

(5) *Certifications of compliance.* The DHHL must certify that it:

(i) Will comply with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and with the Fair Housing Act (42 U.S.C. 3601 *et seq.*), to the extent applicable as described in § 1006.355, in carrying out the Native Hawaiian Housing Block Grant Program; and

(B) Other applicable Federal statutes;  
 (ii) Will require adequate insurance coverage for housing units that are owned and operated or assisted with NHHBG funds, in compliance with the requirements of § 1006.330;

(iii) Has policies in effect and available for review by HUD and the public governing the eligibility, admission, and occupancy of families for housing assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part;

(iv) Has policies in effect and available for review by HUD and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with NHHBG funds; and

(v) Has policies in effect and available for review by HUD and the public governing the management and maintenance of rental and lease-purchase housing assisted with NHHBG funds.

(c) *Updates to plan.* (1) *In general.* Subject to paragraph (c)(2) of this section, after the housing plan has been submitted for a fiscal year, the DHHL may comply with the provisions of this section for any succeeding fiscal year with respect to information included for the 5-year period under paragraph (a) of this section by submitting only such information regarding such changes as may be necessary to update the plan previously submitted and by submitting information for the 1-year period under paragraph (b) of this section.

(2) *Complete plans.* The DHHL shall submit a complete plan under this section not later than 4 years after submitting an initial plan, and not less frequently than every 4 years thereafter.

(d) *Amendments to plan.* The DHHL must submit any amendment to the one-year housing plan for HUD review before undertaking any new activities that are not addressed in the current plan. The amendment must include a description of the new activity and a revised budget reflecting the changes. HUD will review the revised plan and will notify DHHL within 30 days whether the amendment complies with applicable requirements.

#### § 1006.110 Review of plans.

(a) *Review.* (1) *In general.* Within 60 days of receipt of the housing plan, HUD will conduct a limited review to ensure that the contents of the plan comply with the requirements of § 1006.101, are consistent with information and data available to HUD, and are not prohibited by or inconsistent with any provision of the

Act and this part or any other applicable law.

(2) *Limitation.* HUD will review the housing plan only to the extent that HUD considers that the review is necessary.

(3) *Incomplete plans.* If HUD determines that any of the required certifications are not included in the housing plan, the plan shall be considered to be incomplete. HUD may also consider a housing plan to be incomplete if it does not address all of the requirements of § 1006.101, and the DHHL has not requested a waiver of the missing requirement.

(b) *Notice.* (1) *In general.* Not later than 60 days after receiving the housing plan, HUD will notify the DHHL whether or not the plan complies with applicable requirements.

(2) *Notice of reasons for determination of noncompliance.* If HUD determines that the contents of the housing plan do not comply with the requirements of § 1006.101, or are not consistent with information and data available to HUD, or are prohibited by or inconsistent with any provision of the Act and this part or any other applicable law, HUD will specify in the notice under paragraph (b)(1) of this section:

(i) The reasons for noncompliance; and

(ii) Any modifications necessary for the plan to be in compliance.

(3) *Effect of HUD's failure to take action.* If HUD does not notify the DHHL, upon the expiration of the 60-day period described in paragraph (a)(1) of this section, the plan shall be considered to have been determined to comply with the requirements under § 1006.101 and the DHHL shall be considered to have been notified of compliance.

### Subpart C—Eligible Activities

#### § 1006.201 Eligible affordable housing activities.

Eligible affordable housing activities are development, housing services, housing management services, crime prevention and safety activities and model activities. NHHBG funds may only be used for eligible activities that are consistent with the DHHL's housing plan.

#### § 1006.205 Development.

(a) NHHBG funds may be used for the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing for homeownership or rental, which may include:

(1) Real property acquisition;

(2) Acquisition of affordable housing;  
 (3) Financing acquisition of affordable housing by homebuyers through:

(i) Down payment assistance;  
 (ii) Closing costs assistance;  
 (iii) Direct lending; and  
 (iv) Interest subsidies or other financial assistance

(4) New construction of affordable housing;

(5) Reconstruction of affordable housing;

(6) Moderate rehabilitation of affordable housing, including but not limited to:

(i) Lead-based paint hazards elimination or reduction;

(ii) Improvements to provide physical accessibility for disabled persons; and  
 (iii) Energy-related improvements;

(7) Substantial rehabilitation of affordable housing, including but not limited to:

(i) Lead-based paint hazards elimination or reduction;

(ii) Improvements to provide physical accessibility for disabled persons; and  
 (iii) Energy-related improvements;

(8) Site improvement, including recreational areas and playgrounds for use by residents of affordable housing and on-site streets and sidewalks;

(9) The development of utilities and utility services;

(10) Conversion;

(11) Demolition;

(12) Administration and planning;

and

(13) Other related activities, such as environmental review and architectural and engineering plans for the affordable housing project.

(b) *Multi-unit projects.* NHHBG funds may be used to assist one or more housing units in a multi-unit project. Only the actual NHHBG eligible development costs of the assisted units may be charged to the NHHBG Program. If the assisted and unassisted units are not comparable, the actual costs may be determined based upon a method of cost allocation. If the assisted and unassisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the NHHBG-assisted units can be determined by pro-rating the total NHHBG eligible development costs of the project so that the proportion of the total development costs charged to the NHHBG Program does not exceed the proportion of the NHHBG-assisted units in the project.

#### § 1006.210 Housing services.

NHHBG funds may be used for the provision of housing-related services for affordable housing, including:

(a) Housing counseling in connection with rental or homeownership assistance;

(b) The establishment and support of resident organizations and resident management corporations;

(c) Energy auditing;

(d) Activities related to the provisions of self-sufficiency and other services;

(e) Homelessness prevention activities, which may include short term subsidies to defray rent and utility bills of an eligible family;

(f) Payments to prevent foreclosure on a home;

(g) Tenant-based rental assistance, which may include security deposits and/or first month's rent; and

(h) Other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to the Act and this part.

#### **§ 1006.215 Housing management services.**

NHHBG funds may be used for the provision of management services for affordable housing, including:

(a) The preparation of work specifications;

(b) Loan processing;

(c) Inspections;

(d) Tenant selection;

(e) Management of tenant-based rental assistance; and

(f) Management of affordable housing projects.

#### **§ 1006.220 Crime prevention and safety activities.**

NHHBG funds may be used for the provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime, including the costs of:

(a) Physical improvements for affordable housing to enhance security, such as, fences, monitors, locks, and additional lighting;

(b) Security personnel for affordable housing; and

(c) Equipment for patrols.

#### **§ 1006.225 Model activities.**

NHHBG funds may be used for housing activities under model programs that are:

(a) Designed to carry out the purposes of the Act and this part; and

(b) Specifically approved by HUD as appropriate for those purposes.

#### **§ 1006.230 Administrative and planning costs.**

Up to such amount as HUD may authorize, or such other limit as may be specified by statute, of each grant received under the Act may be used for any reasonable administrative and planning expenses of the DHHL relating to carrying out the Act and this part and

activities assisted with NHHBG funds, including:

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the DHHL's staff. In charging costs to this category the DHHL may either include the entire salary, wages, and related costs allocable to the NHHBG Program of each person whose *primary* responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The DHHL may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving NHHBG funds;

(iii) Monitoring NHHBG-assisted housing for progress and compliance with program requirements;

(iv) Preparing reports and other documents related to the program for submission to HUD;

(v) Coordinating the resolution of audit and monitoring findings;

(vi) Evaluating program results against stated objectives; and

(vii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vi) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(b) *Staff and overhead.* Staff and overhead costs directly related to carrying out a project or service, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers (*e.g.*, housing counseling); and staff and

overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 1006.205 or service costs under §§ 1006.210 or 1006.215, at the discretion of the DHHL.

(c) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with NHHBG funds.

(d) *Indirect costs.* Indirect costs may be charged to the NHHBG Program under a cost allocation plan prepared in accordance with OMB Circulars A-87 or A-122 as applicable.

(e) *Preparation of the housing plan and reports.* Preparation of the housing plan under § 1006.101 and performance reports under § 1006.410. Preparation includes the costs of public hearings, consultations, and publication.

(f) *Other Federal requirements.* Costs of complying with the Federal requirements in §§ 1006.370 and 1006.375 of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs, at the discretion of the DHHL.

#### **§ 1006.235 Types of investments.**

Subject to the requirements of this part and to the DHHL's housing plan, the DHHL has the discretion to use NHHBG funds for affordable housing activities in the form of equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, the leveraging of private investments, and other forms of assistance that HUD determines to be consistent with the purposes of the Act. The DHHL has the right to establish the terms of assistance provided with NHHBG funds.

### **Subpart D—Program Requirements**

#### **§ 1006.301 Eligible families.**

(a) Assistance for eligible housing activities under the Act and this part is limited to low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, except as provided under paragraphs (b) and (c), of this section.

(b) *Exception to low-income requirement.* (1) *Other Native Hawaiian families.* The DHHL may provide

assistance for homeownership activities and through loan guarantee activities to Native Hawaiian families who are not low-income families, as approved by HUD, to address a need for housing for those families that cannot be reasonably met without that assistance.

(2) *Limitations.* HUD approval is required if the DHHL plans to use its annual grant amount for assistance in accordance with paragraph (b)(1), of this section.

(c) *Other families.* The DHHL may provide housing or NHHBG assistance to a family that is not low-income and is not composed of Native Hawaiians if the DHHL documents that:

(1) The presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

(2) The need for housing for the family cannot be reasonably met without the assistance.

(d) *Written policies.* The DHHL must develop, follow, and have available for review by HUD written policies governing the eligibility, admission, and occupancy of families for housing assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part.

#### **§ 1006.305 Low-income requirement and income targeting.**

(a) *In general.* Housing qualifies as affordable housing for purposes of the Act and this part only if each dwelling unit in the housing:

(1) In the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy of that family of that unit; and

(2) In the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase, or is an owner-occupied unit in which the family is low-income at the time it receives NHHBG assistance.

(b) NHHBG-assisted rental units must meet the affordability requirements for the remaining useful life of the property, as determined by HUD, or such other period as HUD determines in accordance with section 813(a)(2)(B) of the Act.

(c) *Enforceable agreements.* (1) The DHHL, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this part.

(2) The agreements referred to in paragraph (c)(1) of this section shall provide for:

(i) To the extent allowable by Federal and State law, the enforcement of the

provisions of the Act and this part by the DHHL and HUD; and

(ii) Remedies for breach of the provisions of the Act and this part.

(d) *Exception.* Notwithstanding the requirements of this section, housing assisted with NHHBG funds pursuant to § 1006.301(b) shall be considered affordable housing for purposes of the Act and this part.

#### **§ 1006.310 Rent and lease-purchase limitations.**

(a) *Rents.* The DHHL must develop and follow written policies governing rents for rental housing units assisted with NHHBG funds, including methods by which rents are determined. The maximum monthly rent for a low-income family may not exceed 30 percent of the family's monthly adjusted income.

(b) *Lease-purchase.* If DHHL assists low-income families to become homeowners of rental housing through a long-term lease (i.e. 10 or more years) with an option to purchase the housing, DHHL must develop and follow written policies governing lease-purchase payments for rental housing units assisted with NHHBG funds, including methods by which payments are determined. The maximum monthly payment for a low-income family may not exceed 30 percent of the family's monthly adjusted income.

(c) *Exception for certain homeownership payments.* Homeownership payments for families who are not low-income, as permitted under § 1006.301(b), are not subject to the requirement that homebuyer payments may not exceed 30 percent of the monthly adjusted income of that family.

(d) Low-income families who receive homeownership assistance other than lease-purchase assistance are not subject to the limitations in paragraphs (a) and (b) of this section.

#### **§ 1006.315 Lease requirements.**

Except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with NHHBG funds, the DHHL, owner, or manager must use leases that:

(a) Do not contain unreasonable terms and conditions;

(b) Require the DHHL, owner, or manager to maintain the housing in compliance with applicable local housing codes and quality standards;

(c) Require the DHHL, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable State or local law;

(d) Specify that, with respect to any notice of eviction or termination, notwithstanding any State or local law, a resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

(e) Require that the DHHL, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State, or local law, or for other good cause; and

(f) Provide that the DHHL, owner, or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that:

(1) Threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the DHHL, owner, or manager;

(2) Threatens the health or safety of, or right to peaceful enjoyment of their premises by, persons residing in the immediate vicinity of the premises; or

(3) Involves criminal activity (including drug-related criminal activity) on or off the premises.

#### **§ 1006.320 Tenant or homebuyer selection.**

As a condition to receiving grant amounts under the Act, the DHHL must adopt and use written tenant and homebuyer selection policies and criteria that:

(a) Are consistent with the purpose of providing housing for low-income families;

(b) Are reasonably related to program eligibility and the ability of the tenant or homebuyer assistance applicant to perform the obligations of the lease; and

(c) Provide for:

(1) The selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the housing plan; and

(2) The prompt notification in writing of any rejected applicant of the grounds for that rejection.

#### **§ 1006.325 Maintenance, management and efficient operation.**

(a) *Written policies.* The DHHL must develop and enforce policies governing the management and maintenance of rental housing assisted with NHHBG funds.

(b) *Disposal of housing.* This section may not be construed to prevent the DHHL, or any entity funded by the DHHL, from demolishing or disposing of housing, pursuant to regulations established by HUD.

**§ 1006.330 Insurance coverage.**

(a) *In general.* As a condition to receiving NHHBG funds, the DHHL must require adequate insurance coverage for housing units that are owned or operated or assisted with more than \$5,000 of NHHBG funds, including a loan of more than \$5,000 that includes payback provisions.

(b) *Adequate insurance.* Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount to cover replacement cost.

(c) *Loss covered.* The DHHL must provide for or require insurance in adequate amounts to indemnify against loss from fire, weather, and liability claims for all housing units owned, operated or assisted by the DHHL. NHHBG funds may only be used to purchase insurance for low-income homeowners and only in amounts sufficient to protect against the loss of the NHHBG funds at risk in the property. The cost of such insurance may not include coverage for a resident's personal property.

(d) *Exception.* The DHHL shall not require insurance if the assistance is in an amount less than \$5000.

(e) *Contractor's coverage.* The DHHL shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the DHHL in the contract.

**§ 1006.335 Use of nonprofit organizations and public-private partnerships.**

(a) *Nonprofit organizations.* The DHHL must, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with NHHBG funds.

(b) *Public-private partnerships.* The DHHL must make all reasonable efforts to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing its housing plan.

**§ 1006.340 Treatment of program income.**

(a) *Defined.* Program income is income realized from the use of NHHBG funds. If gross income is used to pay costs incurred that are essential or incidental to generating the income, these costs may be deducted from gross income to determine program income. Program income includes income from fees for services performed; from the use or rental of real or personal property acquired or assisted with NHHBG funds; from the sale of property acquired or

assisted with NHHBG funds; from payments of principal and interest on loans made with NHHBG funds; and from payments of interest earned on investment of NHHBG funds pursuant to § 1006.235.

(b) *Authority to retain.* The DHHL may retain any program income that is realized from any NHHBG funds if:

(1) That income was realized after the initial disbursement of the NHHBG funds received by the DHHL; and

(2) The DHHL agrees to use the program income for affordable housing activities in accordance with the provisions of the Act and this part; and

(3) The DHHL disburses program income before disbursing additional NHHBG funds in accordance with 24 CFR part 85.

(c) *Exclusion of amounts.* If the amount of income received in a single fiscal year by the DHHL, which would otherwise be considered program income, does not exceed \$25,000, such funds may be retained but will not be considered program income.

**§ 1006.345 Labor standards.**

(a) *Davis-Bacon wage rates.* (1) As described in section 805(b) of the Act, contracts and agreements for assistance, sale or lease under this part must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) to be paid to laborers and mechanics employed in the development of affordable housing.

(2) When NHHBG assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NHHBG assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of \$2000 are exempt from Davis-Bacon wage rates.

(b) *HUD-determined wage rates.* Section 805(b) of the Act also mandates that contracts and agreements for assistance, sale or lease under the Act require that prevailing wages determined or adopted (subsequent to a determination under applicable State or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of \$100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the

Contract Work Hours and Safety Standards Act (40 U.S.C. 327).

(d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) *Other laws and issuances.* The DHHL, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, and other applicable Federal laws and regulations pertaining to labor standards.

**§ 1006.350 Environmental review.**

(a) In order to ensure that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of NHHBG funds, HUD will provide for the release of funds for specific projects to the DHHL if the Director of the DHHL assumes all of the responsibilities for environmental review, decisionmaking, and action under NEPA and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) that would apply to HUD were HUD to undertake those projects as Federal projects.

(b) An environmental review does not have to be completed before a HUD finding of compliance for the housing plan or amendments to the housing plan submitted by the DHHL.

(c) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 806(b) and 806(c) of the Act, except as authorized by 24 CFR part 58.

(d) As set forth in section 806(a)(2)(B) of the Act and 24 CFR 58.77, HUD will:

(1) Provide for the monitoring of environmental reviews performed by the DHHL under this section;

(2) At its discretion, facilitate training for the performance of such reviews by the DHHL; and,

(3) At its discretion, provide for the suspension or termination of the assumption of responsibilities under this section based upon a finding of substantial failure of the DHHL to execute responsibilities under this section.

**§ 1006.355 Nondiscrimination requirements.**

Program eligibility under the Act and this part may be restricted to Native

Hawaiians. Subject to the preceding sentence, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability. The following nondiscrimination requirements are applicable to the use of NHHBG funds:

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and HUD's implementing regulations in 24 CFR part 146;

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8; and

(c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*), to the extent that nothing in their requirements concerning discrimination on the basis of race shall be construed to prevent the provision of NHHBG assistance:

(1) To the DHHL on the basis that the DHHL served Native Hawaiians; or

(2) To an eligible family on the basis that the family is a Native Hawaiian family.

#### § 1006.360 Conflict of interest.

In the procurement of property and services by the DHHL and contractors, the conflict of interest provisions in 24 CFR 85.36 or 24 CFR 84.42 apply.

#### § 1006.365 Program administration responsibilities.

(a) *Responsibilities.* The DHHL is responsible for managing the day-to-day operations of the NHHBG Program, ensuring that NHHBG funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of contractors does not relieve the DHHL of this responsibility.

(b) *Agreements with contractors.* The DHHL may enter into agreements with private contractors selected under the provisions of 24 CFR 85.36 for purposes of administering all or part of the NHHBG program for the DHHL.

#### § 1006.370 Federal administrative requirements.

(a) *Governmental entities.* The DHHL and any governmental contractor receiving NHHBG funds shall comply with the requirements and standards of OMB Circular No. A–87, “Cost Principles for State, Local and Indian Tribal Governments,” and with 24 CFR part 85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.”

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–

122, “Cost Principles for Non-profit Organizations,” and the requirements of 24 CFR part 84, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,” apply to contractors receiving NHHBG funds that are non-profit organizations that are not governmental contractors.

(c)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A–87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the NHHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with NHHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

(d) OMB Circulars referenced in this part may be obtained from [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html); telephone; (202) 395–3080.

#### § 1006.375 Other Federal requirements.

(a) *Lead-based paint.* The following subparts of HUD's lead-based paint regulations at part 35, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), apply to the use of assistance under this part:

(1) Subpart A, “Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property”;

(2) Subpart B, “General Lead-Based Paint Requirements and Definitions for All Programs”;

(3) Subpart H, “Project-Based Rental Assistance”;

(4) Subpart J, “Rehabilitation”;

(5) Subpart K, “Acquisition, Leasing, Support Services, or Operation”;

(6) Subpart M, “Tenant-Based Rental Assistance”; and

(7) Subpart R, “Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities”.

(b) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply to the use of assistance under this part.

(c) *Displacement and relocation.* The following relocation and real property acquisition policies are applicable to programs developed or operated under the Act and this part:

(1) *Real property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(2) *Minimize displacement.* Consistent with the other goals and objectives of the Act and this part, the DHHL shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under the Act and this part.

(3) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (d)(7) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(4) *Appeals to the DHHL.* A person who disagrees with the DHHL's determination concerning whether the person qualifies as a “displaced person,” or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the DHHL.

(5) *Responsibility of DHHL.* (i) The DHHL shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The DHHL shall ensure such compliance notwithstanding any third party's contractual obligation to the DHHL to comply with the provisions in this section.

(ii) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the DHHL from any other source.

(iii) The DHHL shall maintain records in sufficient detail to demonstrate compliance with this section.

(6) *Definition of displaced person.* (i) For purposes of this section, the term “displaced person” means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of

rehabilitation, demolition, or acquisition for a project assisted under the Act. The term “displaced person” includes, but is not limited to:

(A) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of a housing plan that is later approved;

(B) Any person, including a person who moves before the date described in paragraph (d)(7)(i)(A) of this section, that the DHHL determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project;

(C) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after execution of the agreement between the DHHL and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(1) The tenant-occupant’s monthly rent and estimated average monthly utility costs before the agreement; or

(2) 30 percent of gross household income.

(D) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(1) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(2) Other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(1) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(2) Other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, a person does not qualify as a “displaced person” (and is not eligible for relocation assistance under the URA or this section), if:

(A) The person moved into the property after the submission of the housing plan to HUD, but before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a “displaced person” or for any assistance provided under this section as a result of the project;

(B) The person is ineligible under 49 CFR 24.2(g)(2); or

(C) The DHHL determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(iii) The DHHL may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(7) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

(d) *Audits.* The DHHL must comply with the requirements of the Single Audit Act and OMB Circular A-133, with the audit report providing a schedule of expenditures for each grant. A copy of each audit must be submitted to HUD concurrent with submittal to the Audit Clearinghouse.

#### Subpart E—Monitoring and Accountability

##### § 1006.401 Monitoring of compliance.

(a) *Periodic reviews and monitoring.* At least annually, the DHHL must review the activities conducted and housing assisted with NHHBG funds to assess compliance with the requirements of the Act and this part. This review must encompass and incorporate the results of the monitoring by the DHHL of all contractors involved in the administration of NHHBG activities.

(b) *Review.* Each review under paragraph (a) of this section must include on-site inspection of housing to determine compliance with applicable requirements.

(c) *Results.* The results of each review under paragraph (a) of this section must be:

(1) Included in a performance report of the DHHL submitted to HUD under § 1006.410; and

(2) Made available to the public.

##### § 1006.410 Performance reports.

(a) *Requirement.* For each fiscal year, the DHHL must:

(1) Review the progress the DHHL has made during that fiscal year in achieving goals stated in its housing plan; and

(2) Submit a report in a form acceptable to HUD, within 60 days of the end of the DHHL’s fiscal year, to HUD describing the conclusions of the review.

(b) *Content.* Each report submitted under this section for a fiscal year shall:

(1) Describe the use of grant amounts provided to the DHHL for that fiscal year;

(2) Assess the relationship of the use referred to in paragraph (b)(1), of this section, to the goals identified in its housing plan;

(3) Indicate the programmatic accomplishments of the DHHL; and

(4) Describe the manner in which the DHHL would change its housing plan as a result of its experiences administering the grant under the Act.

(c) *Public availability.* (1) *Comments by Native Hawaiians.* In preparing a report under this section, the DHHL shall make the report publicly available to Native Hawaiians who are eligible to reside on the Hawaiian Home Lands and give a sufficient amount of time to permit them to comment on that report, in such manner and at such time as the DHHL may determine, before it is submitted to HUD.

(2) *Summary of comments.* The report under this section must include a summary of any comments received by the DHHL from beneficiaries under paragraph (c)(1) of this section, regarding the program to carry out the housing plan.

(d) *HUD review.* HUD will:

(1) Review each report submitted under the Act and this part; and

(2) With respect to each such report, make recommendations as HUD considers appropriate to carry out the purposes of the Act.

##### § 1006.420 Review of DHHL’s performance.

(a) *Objective.* HUD will, at least annually, review DHHL’s performance to determine whether the DHHL has:

(1) Carried out eligible activities in a timely manner;

(2) Carried out and made certifications in accordance with the requirements and the primary objectives of the Act and this part and with other applicable laws;

(3) A continuing capacity to carry out the eligible activities in a timely manner;

(4) Complied with its housing plan; and

(5) Submitted accurate performance reports.

(b) *Basis for review.* In reviewing DHHL's performance, HUD will consider all available evidence, which may include, but not be limited to, the following:

(1) The DHHL's housing plan and any amendments thereto;

(2) Reports prepared by the DHHL;

(3) Records maintained by the DHHL;

(4) Results of HUD's monitoring of the DHHL's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

(c) The DHHL's failure to maintain records may result in a finding that the DHHL failed to meet the applicable requirement to which the record pertains.

#### § 1006.430 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of a performance review, HUD determines that the DHHL has not:

(1) Complied with the requirements of the Act and this part and other applicable laws and regulations, including the environmental responsibilities assumed under § 1006.350;

(2) Carried out its activities substantially as described in its housing plan;

(3) Made substantial progress in carrying out its program and achieving its quantifiable goals as described in its housing plan; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Issue a letter of warning advising the DHHL of the performance problem(s), describing the corrective actions that HUD believes should be

taken, establishing a completion date for corrective actions, and notifying the DHHL that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the DHHL to submit progress schedules for completing activities or complying with the requirements of the Act and this part;

(3) Recommend that the DHHL suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the DHHL redirect funds from affected activities to other eligible activities;

(5) Recommend that the DHHL reimburse its program account or line of credit under the Act in the amount improperly expended and reprogram the use of the funds; and

(6) Recommend that the DHHL obtain appropriate technical assistance using existing grant funds or other available resources to overcome the performance problem(s).

#### § 1006.440 Remedies for noncompliance.

(a) *Remedies.* If HUD finds that the DHHL has failed to comply substantially with any provision of the Act or this part, the following actions may be taken by HUD:

(1) Terminate payments to the DHHL;

(2) Reduce payments to the DHHL by an amount equal to the amount not expended in accordance with the Act or this part;

(3) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply; or

(4) Adjust, reduce or withdraw grant amounts or take other action as appropriate in accordance with reviews and audits.

(b) *Exception.* Grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the DHHL.

(c) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(d) *Hearing requirement.* Before imposing remedies under this section, HUD will:

(1) Take at least one of the corrective or remedial actions specified under § 1006.430 and permit the DHHL to make an appropriate and timely response;

(2) Provide the DHHL with the opportunity for an informal consultation with HUD regarding the proposed action; and

(3) Provide DHHL with reasonable notice and opportunity for a hearing.

(e) *Continuance of actions.* If HUD takes an action under paragraph (a) of this section, the action will continue until HUD determines that the failure of the DHHL to comply with the provision has been remedied and the DHHL is in compliance with the provision.

(f) *Referral to the Attorney General.* In lieu of, or in addition to, any action HUD may take under paragraph (a) of this section, if HUD has reason to believe that the DHHL has failed to comply substantially with any provision of the Act or this part, HUD may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon receiving a referral, the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under the Act that was not expended in accordance with the Act or this part or for mandatory or injunctive relief.

### PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

Sec.

1007.1 Purpose.

1007.5 Definitions.

1007.10 Eligible Borrowers.

1007.15 Eligible uses.

1007.20 Eligible housing.

1007.25 Eligible lenders.

1007.30 Security for loan.

1007.35 Loan terms.

1007.40 Environmental requirements.

1007.45 Applicability of civil rights statutes.

1007.50 Certificate of guarantee.

1007.55 Guarantee fee.

1007.60 Liability under guarantee.

1007.65 Transfer and assumption.

1007.70 Disqualification of lenders and civil money penalties.

1007.75 Payment under guarantee.

**Authority:** 12 U.S.C. 1715z–13b; 42 U.S.C. 3535(d).

#### § 1007.1 Purpose.

This part provides the requirements and procedures that apply to loan guarantees for Native Hawaiian Housing under section 184A of the Housing and Community Development Act of 1992. Section 184A permits HUD to guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan. The purpose of section 184A and this part is to provide access to sources of private financing to Native Hawaiian families who otherwise could not acquire housing financing because of the unique legal status of the

Hawaiian Home Lands or as a result of a lack of access to private financial markets.

#### § 1007.5 Definitions.

The following definitions apply in this part:

*Department of Hawaiian Home Lands (DHHL)* means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 *et seq.*).

*Eligible entity* means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

*Family* means one or more persons maintaining a household, and includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, or a single person.

*Guarantee Fund* means the Native Hawaiian Housing Loan Guarantee Fund under this part.

*Hawaiian Home Lands* means lands that:

(1) Have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

(2) Are acquired pursuant to that Act. *HUD* means the Department of Housing and Urban Development.

*Native Hawaiian* means any individual who is:

(1) A citizen of the United States; and  
(2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

(i) Genealogical records;  
(ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or  
(iii) Birth records of the State of Hawaii.

*Native Hawaiian family* means a family with at least one member who is a Native Hawaiian.

*Office of Hawaiian Affairs* means the entity of that name established under the constitution of the State of Hawaii.

#### § 1007.10 Eligible borrowers.

A loan guaranteed under this part may only be made to the following borrowers:

(a) A Native Hawaiian family;  
(b) The Department of Hawaiian Home Lands;  
(c) The Office of Hawaiian Affairs; or

(d) A private, nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

#### § 1007.15 Eligible uses.

(a) *In general.* A loan guaranteed under this part may only be used to construct, acquire, or rehabilitate eligible housing.

(b) *Construction advances.* Advances made by the lender during construction are eligible if:

(1) The mortgagee and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

#### § 1007.20 Eligible housing.

(a) A loan guaranteed under this part may only be made for one to four-family dwellings that are standard housing, in accordance with paragraph (b), of this section. The housing must be located on Hawaiian Home Lands for which a housing plan that provides for the use of loan guarantees under this part has been submitted and approved under part 1006 of this chapter.

(b) Standard housing must meet housing safety and quality standards that:

(1) Provide sufficient flexibility to permit the use of various designs and materials; and

(2) Require each dwelling unit to:  
(i) Be decent, safe, sanitary, and modest in size and design;

(ii) Conform with applicable general construction standards for the region in which the housing is located;

(iii) Contain a plumbing system that:  
(A) Uses a properly installed system of piping;

(B) Includes a kitchen sink and a partitioned bathroom with lavatory, toilet, and bath or shower; and

(C) Uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable county or State;

(iv) Contain an electrical system using wiring and equipment properly

installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate county, State, or national code;

(v) Be not less than the size provided under the applicable locally adopted standards for size of dwelling units, except that HUD, upon request of the DHHL may waive the size requirements under this paragraph; and

(vi) Conform with the energy performance requirements for new construction established by HUD under section 526(a) of the National Housing Act (12 U.S.C.A. 1735f-4), unless HUD determines that the requirements are not applicable.

(c) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, and R of this title and §§ 200.805 and 200.810 of this title apply to housing eligible for a loan guaranteed under this part.

#### § 1007.25 Eligible lenders.

(a) *In general.* To qualify for a guarantee under this part, a loan shall be made only by a lender meeting qualifications established in this part and approved by HUD, including any lender described in paragraph (b), of this section, except that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the DHHL from amounts borrowed from the United States shall not be eligible for a guarantee under this part.

(b) *Approval.* The following lenders shall be considered to be lenders that have been approved by HUD:

(1) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act (12 U.S.C.A. 1707 *et seq.*);

(2) Any lender that makes housing loans under chapter 37 of title 38, United States Code, that are automatically guaranteed under section 3702(d) of title 38, United States Code;

(3) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 (42 U.S.C.A. 1441 *et seq.*);

(4) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government; and

(5) Any other lender approved by HUD under this part.

**§ 1007.30 Security for loan.**

(a) *In general.* A loan guaranteed under section 184A of the Housing and Community Development Act of 1992 and this part may be secured by any collateral authorized under and not prohibited by Federal or State law and determined by the lender and approved by HUD to be sufficient to cover the amount of the loan. Eligible collateral may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to any restrictions against alienation applicable to Hawaiian Home Lands;

(2) A security interest in non-Hawaiian Home Lands property;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Hawaiian Home Lands property interest as collateral.* If a property interest in Hawaiian Home Lands is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under section 184A of the Housing and Community Development Act of 1992 must be on a form approved by both the DHHL and HUD.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring the DHHL's consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by HUD through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgage other than HUD must obtain the DHHL's consent before obtaining title through a foreclosure sale. The DHHL's consent must be obtained on any subsequent transfer from the purchaser, including HUD, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by HUD.

(3) *Liquidation.* The lender or HUD shall only pursue liquidation after offering to transfer the account to another eligible Native Hawaiian family or the DHHL. The lender or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to another eligible Native Hawaiian family or the DHHL.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by a Hawaiian Home Lands property, the

DHHL must notify HUD that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If HUD determines that the DHHL has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans under this part except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) *Review.* If HUD ceases issuing guarantees for the DHHL's failure to enforce its eviction procedures, HUD shall notify the DHHL of such action and that the DHHL may, within 30 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 30 days after notification of an adverse decision of the appeal by the FONAP Administrator, the DHHL may file a written request for review with the Deputy Assistant Secretary, Office of Native American Programs (ONAP).

Upon notification of an adverse decision by the Deputy Assistant Secretary, the DHHL has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the DHHL may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration.

**§ 1007.35 Loan terms.**

To be eligible for guarantee under this part, the loan shall:

(a) Be made for a term not exceeding 30 years;

(b) Bear interest (exclusive of the guarantee fee under § 1007.55 and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by HUD to be reasonable, but not to exceed the rate generally charged in the area (as determined by HUD) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(c) Involve a principal obligation not exceeding:

(1) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); or

(2) The amount approved by HUD under this section; and

(d) Involve a payment on account of the property:

(1) In cash or its equivalent; or

(2) Through the value of any improvements, appraised in accordance with generally accepted practices and procedures.

**§ 1007.40 Environmental requirements.**

Before HUD issues a commitment to guarantee any loan or (if no commitment is issued) before guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, HUD will require compliance with procedures similar to those required by § 203.12(b)(2) of this title for FHA mortgage insurance.

**§ 1007.45 Applicability of civil rights statutes.**

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) or of the Fair Housing Act (42 U.S.C.A. 3601 *et seq.*) apply to a guarantee provided under this part, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

**§ 1007.50 Certificate of guarantee.**

(a) *Approval process.* (1) *In general.* Before HUD approves any loan for guarantee under this section, the lender shall submit the application for the loan to HUD for examination.

(2) *Approval.* If HUD approves the application submitted under paragraph (a)(1) of this section, HUD will issue a certificate as evidence of the loan guarantee approved.

(b) *Standard for approval.* HUD may approve a loan for guarantee under this part and issue a certificate under this section only if HUD determines that there is a reasonable prospect of repayment of the loan.

(c) *Effect.* (1) *As evidence.* A certificate of guarantee issued under this part by HUD shall be conclusive and incontestable evidence in the hands of the bearer of the eligibility of the loan for guarantee under this part and the amount of that guarantee.

(2) *Full faith and credit.* The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by HUD as security for the obligations made by HUD under this section.

(d) *Fraud and misrepresentation.* This section may not be construed:

(1) To preclude HUD from establishing defenses against the

original lender based on fraud or material misrepresentation; or

(2) To bar HUD from establishing regulations that are (on the date of issuance or disbursement, whichever is earlier) partial defenses to the amount payable on the guarantee.

**§ 1007.55 Guarantee fee.**

The lender shall pay to HUD, at the time of issuance of the guarantee, a fee for the guarantee of loans under this part, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

**§ 1007.60 Liability under guarantee.**

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

**§ 1007.65 Transfer and assumption.**

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

**§ 1007.70 Disqualification of lenders and civil money penalties.**

(a) *In general.* (1) *Grounds for action.* HUD may take action under paragraph (a)(2) of this section if HUD determines that any lender or holder of a guarantee certificate:

- (i) Has failed:
  - (A) To maintain adequate accounting records;
  - (B) To service adequately loans guaranteed under this section; or
  - (C) To exercise proper credit or underwriting judgment; or
- (ii) Has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(2) *Actions.* Upon a determination by HUD that any of the grounds for action in paragraph (a)(1)(i), of this section

apply to the holder of a guarantee certificate, HUD may:

- (i) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;
- (ii) Bar such lender or holder from acquiring additional loans guaranteed under this part; and
- (iii) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this part.

(b) *Civil money penalties for intentional violations.* (1) *In general.* HUD may impose a civil monetary penalty on a lender or holder of a guarantee certificate if HUD determines that the holder or lender has intentionally failed:

- (i) To maintain adequate accounting records;
- (ii) To adequately service loans guaranteed under this section; or
- (iii) To exercise proper credit or underwriting judgment.

(2) *Penalties.* A civil monetary penalty imposed under this section shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act (12 U.S.C.A. 1735f-1) with respect to mortgagees and lenders under that Act.

(c) *Payment on loans made in good faith.* Notwithstanding paragraphs (a) and (b) of this section, if a loan was made in good faith, HUD may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this section.

**§ 1007.75 Payment under guarantee.**

(a) *Lender options.* (1) *Notification.* If a borrower on a loan guaranteed under this part defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to HUD.

(2) *Payment.* Upon providing the notice required under paragraph (a)(1), of this section, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) *Foreclosure.* The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to HUD). Upon a final order by the court authorizing foreclosure and submission to HUD of a claim for payment under the guarantee, HUD will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined under § 1007.60) plus reasonable fees and expenses as approved by HUD. HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(ii) *No foreclosure.* Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (a)(2)(i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to HUD a request to assign the obligation and security interest to HUD in return for payment of the claim under the guarantee. HUD may accept assignment of the loan if HUD determines that the assignment is in the best interest of the United States. Upon assignment, HUD will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under § 1007.60). HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(b) *Requirements.* Before any payment under a guarantee is made under paragraph (a) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. HUD will then take such action to collect as HUD determines to be appropriate.

Dated: May 28, 2002.

**Michael Liu,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 02-14721 Filed 6-12-02; 8:45 am]

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# Federal Register

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**Thursday,  
June 13, 2002**

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**Part III**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 17**

**Endangered and Threatened Wildlife and  
Plants; Listing of the Chiricahua Leopard  
Frog (*Rana chiricahuensis*); Final Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AF41

**Endangered and Threatened Wildlife and Plants; Listing of the Chiricahua Leopard Frog (*Rana chiricahuensis*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule with a special rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate the Chiricahua leopard frog (*Rana chiricahuensis*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act) throughout its range. The Chiricahua leopard frog is now absent from more than 75 percent of its historical sites and numerous mountain ranges, valleys, and drainages within its former range. In areas where it is still present, populations are often small, widely scattered, and occupy marginal and dynamic habitats. Known threats include habitat alteration, destruction, and fragmentation, predation by nonnative organisms, and disease. This final rule will implement Federal protection to this species and provide funding for development and implementation of recovery actions. Concurrently with publication of this final rule, we are publishing a special rule under section 4(d) of the Act. Under the special rule, take of Chiricahua leopard frog caused by livestock use of or maintenance activities at livestock tanks located on private, State, or Tribal lands would be exempt from the prohibition of section 9 of the Act.

**EFFECTIVE DATES:** This rule is effective July 15, 2002.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment and during normal business hours, at the Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021-4951, telephone; 602/242-0210, facsimile; 602/242-2513, website; <http://arizonaes.fws.gov>.

**FOR FURTHER INFORMATION CONTACT:** James Rorabaugh, Herpetologist, Arizona Ecological Services Field Office (see **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:****Background**

Leopard frogs (*Rana pipiens* complex), long considered to consist of a few highly variable taxa, are now

recognized as a diverse assemblage of 17 or more species (American Museum of Natural History 2001, Hillis *et al.* 1983), with many of these described in the last 30 years. Mecham (1968) recognized two distinct variations of "*Rana pipiens*," or the northern leopard frog, in the White Mountains of Arizona. One of these, referred to as the "southern form," was depicted as a stocky frog with raised folds down both sides of the back (dorsolateral folds) that were interrupted and deflected medially towards the rear. The other form matched previous descriptions of *Rana pipiens*. Based on morphology, mating calls, and genetic analyses (electrophoretic comparisons of blood proteins), Platz and Platz (1973) demonstrated that at least three distinct forms of leopard frogs occurred in Arizona, including the southern form. This southern form was subsequently described as the Chiricahua leopard frog (*Rana chiricahuensis*) (Platz and Mecham 1979).

This new species was distinguished from other members of the *Rana pipiens* complex by a combination of characters, including a distinctive pattern on the rear of the thigh consisting of small, raised, cream-colored spots or tubercles on a dark background, dorsolateral folds that were interrupted and deflected medially, stocky body proportions, relatively rough skin on the back and sides, and often green coloration on the head and back (Platz and Mecham 1979). The species also has a distinctive call consisting of a relatively long snore of one to two seconds in duration (Davidson 1996, Platz and Mecham 1979). Snout-vent lengths of adults range from approximately 54 to 139 millimeters (mm) (2.1 to 5.4 inches (in)) (Stebbins 1985, Platz and Mecham 1979). The Ramsey Canyon leopard frog (*Rana subaquavocalis*) is very similar in appearance to the Chiricahua leopard frog, but it often grows to the largest size range given for the Chiricahua leopard frog and has a call that is typically given under water (Platz 1993).

Recent articles in the scientific literature report the extirpation and extinction of amphibians in many parts of the world (Houlahan *et al.* 2000; Berger *et al.* 1998; Lips 1998, 1999; Laurence *et al.* 1996; Vial and Saylor 1993; Pechmann *et al.* 1991; Blaustein and Wake 1990). In the United States, frogs in the family Ranidae, which includes the Chiricahua leopard frog, are particularly affected (Sredl *et al.* 1997, Sredl 1993, Bradford 1991, Clarkson and Rorabaugh 1989, Hayes and Jennings 1986, Corn and Fogleman 1984). These population declines result in many cases from habitat loss or

predation by introduced predaceous fishes, amphibians, and crayfish (Fernandez and Rosen 1996; Rosen *et al.* 1996a, 1994; Hayes and Jennings 1986); however, populations are sometimes extirpated from seemingly pristine habitats, often at higher elevation, montane locales (Meyer and Mikesic 1998, Sredl 1993, Drost and Fellers 1993, Corn and Fogleman 1984, Hines *et al.* 1981). In the last few years, the role of infectious diseases has been recognized as a key factor in amphibian declines in seemingly pristine areas (Carey *et al.* 2001, 1999; Daszak *et al.* 1999). A fungal skin disease, chytridiomycosis, has been linked to amphibian decline in many parts of the world (Berger *et al.* 1998, Speare and Berger 2000), including the Chiricahua leopard frog in Arizona (Sredl 2000, Sredl and Caldwell 2000) and New Mexico (C. Painter, New Mexico Department of Game and Fish, pers. comm. 2001). A number of other factors have been identified as causes or possible causes of global amphibian decline; although their role in the declining status of the Chiricahua leopard frog is poorly studied or unknown, they may be contributing causal factors. They include climate change or climatic extremes (Alexander and Eischeid 2001, Pounds *et al.* 1999, Fellers and Drost 1993, Dimmitt 1979); transport (sometimes over long distances) and deposition of contaminants, dust, gases (Stallard 2001), and pesticides (Cowman *et al.* 2001, Davidson *et al.* 2001, Lips 1998); increased levels of ultraviolet-B radiation and interactions with pathogens, particularly a water mold (*Saprolegnia ferax*) (Blaustein *et al.* 1994, Keisecker and Blaustein 1995); acid rain (Vatnick *et al.* 1999, Blanchard and Stromberg 1987); cadmium and arsenic contamination (Hale and Jarchow 1988); and over-collection (Jennings and Hayes 1985). Furthermore, factors are likely working in synergy to exacerbate deleterious effects (Carey *et al.* 2001, 1999; Keisecker *et al.* 2001, Middleton *et al.* 2001, Vatnick *et al.* 1999, Keisecker and Blaustein 1995). Increased extirpation rates and in some cases extinction, coupled with recent declining trends in the status of many amphibian populations worldwide, are alarming and represent a very recent and rapid global decline of an entire class of vertebrates on all six continents on which they live (Carey *et al.* 1999, Blaustein *et al.* 1994, Wake 1991).

The Chiricahua leopard frog is known currently or historically from cienegas (mid-elevation wetland communities

often surrounded by arid environments), pools, livestock tanks (*i.e.*, small earthen ponds), lakes, reservoirs, streams, and rivers at elevations of 1,000 to 2,710 meters (m) (3,281 to 8,890 feet (ft)) in central and southeastern Arizona; west-central and southwestern New Mexico; and, in Mexico, northern Sonora and the Sierra Madre Occidental of Chihuahua and Durango (Sredl and Jennings in press, Sredl *et al.* 1997, Degenhardt *et al.* 1996, McCranie and Wilson 1987, Platz and Mecham 1984, 1979). The range of the species is divided into two parts, including—(1) a southern group of populations (the majority of the species' range) located in mountains and valleys south of the Gila River in southeastern Arizona, extreme southwestern New Mexico, and Mexico; and (2) northern montane populations in west central New Mexico and along the Mogollon Rim in central and eastern Arizona (Platz and Mecham 1979). Historical records exist for Pima, Santa Cruz, Cochise, Graham, Apache, Greenlee, Gila, Coconino, Navajo, and Yavapai Counties, AZ, and Catron, Grant, Hidalgo, Luna, Socorro, and Sierra Counties, NM (Sredl *et al.* 1997, Degenhardt *et al.* 1996).

The distribution of the Chiricahua leopard frog in Mexico is unclear. The species has been reported from northern Sonora, Chihuahua, and Durango (Hillis *et al.* 1983, Platz and Mecham 1984, 1979) and, more recently, from the State of Aguascalientes (Diaz and Diaz 1997). However, Webb and Baker (1984) concluded that frogs from southern Chihuahua were not Chiricahua leopard frogs, as expected. The taxonomic status of *chiricahuensis*-like frogs in Mexico from southern Chihuahua to the State of Aguascalientes is unclear and in this region another leopard frog, *Rana montezumae*, may be mistaken for the Chiricahua leopard frog.

Recent genetic analyses, including a 50-loci (location of a gene on a chromosome) starch gel survey, morphometrics, and analyses of nuclear DNA supports describing the northern, or Mogollon Rim populations in Arizona of the Chiricahua leopard frog as a distinct species (Platz and Grudzien 1999). Multiple haplotypes (sets of genes inherited as a unit) within *chiricahuensis* were also identified using mitochondrial DNA analysis (Benedict and Quinn 1999), providing further evidence of genetically distinct population segments. If the species is split into two or more distinct taxa, fewer populations would exist within each taxon, increasing the level of endangerment for each.

Chiricahua leopard frogs have been either collected or observed at 231 sites

in Arizona (B. Kuvlesky, Buenos Aires National Wildlife Refuge, pers. comm. 1997; Terry Myers, Apache Sitgreaves National Forest, pers. comm. 1997; Sredl *et al.* 1997; Rosen *et al.* 1996a&b; Snyder *et al.* 1996; C. Schwalbe, University of Arizona, pers. comm. 1995; R. Zweifel, Portal, Arizona, pers. comm. 1995; Hale 1992; Clarkson and Rorabaugh 1989; Fish and Wildlife Service files, Phoenix, Arizona). In New Mexico the species has been either collected or observed at 182 sites (Painter 2000). Eleven historical sites were listed by Platz and Mecham (1979) in Mexico, mostly from the eastern base and foothills of the Sierra Madre Occidental in Chihuahua and Durango, with one site in northern Sonora. Hillis *et al.* (1983) list another site from Durango, and frogs at a site on the Sonora-Chihuahua border have been tentatively identified as Chiricahua leopard frogs (Holycross 1998). The presence of Chiricahua leopard frogs in the Sierra Madre Occidental of southern Chihuahua was questioned by Webb and Baker (1984), and as discussed, taxonomic questions complicate defining the range of the species in Mexico beyond northern and central Chihuahua and northern Sonora.

Some museums still have many southwestern leopard frogs catalogued as *Rana pipiens*. Once these specimens have been reexamined, additional historical sites for *Rana chiricahuensis* may result. Also, frogs observed at some sites in the wild, which may have been *Rana chiricahuensis*, were not positively identified.

Many collections of Chiricahua leopard frogs were made before 1980 (Painter 2000, Jennings 1995; Platz and Mecham 1979; Frost and Bagnara 1977; Mecham 1968). Recent surveys to document the status and distribution of the species were conducted primarily from the mid-1980s to the present (Painter 2000; Sredl *et al.* 1997, 1995, 1994, 1993; Rosen *et al.* 1996a; Fernandez and Bagnara 1995; Jennings 1995; Rorabaugh *et al.* 1995; Rosen 1995; Zweifel 1995; Sredl and Howland 1994, 1992; Hale 1992; Scott 1992; Wood 1991; Clarkson and Rorabaugh 1991, 1989; Rosen and Schwalbe 1988). These surveys were summarized first by Jennings (1995) and then Painter (2000) for New Mexico and by Sredl *et al.* (1997) for Arizona.

In 1995, Jennings reported Chiricahua leopard frogs still occurred at 11 sites in New Mexico. Based on additional work, Painter (2000) listed 41 sites at which Chiricahua leopard frogs were found from 1994 to 1999. Thirty-three of these are north of Interstate 10 (northern populations) and eight are in the

southwestern corner of the State (southern populations). Thirty-one of the 41 populations were verified extant during 1998 and 1999 (Painter 2000). However, during May through August 2000, the Chiricahua leopard frog was found extant at only 8 of 34 of the sites (C. Painter, pers. comm. 2000). Three populations east of Hurley in Grant County declined or were extirpated during 1999 and 2000 (R. Jennings, pers. comm. 2000), and preliminary data indicate another population on the Mimbres River, also in Grant County, has experienced a significant die-off (C. Painter and R. Jennings, pers. comm. 2000).

Sredl *et al.* (1997) reported that during 1990 through 1997 Chiricahua leopard frogs were found at 61 sites in southeastern Arizona (southern populations) and 15 sites in central and east-central Arizona (northern populations). As a means to make the Arizona and New Mexico status information more comparable, the number of sites at which Chiricahua leopard frogs were observed from 1994 through 2001 in Arizona were tallied. Based on available data, particularly Sredl *et al.* (1997), Rosen *et al.* (1996b), and Service files, Chiricahua leopard frogs were observed at 87 sites in Arizona from 1994 to 2001, including 21 northern sites and 66 southern sites. Many of these sites have not been revisited in recent years; however, evidence suggests some populations have recently been extirpated in the Galiuro and Chiricahua mountains, while others, most notably in the Buckskin Hills area of the Coconino National Forest, have been recently (2000–2001) discovered. In 2000, the species was also documented for the first time in the Baboquivari Mountains, Pima County, Arizona (E. Wallace, pers. comm. 2000), extending the range of the species approximately 19 kilometers (km) (12 miles (mi)) to the west.

Intensive and extensive surveys were conducted by Arizona Game and Fish Department (AGFD) in Arizona from 1990 to 1997 (Sredl *et al.* 1997). Included were 656 surveys for ranid frogs (frogs in the family Ranidae) within the range of the Chiricahua leopard frog in southeastern Arizona. Rosen *et al.* (1996a&b, 1994), Hale (1992), Wood (1991), Clarkson and Rorabaugh (1989), and others have also extensively surveyed wetlands in southeastern Arizona. It is unlikely that many additional new populations will be found there. A greater potential exists for locating frogs at additional sites in Arizona's northern region, as several new populations have been discovered on the Coconino National Forest in 2000

and 2001. Sredl *et al.* (1997) conducted 871 surveys for ranid frogs in the range of the northern sites, but report that only 25 of 46 historical Chiricahua leopard frog sites were surveyed during 1990–1997. The majority of these unsurveyed historical sites are in the mountains north of the Gila River in east-central Arizona. Additional extant populations of Chiricahua leopard frogs may occur in this area.

Of the historical sites in New Mexico, 24 have imprecise site information that precludes locating or revisiting them. Many others are on private lands to which the owners have denied access to biologists (the privately owned Gray and Ladder ranches are notable exceptions). As in Arizona, potential habitat within the range of the southern populations has been surveyed more extensively than that of the northern populations. From 1990 to 1991, Scott (1992) conducted extensive surveys of the Gray Ranch, which contains much of the Chiricahua leopard frog habitat in southwestern New Mexico. Observations from numerous other herpetologists were included in his reports, and cowboys and ranch hands were interviewed to locate potential habitats. Jennings (1995) surveyed other potential habitats in southwestern New Mexico outside of the Gray Ranch in the Peloncillo Mountains. Other herpetologists working in that area, including Charles Painter (pers. comm. 2001), and Andy Holycross, Arizona State University (pers. comm. 1998), also worked extensively in this area. Probably few if any unknown populations of Chiricahua leopard frogs occur in southwestern New Mexico.

Surveys in the northern portion of the species' range in New Mexico have been less complete. Jennings (1995) believed that the wilderness areas of the Gila National Forest have the greatest potential for supporting additional extant populations and for securing an intact metapopulation that would have a good chance of long-term persistence. A metapopulation is an assemblage of populations with some level of migration between them, in which individual populations may be extinct but can then be recolonized from other populations. Recent surveys (1995 to 1999) have discovered four extant populations in the Gila Wilderness (Painter 2000).

In Mexico systematic or intensive surveys for Chiricahua leopard frogs have not been conducted. However, it is expected that the species almost certainly occurs or occurred at more than the 12 (or 13) reported sites in Chihuahua, Sonora, and Durango (Platz and Mecham 1979, Hillis *et al.* 1983,

and Holycross 1998). Only one site has been documented in Sonora, yet many populations occur or occurred in the mountain ranges and valleys adjacent to the Sonora border in Arizona. Other sites probably occur or occurred in Sonora. The identity of leopard frogs in southern Chihuahua (and perhaps Durango) is in some question (Webb and Baker 1984). Reports of the species from Aguascalientes (Diaz and Diaz 1997) are similarly questionable and should be confirmed by genetic analysis.

The Chiricahua leopard frog is reported absent from a majority of surveyed historical sites. For example, in Arizona, Clarkson and Rorabaugh (1989) found the species at only 2 of 36 sites that supported Chiricahua leopard frogs in the 1960s and 1970s. In New Mexico, Jennings (1995) found Chiricahua leopard frogs at 6 of 33 sites supporting the species during the previous 11 years. During 1998 to 1999, Chiricahua leopard frogs were found at 31 of the 41 sites where they had been documented after 1993 (Painter 2000); however, subsequent surveys in 2000 only revealed frogs at 8 of 34 of these sites (C. Painter, pers. comm. 2001). Sredl and Howland (1994) reported finding Chiricahua leopard frogs at only 12 of 53 historical sites. In 1994, during surveys of 175 wetland sites in southeastern Arizona, Rosen *et al.* (1994) reported the Chiricahua leopard frog was extant at 19 historical and new sites, but was not found at 32 historical sites. Throughout Arizona, Sredl *et al.* (1997) found the species present at 21 of 109 historical sites.

Determining whether a species is declining based on its presence or absence at historical sites is difficult. Where frogs are observed at a particular site, they are considered extant. However, a failure to find frogs does not necessarily indicate the species is absent. Corn (1994) notes that leopard frogs may be difficult to detect (the frogs hide by movement and camouflage, and are often not vocal), museum records do not always represent breeding sites, collections have occurred from marginal habitat, and museum and literature records often represent surveys over long periods of time, which ignores natural processes of geographical extinction and recolonization. These latter natural processes may be particularly important for the Chiricahua leopard frog because its habitats are often small and very dynamic. Because the Chiricahua leopard frog and other southwestern leopard frogs exhibit a life history that predisposes them to high rates of extirpation and recolonization (Sredl

and Howland 1994), absence from at least some historical sites is expected.

However, the failure of experienced observers to find frogs in relatively simple aquatic systems such as most stock tanks and stream segments indicates that frogs are probably absent. Stock tanks (also known as livestock tanks) are defined as an existing or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock. Howland *et al.* (1997) evaluated visual encounter surveys at five leopard frog sites. At sites with known populations that were not dry, frogs were detected in 93 of 100 surveys conducted during the day from April through October. During a drought in 1994, Rosen *et al.* (1996a, 1994) surveyed all Chiricahua leopard frog sites known at that time in southeastern Arizona and other accessible waters, and discussed locations of waters and faunal occurrence with landowners. By focusing on aquatic sites that did not go dry, and through careful and often multiple surveys at each site, the authors were able to define distribution at a time when aquatic faunal patterns were clear. The authors believed that nearly all potential habitat was surveyed, and, if frogs were present, they would have been detectable at most sites.

Although Chiricahua leopard frogs were found out at 129 sites from 1994 to the present, because of the inherent dynamic nature of southwestern wetland and riparian habitats (e.g., flooding, drought, and human activities), coupled with the increased likelihood of extirpation characteristic of small populations, the viability of extant populations of the Chiricahua leopard frog is thought, in many cases, to be relatively short. As discussed in Factor E of the "Summary of Factors Affecting the Species" section below, approximately 38 percent of sites occupied by Chiricahua leopard frogs from 1994 to 2001 were artificial tanks or impoundments constructed for watering livestock. The dynamic nature of stock tank habitats and the small size of the populations that inhabit them suggest that many of these populations are not likely to persist for long periods.

Rosen *et al.* (1996a) hypothesized that "the ongoing restriction of Chiricahua leopard frogs to shallow, marginal habitat types means that eventually the species will be wiped out by a drought (see Fellers and Drost 1993, Corn and Fogelman 1984) that it would readily have weathered in refugia now preempted by nonnative species. Our hypothesis clearly predicts that this species will go extinct in southern

Arizona, and probably elsewhere, unless appropriate action is taken." In New Mexico, Painter (1996) reported similar findings: "*Rana chiricahuensis* is rapidly disappearing from southwest New Mexico (Jennings 1995, pers. obs.). Unless these unexplainable trends are quickly reversed, I expect the species to be extirpated from 90 to 100 percent of its former range in New Mexico within the next decade."

Although survey data strongly suggest that the species is absent from more than 75 percent of historical sites (Painter 2000, Sredl *et al.* 1997, Jennings 1995), we include here further analysis to investigate whether extirpations represent natural fluctuations or long-term declines caused by human impacts (Blaustein *et al.* 1994, Pechman *et al.* 1991).

Numerous studies indicate that declines and extirpations of Chiricahua leopard frogs are at least in part caused by predation and possibly competition by nonnative organisms, including fishes in the family Centrarchidae (*Micropterus* spp., *Lepomis* spp.), bullfrogs (*Rana catesbeiana*), tiger salamanders (*Ambystoma tigrinum mavortium*), crayfish (*Oronectes virilis* and possibly others), and several other species of fishes, including, in particular, catfishes (*Ictalurus* spp. and *Pylodictus oliveris*) and trout (*Oncorhynchus* spp. (= *Salmo*) and *Salvelinus* spp.) (Fernandez and Rosen 1998, Rosen *et al.* 1996a, 1994; Snyder *et al.* 1996; Fernandez and Bagnara 1995; Sredl and Howland 1994; Clarkson and Rorabaugh 1989). For instance, in the Chiricahua region of southeastern Arizona, Rosen *et al.* (1996a) found that almost all perennial waters investigated that lacked introduced predatory vertebrates supported Chiricahua leopard frogs. All waters except three that supported introduced vertebrate predators lacked Chiricahua leopard frogs. The authors noted an alarming expansion of nonnative predatory vertebrates over the last two decades. In the Chiricahua region, Chiricahua leopard frogs were primarily limited to habitats subject to drying or near drying, such as stock tanks. These habitats are not favored by nonnative predatory fishes and bullfrogs, but because they are not stable aquatic habitats they are marginal for leopard frogs (Rosen *et al.* 1994).

Additional evidence that the observed absence of Chiricahua leopard frogs from historical sites is not the result of a natural phenomenon emerges from analysis of regional occurrence. If the extirpation of the Chiricahua leopard frog was a natural consequence of metapopulation dynamics or other

population level processes, then an observer would not expect to find the species absent from large portions of its range. Rather, Chiricahua leopard frogs might be absent from some historical sites, but would still be found at other new or historical sites in the region. In New Mexico, Painter (2000) reported that, with the possible exception of the Yaqui River drainage, extant Chiricahua leopard frog populations occur in each of the six major drainages where the species was found historically (Tularosa/San Francisco, Mimbres, Alamosa/Seco/Rio Grande, Gila, Playas, and Yaqui). However, occurrence of the frog in these drainages is characterized by few, mostly small, isolated populations. Populations in the Playas drainage are probably limited to two introduced populations in steep-sided livestock tanks from which frogs cannot escape (Painter 2000). The species was not found on the mainstem, Middle Fork, or East Fork of the Gila River, where the species occurred historically at many sites.

In Arizona, the species is still extant in seven of eight major drainages of historical occurrence (Salt, Verde, Gila, San Pedro, Santa Cruz, Yaqui/Bavispe, and Magdalena river drainages), but appears to be extirpated from the Little Colorado River drainage on the northern edge of the species' range. Within the extant drainages, the species was not found recently in some major tributaries and/or from river mainstems. For instance, the species was not reported from 1995 to the present from the following drainages or river mainstems where it historically occurred: White River, West Clear Creek, Tonto Creek, Verde River mainstem, San Francisco River, San Carlos River, upper San Pedro River mainstem, Santa Cruz River mainstem, Aravaipa Creek, Babocomari River mainstem, and Sonoita Creek mainstem. In southeastern Arizona, no recent records (1995 to the present) exist for the following mountain ranges or valleys: Pinaleno Mountains, Peloncillo Mountains, Sulphur Springs Valley, and Huachuca Mountains. Moreover, the species is now absent from all but one of the southeastern Arizona valley bottom cienega complexes. The Chiricahua leopard frog is known or suspected to have been historically present, and at least in some cases, very abundant (Wright and Wright 1949) in each major southeastern Arizona valley bottom cienega complex. It is thought to be breeding in small numbers in the Empire Cienega, but is absent as a breeding species from all others, including Arivaca Cienega, upper Santa Cruz Valley cienegas, Babocomari

Cienega, marshy bottoms of the upper San Pedro River, Whitewater Creek and Hooker Cienega in the Sulphur Springs Valley, Black Draw and associated cienegas, and San Simon Cienega. Three frogs were recently observed at the O'Donnell Creek cienega, but these appear to be immigrants from nearby populations (P. Rosen, pers. comm. 2000). These large, valley bottom cienega complexes may have supported the largest populations in southeastern Arizona, but are now so overrun with nonnative predators that they do not presently support the Chiricahua leopard frog in viable numbers (Rosen *et al.* in press). These apparent regional extirpations provide further evidence that the species is disappearing from its range. Once extirpated from a region, natural recolonization of suitable habitats is unlikely to occur in the near future.

Where the species is still extant, sometimes several small populations are found in close proximity, suggesting metapopulations are important for preventing regional extirpation (Sredl *et al.* 1997). Disruption of metapopulation dynamics is likely an important factor in regional loss of populations (Sredl *et al.* 1997, Sredl and Howland 1994). Chiricahua leopard frog populations are often small and their habitats are dynamic, resulting in a relatively low probability of long-term population persistence. However, if populations are relatively close together and numerous, extirpated sites can be recolonized.

Human disturbances can result in increased rates of extinction and decreased rates of recolonization. If the extinction rate for a given population exceeds the colonization rate, that population will go extinct (Hanski 1991). Various human impacts (see "Summary of Factors Affecting the Species" section) can result in increased extinction rates and increased isolation of populations within a metapopulation with resulting decreased colonization rates. In addition, big rivers, cienega complexes, lakes, and reservoirs that once probably supported large populations of Chiricahua leopard frogs, and were likely stable source populations for dispersal to smaller sites, are almost all inhabited by nonnative predators and thus are unsuitable as habitat for this species (Sredl *et al.* 1997, Rosen *et al.* 1996a, Sredl and Howland 1994). The currently extant smaller populations almost certainly exhibit greater extinction rates than these larger populations did historically, increasing the importance of metapopulations for maintaining viable populations or groups of frog populations. However, pathogens may

counter some of the beneficial aspects of metapopulations. Once introduced into a metapopulation, a disease such as chytridiomycosis can spread to and eliminate groups of adjacent populations as frogs move between wetland sites. This is the most reasonable explanation of extirpation of the Chiricahua leopard frog from a metapopulation of stock tanks in New Mexico (Declining Amphibian Populations Task Force 1993, R. Jennings, pers. comm. 2000).

#### Previous Federal Action

Based on status information indicating the species was recently extirpated from historical sites (Clarkson *et al.* 1986, Clarkson and Rorabaugh 1989), the Chiricahua leopard frog was added to the list of category 2 candidate species with the publication of a comprehensive Notice of Review on November 21, 1991 (56 FR 58804). We also included the species as a category 2 candidate in the November 15, 1994, Notice of Review (59 FR 58982). Category 2 candidates were those taxa for which we had some evidence of vulnerability and threats, but for which we lacked sufficient data to support a listing proposal.

We elevated the Chiricahua leopard frog to category 1 candidate status on July 11, 1994. This change in the status of the species came too late to appear in the November 15, 1994, Notice of Review. Category 1 candidates were taxa for which we had on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened, but for which preparation of listing proposals was precluded by higher priority listing actions.

Beginning with our February 28, 1996, Candidate Notice of Review (61 FR 7596), we discontinued the designation of multiple categories of candidates, and only those taxa meeting the definition for former category 1 candidates are now considered candidates for listing purposes. In the February 28, 1996, notice, we identified the Chiricahua leopard frog as a candidate species.

On June 10, 1998, we received a petition dated June 4, 1998, from the Southwest Center for Biological Diversity to list the Chiricahua leopard frog as endangered and to designate critical habitat for the species. In a letter dated July 7, 1998, we informed the petitioner that pursuant to the Service's July 1996 Petition Management Guidance, we consider candidate species to be under petition and covered by a "warranted but precluded" finding under section 4(b)(3)(B)(iii) of the Act.

The petitioner filed a complaint for declaratory and injunctive relief with the Arizona District Court on August 25, 1999, which asked the court to require the Secretary of the Interior to take action on the petition. We published the proposed rule to list the Chiricahua leopard frog in the **Federal Register** on June 14, 2000 (65 FR 37343). In that same rule we also published a proposed special rule that we are finalizing as discussed below.

On August 29, 2001, the Service announced a settlement agreement in response to litigation by the Center for Biological Diversity, the Southern Appalachian Biodiversity Project, and the California Native Plant Society. Terms of the agreement require that we submit to the **Federal Register**, on or before June 6, 2002, a final listing and critical habitat decision for the Chiricahua leopard frog. This agreement was entered by the court on October 2, 2001 (*Center for Biological Diversity, et al. v. Norton*, Civ. No. 01-2063 (JR) (D.D.C.)).

#### Special Rule

Concurrently with publication of this final rule to list the Chiricahua leopard frog as threatened, we are publishing a special rule under section 4(d) of the Act to amend regulations at 50 CFR 17.43. The special rule replaces the Act's general prohibitions against take of the Chiricahua leopard frog with special measures tailored to the conservation of the species on all non-Federal lands. Through the maintenance and operation of the stock tanks for cattle, habitat is provided for the leopard frogs, hence there is a conservation benefit to the species. Under the special rule, take of Chiricahua leopard frog caused by livestock use of or maintenance activities at livestock tanks located on private, State, or Tribal lands would be exempt from section 9 of the Act. See Summary of Factors for more information on take. As noted above, a livestock tank is defined as an existing or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock. The rule targets tanks on private, State, and Tribal lands to encourage landowners and ranchers to continue to maintain these tanks as they provide habitat for the frogs. Livestock use and maintenance of tanks on Federal lands will be addressed through the section 7 process. When a Federal action, such as permitting livestock grazing on Federal lands, may affect a listed species, consultation between us and the action agency is required pursuant to section 7 of the Act. The

conclusion of consultation may include mandatory changes in livestock programs in the form of measures to minimize take of a listed animal or to avoid jeopardizing the continued existence of a listed species. Changes in a proposed action resulting from consultations are almost always minor. (See our response to Issue 8 and Factor A in the Summary of Factors for further discussion.)

#### Summary of Comments and Recommendations

In the June 14, 2000, proposed rule and associated notifications, we requested that all interested parties submit factual reports or information that might contribute to the development of this final rule. The comment period for the proposed rule was initially open from June 14 through September 12, 2000. In a September 27, 2000, **Federal Register** notice (65 FR 58032), we reopened the comment period from September 27 through November 13, 2000, announced two public hearings, and clarified the proposed special rule that accompanied the proposed rule. We contacted four peer reviewers; appropriate elected officials from State, Federal, and local governments; Mexican, Tribal, Federal, and State agencies; county and city governments; scientific organizations; and other interested parties and requested that they comment. We published legal notices in the following newspapers announcing the proposal and inviting comment: Arizona Business Gazette (July 6, 2000), Tucson Citizen (June 28, 2000), Arizona Daily Star (June 28, 2000), Albuquerque Journal (June 28, 2000), Albuquerque Tribune (June 28, 2000), Sierra Vista Herald (June 27, 2000), Bisbee Daily Review (June 27, 2000), Silver City Daily Press (June 26, 2000), and the White Mountain Independent (June 30, 2000). To announce the reopening of the comment period, public hearings, and the clarification of the special rule, we published legal notices in the Arizona Republic (October 5, 2000), Tucson Citizen (October 2, 2000), Arizona Daily Star (October 2, 2000), Sierra Vista Herald (September 29, 2000), Bisbee Daily Review (September 29, 2000), Silver City Daily Press (September 28, 2000), and White Mountain Independent (October 3, 2000). We received 23 comment letters. Nine of these opposed, seven supported, and seven were neutral on the proposed listing action. The breakdown of the comments included two from Federal agencies, two from State agencies, one from a County, ten from organizations or corporations, and eight from

individuals. These included the letters from the four peer reviewers (two from State agencies and two from individuals). We also received 11 requests for public hearings. In response to those requests, public hearings were held in Silver City, New Mexico, on October 10, 2000, and in Bisbee, Arizona on October 11, 2000. Thirteen people attended the hearing in Silver City, during which four individuals and two representatives of organizations provided oral comments. Six people attended the hearing in Bisbee; two individuals provided oral comments. In total, four of the commenters at the hearings supported and one opposed listing, and three provided additional information or asked questions.

We updated the final rule to reflect comments and information we received during the comment period. We address opposing comments and other substantive comments concerning the rule below. Comments of a similar nature or point are grouped together (referred to as "Issues" for the purpose of this summary) below, along with our response to each.

*Issue 1:* The frog should be protected under a conservation agreement in lieu of listing. Several commenters commented that the Chiricahua leopard frog would be better protected under a conservation agreement in lieu of listing as threatened. Commenters noted that conservation efforts are underway for the species in several areas that could serve as models for conservation strategies and agreements, and that ranchers and others are more likely to work with the Service on conservation if the species is not listed.

*Response:* Valuable conservation efforts have been undertaken for the Chiricahua leopard frog in Arizona on the Tonto National Forest near Young (Sredl and Healy 1999), in the San Bernardino Valley (Rosen and Schwalbe 2000; Biology 150, Douglas High School 1998), and Buenos Aires National Wildlife Refuge (Schwalbe and Rosen 2001, Schwalbe et al. 2000), and in New Mexico on the Mimbres River, as described in the proposed rule. As mentioned by the commenters, these efforts are models for future conservation of the species and we encourage the development of similar efforts elsewhere within the range of the frog. However, a conservation agreement is unlikely to preclude the need to list this particular species for several reasons. Conservation agreements are most effective when there is a good understanding of the relationship between habitat management and maintenance of the species, and of the specific management needed to

conserve it. As discussed in the "Background" section, the Chiricahua leopard frog is declining, but the causes of the declines are not always clear. Finding solutions to two of the primary identified causes of decline, disease and predation by introduced organisms, will not be easy, and will likely involve considerable research. Implementing solutions will likely require considerable corrective or restorative actions. However, at this time we do not know how to address these serious threats on a landscape scale. If other factors, such as climate change, UV-B radiation, acid rain, or airborne contaminants from copper smelters in Mexico, are contributing to the decline of the species, these are also threats for which we have no easy solution, and which could not be addressed adequately in a conservation agreement. Furthermore, funding is not available to research, develop, and coordinate comprehensive solutions to problems facing this species, let alone implement them throughout the species' extensive range. The primary goal of a conservation agreement, whether it be a candidate conservation agreement with assurances for private or State landowners, or conservation agreements with Federal agencies, should be to reduce threats to a species to a point where listing is not needed. That goal is not achievable at this time. To conclude, a conservation agreement in lieu of listing is not appropriate for the Chiricahua leopard frog for the following reasons: (1) Our knowledge of why populations have declined or disappeared is incomplete, (2) we do not know how to alleviate some of the major identified threats, and (3) only limited resources are available to develop or implement needed management. We commit to continue our efforts to work with landowners and encourage involvement in conservation efforts for the frog.

*Issue 2:* The special rule should be clarified and expanded. One commenter suggested that the special rule be expanded to include an exemption from section 9 of the Act for management and operation of, and sport fishery and angling in, all artificial and managed water bodies on all State and Federal lands. Another commenter requested that the special rule be extended to "acequias," which is a name used for historical irrigation headwaters and ditches in New Mexico. Other commenters asked that we extend the rule to livestock tanks on State and Federal lands, as well as private and Tribal lands.

*Response:* Extension of the rule to sport fisheries management and angling

in waters occupied or potentially occupied by the Chiricahua leopard frog is also not appropriate. Special rules may be issued by the Secretary of the Interior pursuant to section 4(d) of the Act when such regulation is deemed "necessary and advisable to provide for the conservation of the species." Predation by nonnative fishes, some of them sport fish, is a potential threat to the Chiricahua leopard frog. Extension of the special rule to sport fisheries management and angling would thus not be consistent with the conservation needs of the Chiricahua leopard frog and with section 4(d) of the Act. Extension of the special rule to acequias is not necessary because the only known current or historical occurrence of a Chiricahua leopard frog in or near an acequia is at a spring in the headwaters of an acequia located on Bureau of Land Management lands in Sierra County, NM. Any work at this site must be approved by the Bureau of Land Management, and therefore is a Federal action that would be evaluated in consultation pursuant to section 7 of the Act. As a result, coverage for acequias under the special rule would be duplicative from a regulatory perspective.

We published a **Federal Register** notice (65 FR 58032) on September 27, 2000, clarifying that the proposed special rule extends to operation and maintenance of livestock tanks on private, State, and Tribal lands. Extension to tanks or other bodies of water on Federal lands is unnecessary and would be duplicative from a regulatory perspective because the section 7 consultation process in the Act is designed to efficiently evaluate effects to listed species for projects such as stock tanks, and authorize take, if appropriate, via an incidental take statement in a biological opinion. Since the Chiricahua leopard frog was proposed for listing, we have conducted a number of section 7 conferences with the Forest Service in regard to grazing in Chiricahua leopard frog habitat. None of these conferences have concluded that grazing would jeopardize the continued existence of the Chiricahua leopard frog. Where grazing would affect occupied habitat we have in some cases anticipated that take of Chiricahua leopard frogs would occur, and included measures to minimize that take. These measures have included, for instance, guidelines for stock tank maintenance, guidelines for cleaning or drying equipment and gear used at one tank before using it at another tank as a means of preventing disease transmission, and preconstruction

surveys for frogs in areas to be affected by range improvement projects. In no case have we required changes in stocking rates, use of pastures, or utilization rates, or made other major modifications to livestock operations during the section 7 process.

*Issue 3:* In the proposed rule we solicited comment on the desirability of issuing a special rule that would exempt activities associated with conservation plans that promote recovery from the section 9 take prohibitions, so long as the plans are approved by us and the appropriate State game and fish agency. Two commenters believed that extending the special rule to these circumstances would be beneficial and would likely promote recovery efforts.

*Response:* We did not expand the special rule to provide coverage for conservation plans. A multi-party conservation agreement exists for this species that promotes recovery and was approved by us and AGFD; thus, it could serve as a model conservation plan element of a special rule. We want to encourage to the fullest extent possible cooperative conservation planning and implementation such as the efforts described above. However, we believe we can provide technical assistance, all necessary permits, and in many cases, limited funding to support these activities in the absence of a special rule. For example, we are providing funding through AGFD for development of a safe harbor agreement to address conservation planning by the Malpai Borderlands Group in southeastern Arizona and southwestern New Mexico. In summary, coverage of conservation planning under the special rule is not needed to allow current efforts to proceed and to promote and permit future conservation.

*Issue 4:* One commenter noted that the taxonomy of the Ramsey Canyon leopard frog is in question, and it could be subsumed into *Rana chiricahuensis*.

*Response:* If a peer-reviewed paper is published in a scientific journal that subsumes that species into *Rana chiricahuensis*, we will promptly work with our partners in that conservation agreement to put in place safe harbor agreements, habitat conservation plans, and other regulatory tools as needed to maintain the successful continuity of the program and ensure our partners do not face legal vulnerability as a result of their efforts to conserve this frog.

*Issue 5:* Information is inadequate to support listing the Chiricahua leopard frog. Several commenters believed that the status information on the Chiricahua leopard frog is inadequate to support listing the species as threatened. Commenters pointed to numerous

places in the proposed rule where we state that specific factors *may* be a threat, but few if any supportive data exist. Several commenters believed surveys were inadequate to quantify whether declines have occurred. They believed the frog could occur at many unsurveyed sites, particularly on private lands, and thus not be in danger of extinction. Commenters noted that over 12,000 stock tanks are located within watersheds occupied by the frog in Arizona, and over 10,000 in New Mexico, but only several dozen have been surveyed. One commenter questioned the qualifications of researchers cited, and others stated the listing should be based on peer-reviewed science. One commenter thought systematic or intensive surveys must be conducted in Mexico prior to listing. Another asked if studies had been completed to determine whether observed declines in Chiricahua leopard frog populations are natural fluctuations or long-term trends.

*Response:* Chiricahua leopard frogs are difficult to identify, thus some survey data may be in error. The data standard upon which a listing decision must be based is stated at section 4(b)(1)(A) of the Act: Listings shall be made "solely on the basis of the best scientific and commercial data available." In evaluating the status of the Chiricahua leopard in the proposed rule, the preferable data to use is found in peer-reviewed scientific journals, followed by other peer-reviewed published or unpublished reports, non peer-reviewed reports by experts on the species, other reports available to us, and personal communications. For the development of this rule, the relied-upon information consisted mostly of peer-reviewed reports, most of which are unpublished. In some cases the best information available was personal communications with experts on the species. Relatively few peer-reviewed scientific journal articles have been published specifically about the status of the Chiricahua leopard frog.

Although few peer-reviewed journal articles are available, there is a wealth of information about declines and, to a lesser extent, causes of decline of the Chiricahua leopard frog in the United States. Historical distribution was well-explored, particularly in the 1960s and 1970s, when researchers were sorting out the taxonomy of southwestern leopard frogs (Pace 1974, Platz and Platz 1973, Mecham 1968). This intensive work occurred in the context of nearly 100 years of collections in Arizona and New Mexico, resulting in leopard frogs being well-represented in museum collections (Rosen *et al.* 1996b, Fritts *et*

*al.* 1984). Fritts *et al.* (1984) list 61 sites for Chiricahua leopard frog in New Mexico. Sredl *et al.* (1997) list 147 historic sites for Arizona.

Declines in southwestern leopard frogs and other ranid frogs were first noted in the 1970s (Hale and May 1983), and in the early 1980s an effort was initiated to document the decline and identify causes (Clarkson and Rorabaugh 1989, Rosen and Schwalbe 1988, Clarkson *et al.* 1986, Fritts *et al.* 1984). In 1990, AGFD hired a leopard frog projects coordinator, and since that time, the AGFD has devoted a full-time team of herpetologists to track the status and implement conservation of Arizona's ranid frogs. Status work accomplished from 1990 to 1997 by the AGFD in Arizona is summarized by Sredl *et al.* (1997), and included intensive frog inventories at 75 percent of historical Chiricahua leopard frog sites as well as many other wetland sites in Arizona. This work occurred at the same time others were searching for leopard frogs at new and historical Chiricahua leopard frog sites in Arizona (e.g. Rosen *et al.* 1996a&b, 1994, Snyder *et al.* 1996, Fernandez and Rosen 1996, Fernandez and Bagnara 1995, Zweifel 1995, Hale 1992, Clarkson and Rorabaugh 1991, Wood 1991).

In New Mexico, Scott (1992) thoroughly surveyed potential Chiricahua leopard frog habitats in southwestern New Mexico. Jennings (1995) surveyed 50 (82 percent) of the 61 historic sites identified by Fritts *et al.* (1984) as well as 22 other wetland sites. Additional surveys have been conducted since Jennings' work by New Mexico Department of Game and Fish, the Gila National Forest, Barney Tomberlin, Bureau of Land Management, the Animas Foundation, Andy Holycross, personnel at the Ladder Ranch, and others, as summarized in Table 4 of Painter (2000). Since the proposed rule was published, Forest Service biologists have become more aware of the species and have been looking for leopard frogs throughout the forests of Arizona and New Mexico. The surveys upon which this rule is based were conducted by qualified biologists, and the majority were by experts on the species.

In summary, more than 75 percent of the historical sites have been resurveyed for Chiricahua leopard frogs. Frogs were not found at more than 75 percent of those resurveyed sites. We acknowledge that the species probably occurs at some unsurveyed sites. However, the results of the historical site surveys present a convincing argument that the species is declining across its range in Arizona and New Mexico. Furthermore, every

recent report that discusses the status of the species concludes it is in decline. As discussed in the "Background" section, the frog's apparent disappearance from significant portions of its range argues that the declines are not the result of normal population fluctuations, but represent real, regional declines and loss of populations and metapopulations. Commenter's contention that only a small percentage of stock tanks in Arizona and New Mexico have been surveyed for Chiricahua leopard frogs is inaccurate. Many of the historical and new sites that have been surveyed for frogs are stock tanks. Also, only a small percentage of stock tanks have any potential to support populations of this frog. These are stock tanks within the range of the frog, from 1,000 to 2,710 m (3,280–8,890 ft) in elevation, and which hold water most of the time. Surveys for frogs have focused on this category of stock tank. The potential for finding many new populations on private lands is small, because most of the habitat and potential habitat of the Chiricahua leopard frog occurs on National Forests. Two of the most important private parcels within the range of the frog (Gray Ranch and Ladder Ranch in New Mexico) have been recently surveyed for frogs.

Commenters accurately identified a gap in our knowledge of the species' status in Mexico. As discussed in the "Background" section, limited surveys have been conducted in Mexico, and unresolved taxonomic questions and possible misidentification of frogs are apparent problems. However, declines or the causes of decline do not stop at the international boundary as shown by the fact that the Mexican Government considers the Chiricahua leopard frog a threatened species (Secretario de Desarrollo Social 1994). Our designation of the frog as a threatened species is consistent with the findings of Mexican biologists and the Mexican Government.

Commenters are also correct in stating that research into the causes of population loss and decline are incomplete, and compelling evidence linking declines with causal factors is often missing or speculative. However, as discussed in the "Background" section and the "Summary of Factors Affecting the Species" section, abundant data support the contention that populations of Chiricahua leopard frogs are eliminated by a variety of introduced, nonnative vertebrate and invertebrate predators, and that these predators are widespread in Arizona and New Mexico. However, Chiricahua leopard frogs have disappeared from many locations where nonnative

predators are absent and no other causes of extirpation are apparent.

Chytridiomycosis has played a part in these mysterious declines, but a myriad of other causal factors may be involved as well. As a result, discussions of the threats to the species herein are appropriately and often punctuated by uncertainty qualifiers such as "may" and "could." The fact that we cannot always identify the causes of decline does not negate a large body of evidence that the species is declining and threatened throughout a significant portion of its range, and thus warrants listing.

*Issue 6:* Peer reviews and regulatory compliance documents should be made available for public review and comment prior to making a listing decision. Several commenters stated that peer reviews and regulatory compliance documents should be made available to the public for review and comment before a final decision regarding listing.

*Response:* In accordance with policy promulgated July 1, 1994 (59 FR 34270), we solicited the expert opinions of four appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Our four peer reviewers submitted comments during the public comment periods. As stated in the proposed rule, these and other comments received were and still are available for public review. Although, if individual respondents request that we withhold their home address or identity, we honor such requests to the extent allowable under the law. Public review and comment was and is possible, but any such comments would need to have been submitted during a comment period to be included in the administrative record and considered in our listing decision. We frequently reopen comment periods if needed to include substantive comments in the administrative record; however, we did not receive any comments after the close of the second and last comment periods; thus there was no need to reopen the comment period.

In the issuance of rules under the Act we are required to ensure compliance with applicable regulations. Required determinations under these regulations were presented in the proposed rule for the Paperwork Reduction Act of 1995 and Civil Justice Reform Executive Order. Our determinations under these regulations were available for comment;

however, we received no comments pertaining to them.

We also indicated in the proposed rule that we would publish an analysis of how the special rule complies with various laws and Executive Orders. However, these regulations and Executive Orders, which include the Small Business Regulatory Enforcement Fairness Act, the Regulatory Flexibility Act, Executive Order 12866 (Regulatory Planning and Review), Unfunded Mandates Reform Act, Executive Order 12630 (Takings Assessment), Executive Order 13132 (Federalism), and Executive Order 13211 (dealing with regulations that significantly affect energy supply, distribution, and use), address economic and other issues not related to science. Section 4(a) of the Act requires that listing decisions be made solely on the best scientific and commercial (i.e., trade) data available. Therefore Section 4(a) of the Act supersedes the Executive Orders and statutes listed above which would otherwise require the Service to consider economic and other aspects of the special rule as an integral part of the listing decision. As a result, Service policy, as outlined in the Endangered Species Listing Handbook, 1994, indicates that special rules being published contemporaneously with a listing do not include an analysis of these various laws and Executive Orders. Thus, the Service will not be publishing an analysis of how this special rule complies with these various laws and Executive Orders.

*Issue 7:* One commenter asked how the rule will affect the quality of the human environment, particularly how industry and recreation will be affected.

*Response:* This is a question typically addressed in National Environmental Policy Act (NEPA) documents. As stated herein and in the proposed rule, NEPA documents are not required in connection with regulations such as this adopted pursuant to section 4(a) of the Act.

*Issue 8:* Listing, even with adoption of the special rule, will unnecessarily burden or threaten the livelihood of ranchers and cattle operations. Several commenters were concerned that regulations put in place by listing the Chiricahua leopard frog would add additional burden to an already over-regulated livestock industry. One commenter believed listing the frog would result in elimination of grazing on Federal lands. Another commenter was concerned that listing could result in different management of stock tanks on private versus Federal lands within the same ranch, causing management and resource conflicts. One commenter

was concerned that the rights of Federal livestock permittees are not guaranteed in the section 7 process.

*Response:* We recognize the importance of stock tanks as habitat for the Chiricahua leopard frog. Stock tanks are small earthen ponds created when a rancher builds up a barrier of soil to capture water from a small drainage area. These tanks would not have been built nor maintained without active grazing programs and viable ranches. Although livestock programs help create and maintain habitat, as discussed in the "Summary of Factors Affecting the Species" section, some adverse effects can occur from grazing programs, such as watershed degradation, riparian habitat loss, trampling of frogs, eggs, and tadpoles, and spread of disease. When a Federal action, such as permitting livestock grazing on Federal lands, may affect a listed species, consultation between us and the action agency is required pursuant to section 7 of the Act. The conclusion of consultation may include mandatory changes in livestock programs in the form of measures to minimize take of a listed animal or to avoid jeopardizing the continued existence of a listed species. Changes in a proposed action resulting from consultations are almost always minor. Since the Chiricahua leopard frog was proposed for listing, we have conducted a number of section 7 conferences with the Forest Service in regard to grazing in Chiricahua leopard frog habitat. None of these conferences have concluded that grazing would jeopardize the continued existence of the Chiricahua leopard frog. Where grazing would affect occupied habitat we have in some cases anticipated that take of Chiricahua leopard frogs would occur, and included measures to minimize that take. These measures have included, for instance, guidelines for stock tank maintenance, guidelines for cleaning or drying equipment and gear used at one tank before using it at another tank as a means of preventing disease transmission, and preconstruction surveys for frogs in areas to be affected by range improvement projects. In no case have we required changes in stocking rates, use of pastures, or utilization rates, or made other major modifications to livestock operations during the section 7 process.

We cannot predetermine the outcome of section 7 consultations, but because the Chiricahua leopard frog coexists with grazing throughout its range, we believe the likelihood of a biological opinion with a jeopardy conclusion is low. In those cases in which we anticipate that take of Chiricahua

leopard frogs would occur, any reasonable and prudent measures, along with terms and conditions, identified to minimize take cannot alter the basic design, location, scope, duration, or timing of an action and may involve only minor changes (50 CFR 402.14(i)(2)). A permittee can ensure that his or her rights and concerns in the section 7 consultation process are addressed to the maximum extent possible under the law by applying for applicant status with the action agency pursuant to 50 CFR 402.14. Applicant status guarantees permittees certain rights in the section 7 process, such as submitting information, having veto power over requests for extensions of the consultation period beyond 60 days, and reviewing and commenting on draft biological opinions.

In regard to grazing activities on non-Federal lands, the special rule provides an exemption from the section 9 take prohibitions for operation and maintenance of stock tanks. These are the ranching activities on non-Federal lands most likely to take a Chiricahua leopard frog. By providing this exemption, we acknowledge the importance of these tanks to the conservation of the species, and that populations of frogs can coexist with use and maintenance of the tanks. If other non-Federal ranching activities may result in take of Chiricahua leopard frogs, these activities may be permitted by the Service by issuance of an incidental take permit to the landowner pursuant to section 10(a)(1)(B) of the Act.

*Issue 9:* One commenter believed that our assertion in the proposed rule that tadpoles may be trampled by cattle is overly speculative.

*Response:* There are no observations of trampling that we are aware of with regard to grazing of cattle and Chiricahua leopard frogs. However, in southeastern Idaho, hundreds of metamorphosing western toads (*Bufo boreas*) were trampled when a large herd of sheep were driven through a pond that had dried 4 days earlier. The majority of the young toads at the pond were left dead or dying; however, at least some adult toads escaped injury by hiding under logs or in rodent burrows (Bartelt 1998). Nevertheless, we believe this observation from Idaho supports our contention that certain life stages of the Chiricahua leopard frog are probably trampled by cattle at livestock tanks and in other habitats where cattle have access to aquatic habitats used by this frog. Discussions in the "Summary of Factors Affecting the Species" section describe other ways that direct mortality of frogs may occur from livestock

grazing. Despite these potentially adverse effects from livestock grazing, we recognize the importance of stock tanks as providing additional habitat for the Chiricahua leopard frog and find that an overall conservation benefit occurs from the maintenance of these stock tanks. We do not believe that cattle trampling alone would lead to the extirpation of a population of Chiricahua leopard frogs.

*Issue 9:* We did not follow regulations pertaining to required notifications and public participation. One commenter stated that we did not provide notice of the proposed rule to State agencies and countries, or publish a summary in each area in which the frog occurs, in accordance with 16 U.S.C. 1533(b)(5). Another commenter believed we did not provide for adequate public participation in the rulemaking process, and criticized us for only providing 12 to 15 days notice of the public hearings. Commenters contend that hearings were held at night in driving rain storms, which was inconvenient, and notices of extension of the comment period included 2 deadline dates, which was confusing.

*Response:* Procedures for public participation and review in regard to proposed rules are defined at section 4(b)(5) of the Act, 50 CFR 424, the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), and other applicable law. In response to commenters' specific comments, notice of publication of the proposed rule, which included a web address where the rule could be viewed or downloaded, was mailed on June 20, 2000, from our Phoenix Office to 149 agencies, organizations, and individuals, including 3 Arizona State agencies and 3 New Mexico State agencies, and a Federal and State agency in Mexico. Summaries of the proposed rule were published in the form of legal notices in 9 newspapers in Arizona and New Mexico, as described in the beginning of this section. We also provided news releases to newspapers and news services, and a number of newspaper articles were published describing the frog, its status, and the proposed rule. Similar notifications were provided for the reopening of the comment period.

Weather may have been a factor in the low turnout at the public hearing in Bisbee, AZ. As the commenter noted, heavy rain may have kept some people from coming, especially if they had to drive more than a few miles. In contrast, the weather in Silver City, NM, was good on the day of the hearing. We held the hearings in the evening (7:00–9:00 p.m.) because most people work or have other commitments during the day. The

September 27, 2000, **Federal Register** included two notices of the reopening of the comment period, announcement of the public hearings, and clarification of the special rule. The first stated the comment period was reopened until November 13, 2000; the second stated comments were due on October 27, 2000. We accepted comments until November 13, and we did not receive any comments after the close of the comment period. We made it clear at the public hearings and in the legal notices and news releases announcing the hearings that the comment period was open until November 13. We agree that this may have been confusing to some people, but if someone had only seen the **Federal Register** notice that comments were due October 27, and submitted comments in accordance with that incorrect notice, their comments were still accepted and entered into the administrative record.

Public notices were published in Bisbee, AZ, and Silver City, NM, 12 days prior to the public hearings in those cities. A **Federal Register** notice announcing the reopening of the comment period, the public hearing, and a clarification of the special rule was published 13 days prior to the hearing in Silver City and 14 days prior to the hearing in Bisbee. We believe on the whole the public had ample notice of the hearings and ample opportunity to comment on the rule, both orally at public hearings and in written comments. The Act only requires that one public hearing be held, if requested (section 4(b)(5)(E)). We held two hearings. Notification was provided both in the **Federal Register** and in newspaper notices in seven newspapers. We also sent a news release to 45 news outlets servicing communities in the historical range of the Chiricahua leopard frog, and we published articles on October 5, 2000, in Bisbee, AZ, and October 2, 2000, in Silver City, NM, announcing the hearings and discussing the proposed rule. On September 27, 2000, we mailed an announcement of the hearings, reopening of the comment period, and clarification of the proposed special rule to 163 individuals, organizations, and government agencies within the historical range of the frog. Furthermore, our regulations only requires a 60-day comment period on proposed rules (50 CFR 424.16 (c)(2)). The comment period on the Chiricahua leopard frog proposed rule was initially open for 120 days, and then reopened for 45 days, for a total of 165 days. In conclusion, we maintain that the public had ample opportunity to comment on the proposed rule, and ample

notification that comments were being solicited.

*Issue 10:* Critical habitat should be designated. Commenters stated that, without critical habitat, section 7 will only protect currently occupied habitat, which is insufficient for medium- or long-term survival of the species. One of our peer reviewers suggested we designate only the unoccupied major recovery areas as critical habitat. The reviewer argues that if only major, unoccupied recovery areas are designated as critical habitat, these areas and their recovery potential would be protected under the section 7 consultation regulations, but the location of occupied sites would not be revealed. The reviewer recommends several valley bottom cienega complexes and montane canyons in southeastern Arizona for designation as critical habitat.

*Response:* Our rationale for determining that designation of critical habitat is not prudent is grounded in the concern that publication of maps and locations of Chiricahua leopard frogs will increase threats of collection, vandalism, and disease transmission for this species (see the "Critical Habitat" section of this rule). These threats would only be a concern where the frog actually occurs.

The Chiricahua leopard frog is largely absent from rivers, springs, cienegas, and other valley wetlands, as well as many of the major montane canyons of southeastern Arizona. Historically, these areas were probably very important and may have contained the largest, most stable populations of the Chiricahua leopard frog in southeastern Arizona. Most are now dominated by nonnative predators that have apparently excluded the Chiricahua leopard frog (Rosen *et al.* in press, 1996a, 1994). This scenario has been repeated elsewhere within the range of the Chiricahua leopard frog.

Critical habitat is habitat that is essential to the conservation of the species (section 3 of the Act; see "Critical Habitat" section herein). Because of the presence of a variety of nonnative predators, most of the sites suggested by the reviewer for designation of critical habitat do not currently contain features that are essential to the conservation of the Chiricahua leopard frog. Whether these sites are capable of being restored is unknown. The presence of a variety of nonnative predators with very different life histories make restoration especially challenging. For example, although bullfrogs can be eliminated from small, simple aquatic systems (Schwalbe and Rosen 2001, Schwalbe *et al.* 2000), we currently do not know how to remove

them from large, complex aquatic systems. We also do not know how to control crayfish, even on a relatively small scale, and both the bullfrog and crayfish can live in, at least for a while, and disperse through terrestrial habitats. Our ability to control nonnative fish is better, but accomplishing fish control in a large system would be challenging, at best. A further problem would be preventing the reintroduction of these species, if we were successful at initially removing them. As a result, we do not know if the areas described by the reviewer can ever support Chiricahua leopard frogs in the future, and thus whether they are essential for the conservation of the species is questionable. If we were successful at eliminating nonnative predators and Chiricahua leopard frogs recolonized or were reestablished in these areas, then our concern about vandalism, collection, and disease transmission would extend to these areas, as well as the sites occupied today, and our rationale for not designating critical habitat in currently occupied sites would extend to these newly-occupied habitats.

In the absence of critical habitat designation, many of the areas referred to by the peer reviewer will be protected as a result of the presence of other critical habitat designations and listed species that require healthy riparian systems, special management that is typically extended to riparian and aquatic sites on Forest Service and Bureau of Land Management lands, and protection afforded by section 404 of the Clean Water Act and other regulations. In addition, if a site has potential to support Chiricahua leopard frogs, and the species may be present, a Federal action agency should still consult with us pursuant to section 7 of the Act if the actions of that agency may affect the survival or recovery of the frog via effects to its habitat.

In time, our ability to control nonnative predators should improve, and our understanding of the conservation needs of the Chiricahua leopard frog will be honed. The need for critical habitat will be revisited during preparation of a recovery plan for the species, and if new information becomes available suggesting designation of critical habitat is prudent, we may revisit a critical habitat designation at that time.

#### Peer Review

In accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review, we requested the expert opinions of four independent specialists regarding pertinent scientific

or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We requested four individuals who possess expertise on Chiricahua leopard frog natural history and ecology to review the proposed rule and provide any relevant scientific data relating to taxonomy, distribution, or to the supporting biological data used in our analyses of the listing factors. We received peer reviews from all entities (including AGFD). All agreed that the Chiricahua leopard frog is in decline over all or significant portions of its range and faces considerable threats where it still exists. AGFD favored conservation agreements over Federal listing as a means to recover the species; the other reviewers believed the frog should be listed as a threatened species. We have carefully considered and incorporated peer reviewers' comments into the final rule, as appropriate. We briefly summarize their observations below.

One of the peer reviewers recommended designation of critical habitat (that comment is addressed above); the other reviewers did not address critical habitat. One of the reviewers did not object to the special rule, two others supported it, and the fourth recommended expanding its scope (comment addressed above). Two of the peer reviewers provided documentation of recent die-offs or extirpations in New Mexico at three sites near Hurley and a fourth site on the Mimbres River. Chytridiomycosis was confirmed at one of the sites, and the pattern of decline at the other three suggests chytridiomycosis may be involved there as well. One of the reviewers emphasized that chytridiomycosis is emerging as a viable explanation for observed patterns of Chiricahua leopard frog declines. Small populations that are isolated, such as in remote stock tanks, may be less susceptible to contracting chytridiomycosis than large populations of frogs or individuals in metapopulations, in which the likelihood of disease transmission is much greater. This perspective tempers current thought that metapopulations are crucial to survival of the frog, but may help explain why Chiricahua leopard frog populations are often small and isolated, and why metapopulations are so rare. The reviewer notes further that the growth of chytrids is retarded

by warm waters, which may help explain why Chiricahua leopard frogs have persisted at some geothermal springs in New Mexico. One of the reviewers provided the following new survey data for New Mexico: during May to August 2000, the frog was found at only 8 of 34 sites at which the species had been found from 1994 to 1999. This same reviewer described two proposed mining projects in New Mexico that may adversely affect Chiricahua leopard frogs and their habitats.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Chiricahua leopard frog should be classified as a threatened species. We followed the procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) issued to implement the listing provisions of the Act. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Chiricahua leopard frog (*Rana chiricahuensis* Platz and Mecham) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Riparian and wetland communities throughout the range of the Chiricahua leopard frog are much altered and reduced in size compared to early- to mid-19th century conditions (Arizona Department of Water Resources 1994; Brown 1985; Hendrickson and Minckley 1984; Minckley and Brown 1982). Dams, diversions, groundwater pumping, introduction of nonnative organisms, woodcutting, mining, contaminants, urban and agricultural development, road construction, overgrazing, and altered fire regimes have all contributed to reduced quality and quantity of riparian and wetland habitat (Belsky and Blumenthal 1997; Wang *et al.* 1997; DeBano and Neary 1996; Bahre 1995; Brown 1985; Hadley and Sheridan 1995; Hale *et al.* 1995; Ohmart 1995; Stebbins and Cohen 1995; Hendrickson and Minckley 1984; Arizona State University 1979; Gifford and Hawkins 1978).

Many of these changes began before ranid frogs were widely collected or studied in Arizona and New Mexico. The Chiricahua leopard frog may have been much more widely distributed in pre-settlement times than is indicated by historical collections. Extant sites are generally located in stream and river drainage headwaters, springs, and stock

tanks. However, historical records exist for the Verde, San Pedro, Santa Cruz, and Gila Rivers, and the species is extant in the San Francisco and Mimbres Rivers in New Mexico and on the Blue River in Arizona. This suggests that it may have occurred in other major drainages such as the mainstems of the Salt, White, Black, and Little Colorado Rivers. The species is also now largely absent from valley bottom cienega complexes in southeastern Arizona, which likely contained large populations historically (Rosen *et al.* in press). Habitat degradation, diversions, loss or alteration of stream flows, groundwater pumping, introduction of nonnative organisms, and other changes are often most apparent on these larger drainages and cienega complexes (Sredl *et al.* 1997, State of Arizona 1990, Hendrickson and Minckley 1984).

Although the cumulative effect of such changes to its habitat is unknown, the extirpation of the Chiricahua leopard frog may have occurred in some major drainages and cienegas prior to its occurrence being documented. Large drainages connect many of the extant and historical populations and may have served as important corridors for exchange of genetic material. Riverine and cienega populations probably served as a source of frogs for recolonization if extirpations occurred within satellite populations (Sredl *et al.* 1997, Rosen *et al.* 1996a).

Beavers (*Castor canadensis*) likely promoted the creation of Chiricahua leopard frog habitat. The activities of beavers tend to inhibit erosion and downcutting of stream channels (Parker *et al.* 1985) and ponded water behind beaver dams is favored habitat for ranid frogs. However, beavers were extirpated from some areas by the late 1800s and are still not abundant or are extirpated from other areas where they were once common (Hoffmeister 1986). For example, in Arizona beavers are extirpated from the Santa Cruz River and, before recent reestablishments, were extirpated from the upper San Pedro River. Loss of this large mammal and the dams it constructed likely resulted in loss of backwaters and pools favored by the Chiricahua leopard frog.

These changes occurred before leopard frogs were widely collected; thus, hypotheses concerning correlations between extirpations of beaver and Chiricahua leopard frogs cannot be tested by comparing historical versus extant frog populations. Where beavers occur within the range of the Chiricahua leopard frog today, beaver ponds are often inhabited by nonnative predators, such as introduced fishes and bullfrogs, that prey upon and preclude

viable populations of Chiricahua leopard frogs. Because nonnative species often thrive in beaver ponds, the presence of beavers could actually hinder recovery of the Chiricahua leopard frog in some systems.

As discussed above in Issue 8 of the comments section, small earthen ponds commonly known as stock tanks, constructed as water sources for livestock, are important habitats for the Chiricahua leopard frog, particularly in Arizona (Sredl and Jennings in press, Sredl and Saylor 1998). In some areas, stock tanks replaced natural springs and cienegas or were developed at spring headwaters or cienegas and now provide the only suitable habitat available to the Chiricahua leopard frog. For instance, the only known sites of the Chiricahua leopard frog in the San Rafael and San Bernardino valleys, Buckskin Hills, and in the Patagonia Mountains of Arizona are stock tanks. For example, data suggest Arizona populations of this species have fared better in stock tanks than in natural habitats. In Arizona, Sredl and Saylor (1998) found a significantly higher proportion (63 percent) of known extant Chiricahua leopard frog populations in stock tanks as compared to riverine habitats (35 percent), suggesting Arizona populations of this species have fared better in stock tanks than in natural habitats. However, this generalization does not hold for New Mexico, where in recent years many stock tank populations were extirpated, apparently by disease (Painter 2000). Sredl and Saylor (1998) found that stock tanks in Arizona are occupied less frequently by nonnative predators (with the exception of bullfrogs) than natural sites. For all these reasons, there is a high probability that the Chiricahua leopard frog would be extirpated from many more areas if ranchers had not built and maintained stock tanks for livestock production.

Although stock tanks provide refugia for frog populations and are important for this species in many areas, only small populations are supported by such tanks and these habitats are very dynamic. Tanks often dry out during drought, and flooding may destroy downstream impoundments or cause siltation, either of which may result in loss of aquatic communities and extirpation of frog populations. Periodic maintenance to remove silt from tanks may also cause a temporary loss of habitat and mortality of frogs. Populations of nonnative introduced predaceous fishes, bullfrogs, and other species, although less prevalent than in natural habitats, sometimes become established in stock tanks and are implicated in the decline of the

Chiricahua leopard frog (Rosen *et al.* 1996a, 1994). Stock tanks may facilitate spread of infectious disease and nonnative organisms by providing habitats for frogs in arid landscapes that otherwise may have served as barriers to the spread of such organisms. In New Mexico, stock tank populations in some areas were apparently eliminated by disease (Painter 2000, Declining Amphibian Populations Task Force 1993). Sredl and Saylor (1998) caution that stock tank populations are sometimes simply mortality sinks with little reproduction or recruitment.

The effects of livestock grazing on leopard frog populations are not well-studied; however the Chiricahua leopard frog coexists with grazing activities throughout its range. For instance, a large and healthy population of Chiricahua leopard frogs coexists with cattle and horses on the Tularosa River, New Mexico (Randy Jennings, Western New Mexico University, pers. comm. 1995). A metapopulation of Chiricahua leopard frogs exists in stock tanks on allotments in the Buckskin Hills of the Coconino National Forest, Arizona. Maintenance of viable populations of Chiricahua leopard frogs is thought to be compatible with well-managed livestock grazing, and as discussed, stock tanks are currently important leopard frog habitats, particularly in Arizona. However, adverse effects to the species and its habitat may occur under certain circumstances (Sredl and Jennings in press). These effects include deterioration of watersheds, erosion and/or siltation of stream courses, elimination of undercut banks that provide cover for frogs, loss of wetland and riparian vegetation and backwater pools, and spread of disease and nonnative predators (Sredl and Jennings in press, U.S. Fish and Wildlife Service 2000, Belsky *et al.* 1999, Jancovich *et al.* 1997 Ohmart 1995; Hendrickson and Minckley 1984; Arizona State University 1979). Increased watershed erosion caused by grazing can accelerate sedimentation of deep pools used by frogs (Gunderson 1968). Sediment can alter primary productivity and fill interstitial spaces in streambed materials with fine particulates that impede water flow, reduce oxygen levels, and restrict waste removal (Chapman 1988). Eggs, tadpoles, metamorph frogs, and frogs hibernating at the bottom of pools or stock tanks are probably trampled by cattle (US Fish and Wildlife Service 2000, Bartelt 1998).

In June 1994, a die-off of Chiricahua leopard frogs occurred at a stock tank in the Chiricahua Mountains, Arizona, that reduced the frog population from 60 to

80 adults to fewer than 10 (Sredl *et al.* 1997). Analysis of dead and moribund frogs and water from the tank indicated that disease was unlikely to be the cause of the die-off; however, levels of hydrogen sulfide were high enough to be toxic to wildlife. The authors suspected that high detritus loads (including cattle feces), low water levels, high water temperature, and low concentrations of dissolved oxygen created a suitable environment for sulphur-producing bacteria that produced toxic levels of hydrogen sulfide. Chiricahua leopard frogs were not found at this site in 1998.

Many large impoundments or lakes were created within the range of the Chiricahua leopard frog for water storage, recreation, and as a source of hydroelectric power. For instance, historical records exist for the species from Luna Lake, Nelson Reservoir, Hawley Lake, and Rainbow Lake north of the Gila River in Arizona; and Lake Roberts, Patterson Lake, and Ben Lilly Lake in New Mexico, but surveys at these sites since 1985 located no frogs (Painter 2000, AGFD 1997). Currently, large impoundments invariably support populations of predaceous nonnative fishes, crayfish, and/or bullfrogs. Predation and possibly competition with leopard frogs likely caused or contributed to the disappearance of the Chiricahua leopard frog from reservoirs.

Construction and operation of reservoirs also alter downstream flows and can result in dramatic changes in stream hydrology, rates of erosion and sedimentation, riparian vegetation, and other components of riparian ecosystems (Johnson 1978). The effects of these changes on Chiricahua leopard frog populations are unknown. However, downstream effects of such impoundments are implicated in the decline of other anurans (frogs and toads), including the endangered arroyo toad (*Bufo californicus*) (Service 1993) and the foothill yellow-legged frog (*Rana boylei*) (Lind *et al.* 1996).

On the Trinity River in California, the extent of riparian vegetation increased with an accompanying decrease in sandbars, of which the latter was breeding habitat of the foothill yellow-legged frog. Unseasonably high flows from dam releases also resulted in loss of entire cohorts or age groups of larval frogs (Lind *et al.* 1996). Similar effects may occur in Chiricahua leopard frog habitats. Water temperatures are often colder below dams than in similar unaltered systems (Lind *et al.* 1996), which may retard development of frog eggs and larvae (Stebbins and Cohen 1995). Lack of scouring flood flows below dams may also create relatively

stable pools with abundant vegetation that favors establishment of bullfrogs (Lind *et al.* 1996). Dispersal of nonnative fish from impoundments to either downstream or upstream reaches may result in further adverse effects to frog populations.

Evidence of historical mining is commonly encountered within the range of the Chiricahua leopard frog, but few of these mines are currently active and most do not appear to directly affect the wetland and riparian areas occupied by the species. Only a few extant or historical Chiricahua leopard frog sites are thought to be currently directly affected by mining operations. Active mining occurs in California Gulch, Pajarito Mountains, AZ (an historical site), but is limited to a short reach of the drainage. Mining in the area of Hurley, NM, may affect Chiricahua leopard frogs in that area (if populations have not been eliminated by disease; R. Jennings, pers. comm. 2000). The recently proposed Gentry Iron Mine may be located within 1.6 km (1.0 mi) of two extant Chiricahua leopard frog populations on the Tonto National Forest, Arizona. The effects of that mine, if built, are unknown. In New Mexico, both the proposed expansion of the Santa Rita open-pit copper mine near Silver City, and a proposed beryllium mine on the south side of Alamosa Creek, may affect Chiricahua leopard frog populations in those areas (C. Painter pers. comm. 2000). The resulting effects of the proposed mining activities on these populations are uncertain at this time, but may include changes in water quality and flow rates.

In the past, spillage from mine leach ponds probably affected some Chiricahua leopard frog populations. In June 1969, leach ponds at a mine at Clifton, AZ, breached and spilled a heavy, red residue (probably iron oxide) into Chase Creek, which flowed for 4 miles to the San Francisco River. Rathbun (1969) estimated a nearly 100 percent kill of "leopard" frogs and tadpoles along the 4 mile reach of Chase Creek. Given the location and elevation of the site, the leopard frogs affected could have been lowland leopard frogs (*Rana yavapaiensis*) or Chiricahua leopard frogs. Overflow, leakage, and tailings dam failures at the copper mine at Cananea, Sonora, occurred several times from 1977 to 1979 and severely affected many miles of the upper San Pedro River in Sonora and Arizona. A spill in 1979 resulted in water that was brick red in color with a pH as low as 3.1. Aquatic life in the river was killed (U.S. Bureau of Land Management 1998). The last known occurrence of the Chiricahua leopard frog in the upper

San Pedro River was 1979 (Service files).

Although mining activities were more widespread historically and may have constituted a greater threat in the past, the mining of sand and gravel, iron, gold, copper, beryllium, or other materials remains a potential threat to the Chiricahua leopard frog. In addition as noted in Factor C of this section, mining also has indirect adverse effects to this species.

Fire frequency and intensity in Southwestern forests are much altered from historic conditions (Dahms and Geils 1997). Before 1900, surface fires generally occurred at least once per decade in montane forests with a pine component. Beginning about 1870 to 1900, these frequent ground fires ceased to occur due to intensive livestock grazing that removed fine fuels coupled with effective fire suppression in the mid to late 20th century that further prevented frequent, widespread ground fires (Swetnam and Baisan 1996). Absence of ground fires allowed a buildup of woody fuels that precipitated infrequent but intense crown fires (Danzer *et al.* 1997, Swetnam and Baisan 1996). Absence of vegetation and forest litter following intense crown fires exposed soils to surface and rill (a channel made by a small stream) erosion during storms, often causing high peak flows, sedimentation, and erosion in downstream drainages (DeBano and Neary 1996). Following the 1994 Rattlesnake fire in the Chiricahua Mountains, Arizona, a debris flow filled in Rucker Lake and many pools in Rucker Canyon, both of which are historical Chiricahua leopard frog sites. Leopard frogs (either Chiricahua or Ramsey Canyon leopard frogs) apparently disappeared from Miller Canyon in the Huachuca Mountains, Arizona, following a 1977 crown fire in the upper canyon and subsequent erosion and scouring of the canyon during storm events (Tom Beatty, Miller Canyon, pers. comm. 2000). Leopard frogs were historically known from many sites in the Huachuca Mountains; however, natural pools and ponds are largely absent now and the only breeding leopard frog populations occur in man-made tanks and ponds. Bowers and McLaughlin (1994) list six riparian plant species they believed might have been eliminated from the Huachuca Mountains as a result of floods and debris flow following destructive fires.

Other activities have also affected the habitat of the Chiricahua leopard frog. For instance, in an attempt to increase flow, explosives were used at Birch Springs in the Animas Mountains, Hidalgo County, New Mexico, to open

up the spring. The explosion resulted in destruction of the aquatic community, flows were reduced rather than increased, and Chiricahua leopard frogs subsequently disappeared (N. Scott, pers. comm. 1994). In the first half of 2001, Cuchillo Negro Spring in Sierra County, New Mexico, was excavated probably in an attempt to increase flows for downstream agricultural use. The spring, located on Bureau of Land Management lands, was occupied by Chiricahua leopard frogs prior to the excavation. Surveys in July 2001, after the excavation, failed to locate any Chiricahua leopard frogs, and pools that provided frog habitat had been largely destroyed (J. Rorabaugh, pers. obs. 2001).

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* The collection of Chiricahua leopard frogs in Arizona is prohibited by Arizona Game and Fish Commission Order 41, except where such collection is authorized by special permit. Collection of Chiricahua leopard frogs is also prohibited in Mexico. The collection or possession of Chiricahua leopard frogs is not prohibited in New Mexico.

Over-collection for commercial purposes is known to be a contributing factor in the decline of other ranid frogs (Jennings and Hayes 1985, Corn and Fogelman 1984). Although collection is not documented as a cause of population decline or loss in the Chiricahua leopard frog, Painter (2000) notes that individuals have repeatedly joked to him that these frogs make good bass bait. The collection of large adult frogs for food, research, pets, or other purposes, particularly after a winter die-off or other event that severely reduces the adult population, can hasten the extirpation of small populations. The listing of the Chiricahua leopard frog and its recognition as a rare species are reasonably expected to increase its value to collectors. In 1995, many large adult Ramsey Canyon leopard frogs (closely related to the Chiricahua leopard frog) were reportedly illegally collected from a site in the Huachuca Mountains, Arizona, following publicity about the rare status of the frog. Leopard frogs are common in the pet trade in the United States, and although we are not aware of U.S. commercial trade in Chiricahua leopard frogs, it may occur. Diaz and Diaz (1997) note that Chiricahua leopard frogs are sometimes sold in pet shops in Mexico, but, as discussed, the identity of these frogs is questionable.

*C. Disease or predation.* Predation by introduced, nonnative bullfrogs, fishes, tiger salamanders, and crayfish is

implicated as a contributing factor in the decline of ranid frogs in western North America (Fernandez and Rosen 1996, Bradford *et al.* 1993, Hayes and Jennings 1986, Moyle 1973), and may be the most important factor identified so far in the current decline of the Chiricahua leopard frog (Rosen *et al.* 1994, 1996a). In southeastern Arizona, Rosen *et al.* (1994, 1996a) documented 13 nonnative predaceous vertebrate species in aquatic communities in the range of the Chiricahua leopard frog, including bullfrog, tiger salamander, and 11 fish species including bass, trout, and catfish, among others.

Rosen *et al.* (1994, 1996a) found that Chiricahua leopard frogs were replaced by bullfrogs and centrarchid fish. Sixteen of 19 sites where Chiricahua leopard frogs occurred lacked nonnative vertebrates. All historical frog sites that lacked Chiricahua leopard frogs supported nonnative vertebrates. At the three sites where Chiricahua leopard frogs occurred with nonnatives (one site with green sunfish, *Lepomis cyanellus*, and two with tiger salamanders), either the frog or the nonnative vertebrate was rare. In two of the three cases, frogs may have derived from other nearby sites (Rosen *et al.* 1996a), and thus may have represented immigrants rather than a viable population.

In the San Rafael Valley, Arizona, Chiricahua leopard frogs were only found at sites that lacked nonnative fish and bullfrogs (Snyder *et al.* 1996). In the White Mountains of Arizona, disappearance of Chiricahua leopard frogs from most historical sites correlated with the appearance of tiger salamanders and nonnative crayfish (Fernandez and Rosen 1996, Fernandez and Bagnara 1995). Crayfish were found to prey upon Chiricahua leopard frog larvae, metamorphs, and adults. Crayfish recently spread to the breeding pond of one of the last and possibly the most robust populations of Chiricahua leopard frogs in the White Mountains, Arizona (M. Sredl, pers. comm. 1999, Fernandez and Rosen 1998), and are now very abundant in former Chiricahua leopard frog habitats on the Blue River, Arizona (J. Platz, pers. comm. 2000).

Sredl and Howland (1994) noted that Chiricahua leopard frogs were nearly always absent from sites supporting bullfrogs and nonnative predatory fishes; however, Rosen *et al.* (1996a) suggested further study was needed to evaluate the effects of mosquitofish, trout, and catfish on frog presence. Rosen *et al.* (1996a) suspected that catfish would almost always exclude Chiricahua leopard frogs, and that trout may exclude leopard frogs.

The Rio Grande leopard frog (*Rana berlandieri*) is a recent introduction to southwestern Arizona and southeastern California (Platz *et al.* 1990). Although the species does not presently occur within the range of the Chiricahua leopard frog, it is rapidly expanding its distribution and currently occurs as far east as the Phoenix area (Rorabaugh *et al.* 2002). If it continues to spread eastward, the ranges of the Rio Grande and Chiricahua leopard frogs may overlap in the future. This large, introduced leopard frog might prey on small Chiricahua leopard frogs (Platz *et al.* 1990), and tadpoles of the two species may compete.

In contrast to nonnative aquatic vertebrates, numerous species of native fishes, the Sonoran mud turtle (*Kinosternon sonoriense*), other species of native ranid frogs, and native garter snakes commonly coexist with the Chiricahua leopard frog (Rosen *et al.* 1996a, Platz and Mecham 1979). Tiger salamanders are native to the following portions of the Chiricahua leopard frog's range: San Rafael Valley in southeastern Arizona (*Ambystoma tigrinum stebbinsi*), the northern portion of the species' range (*Ambystoma tigrinum nebulosum*), and the mountains of Sonora, Chihuahua, and Durango (*Ambystoma rosaceum*). Native fishes, such as trout (*Oncorhynchus*), chub (*Gila*), longfin dace (*Agosia chrysogaster*), and topminnow (*Poeciliopsis*), also occur within the range of the Chiricahua leopard frog.

Fish, frogs, and salamanders, both native and nonnative, may facilitate disease transmission among Chiricahua leopard frog populations. Bullfrogs, Rio Grande leopard frogs, lowland leopard frogs, Sonora tiger salamanders, and other species found with Chiricahua leopard frogs are known to contract chytridiomycosis (Davidson *et al.* 2000, Speare and Berger 2000, Sredl *et al.* 2000), and could conceivably transmit that disease or other diseases to Chiricahua leopard frogs. Kiesecker *et al.* (2001) showed that rainbow trout (*Oncorhynchus mykiss*) may serve as a vector for a pathogenic water mold, *Saprolegnia ferax*, that has been associated with embryonic mortality of amphibians in the Cascade Mountains of Oregon, suggesting stocking of game fishes could facilitate disease transmission, as well.

Postmetamorphic Death Syndrome (PDS) was implicated in the extirpation of Chiricahua leopard frog populations in Grant County, New Mexico, as well as in other frog and toad species. All stock tank populations of the Chiricahua leopard frog in the vicinity of Gillette and Cooney tanks disappeared within a

three-year period, apparently as a result of PDS (Declining Amphibian Populations Task Force 1993). The syndrome is characterized by death of all or nearly all metamorphosed frogs in a short period of time, leaving only tadpoles surviving in the population. Dead or moribund frogs are often found during or immediately following winter dormancy or unusually cold periods. The syndrome appears to spread among adjacent populations causing regional loss of populations or metapopulations. Similar die-offs or spring absence of frogs were noted in Arizona and Sonora. Steve Hale (Tucson, AZ, pers. comm. 1994) noted that in some years, very few Chiricahua leopard frogs would occur in the canyons of the Santa Rita and Pajarito mountains in the spring, suggesting that frogs were dying during the winter months. The apparent post-metamorphic death of the Tarahumara frog was documented in southern Arizona and northern Sonora as early as 1974, and by 1983 this species had died out in Arizona (Hale 2001, Hale *et al.* 1995, Hale and Jarchow 1988).

Hale and Jarchow (1988) suggested arsenic and or cadmium poisoning might be contributing factors in these frog die-offs. Arsenic often occurs at high levels near sulfite mine tailings and may be leached by rainfall containing elevated levels of sulfate (Hale and Jarchow 1988). Cadmium originating from airborne emissions from copper smelters in southern Arizona and northern Sonora was identified as another possible cause of mortality. Frogs appeared to persist most consistently at springs and headwaters where cadmium to zinc ratios were relatively low, which is consistent with the theory that contaminants were washing into streams and accumulating in downstream reaches. Precipitation collected in 1984 to 1985 in southeastern Arizona had a depth-weighted mean pH of 4.63 and carried high levels of sulfate, arsenic, cadmium, copper, lead, and zinc. High acidity and sulfate concentration occurred when upper-level winds were from the directions of copper smelters, particularly those at Douglas, AZ, and Cananea, Sonora (Blanchard and Stromberg 1987). In regard to the northern leopard frog, waters no more acidic than pH 6.0 are optimal for fertilization and early development (Schlichter 1981). When exposed to waters of pH 5.5 for 10 days, 72 percent of northern leopard frogs died, versus a control group held in pH 7.0 that exhibited 3.5 percent mortality (Vatnick *et al.* 1999). These results suggest that

precipitation may have been acidic enough to affect Chiricahua leopard frog reproduction and survival. Small aquatic systems, such as stock tanks, that could be swamped by runoff during heavy rainfall events are most likely to be affected. Stock tanks with pHs of less than 4 were noted in the late 1990s on the west slope of the Huachuca Mountains, Arizona, which is near the smelter at Cananea (M. Pruss, pers. comm. 1999). The smelters at Douglas and Cananea are now closed, thus we would expect a reduction or cessation of contaminant laden or acidic rainfall. How long it might take for residual elevated levels of cadmium, arsenic, and other smelter-related contaminants in the environment to disperse is unknown.

In the 1990s disease was recognized as a significant factor, if not the most important proximate factor, in global amphibian decline. In retrospect, the die-offs observed in New Mexico and attributed to PDS, and die-offs of leopard frogs and Tarahumara frogs described above in Arizona and Sonora, appear consistent with disease outbreaks elsewhere in the world. Lips (1998) documented reduced abundance and skewed sex ratios of two anuran species, and dead and dying individuals of six other amphibian species in Puntarenas Province, Costa Rica. Her observations were consistent with a pathogen outbreak, and recent evidence suggests chytridiomycosis may be responsible for the declines (Longcore *et al.* 1999, Berger *et al.* 1998). Lips (1998) noted that declines in her study area were similar to those reported for Monteverde, Costa Rica, the Atlantic coast of Brazil, and Australia. Amphibian decline in these areas spread wave-like across the landscape, suggestive of pathogen dispersal. Further work by Berger *et al.* (1998) showed that chytrid fungi were associated with amphibian declines in Panama and Queensland, Australia; the authors hypothesize it is the proximate cause of amphibian decline in these areas. Evidence now suggests chytridiomycosis is responsible for observed declines of frogs, toads, and salamanders in portions of Central America (Panama and Costa Rica), South America (Atlantic coast of Brazil, Ecuador, and Uruguay), Australia (eastern and western States), New Zealand (South Island), Europe (Spain and Germany), Africa (South Africa, "western Africa", and Kenya), Mexico (Sonora), and the United States (8 States) (Speare and Berger 2000, Longcore *et al.* 1999, Berger *et al.* 1998, Hale 2001). Ninety-four species of

amphibians have been diagnosed as infected with the chytrid *Batrachochytrium dendrobatidis* (Hale 2001, Speare and Berger 2000). The proximal cause of extinctions of two species of Australian gastric brooding frogs and the golden toad (*Bufo periglenes*) in Costa Rica was likely chytridiomycosis. Another species in Australia for which individuals were diagnosed with the disease may now be extinct (Daszak 2000).

In Arizona, chytrid infections have been reported from four populations of Chiricahua leopard frogs. Two populations of the closely related Ramsey Canyon leopard frog have also been infected (M. Sredl, pers. comm. 2000). In New Mexico, chytridiomycosis was identified in a declining population near Hurley, and patterns of decline at three other populations are consistent with chytridiomycosis (R. Jennings, pers. comm. 2000). Retrospective analysis of Tarahumara frog specimens collected during a die-off in Sycamore Canyon, Arizona, in 1974 showed they were infected with chytrids (T.R. Jones and P.J. Fernandez, pers. comm. 2001), and the disease has now been confirmed from all Tarahumara frog declines and extirpations in Arizona and Sonora where specimens have been available for examination (Hale 2001). Although chytridiomycosis has been associated with Southwestern ranid frog declines and extirpations, the role of the fungi in the larger picture of frog population dynamics is as yet undefined. It is clear that Chiricahua leopard frog populations can exist with the disease for extended periods. The frog has coexisted with chytridiomycosis in Sycamore Canyon, Arizona, since at least 1974. However, at a minimum, it is an additional stressor, resulting in periodic die-offs that increase the likelihood of extirpation and extinction.

Although chytridiomycosis now appears to be the most likely proximate cause of ranid frog die-offs observed in Arizona and Sonora since the 1970s, Hale and Jarchow's (1988) contention that contaminants associated with copper smelters may have caused the die-offs should not be dismissed. In fact, many other environmental factors or stressors may interact with chytridiomycosis synergistically to either increase the virulence of the disease or compromise the immune systems of amphibians (Lips 1999). These factors or stressors may include increased levels of contaminants (such as cadmium, arsenic, pesticides and others), as suggested by Hale and Jarchow (1988), but also acidic rainfall, climate or microclimate (e.g., temperature, moisture) change,

increased UV-B radiation, or other changes in habitats that cause stress and immunosuppression (Carey *et al.* 2001, 1999). Additional research is needed to determine how or if these factors are contributing, directly or indirectly, to the decline of the Chiricahua leopard frog.

D. *The inadequacy of existing regulatory mechanisms.* A variety of existing international conventions and law, and Federal and State regulations provide limited protection to the Chiricahua leopard frog and its habitat (Arizona Game and Fish Commission Order 41). State regulations prohibit collection or hunting of Chiricahua leopard frogs in Arizona, except under special permit. Collection is not prohibited in New Mexico, and although collecting has not been documented as a cause of population loss, the typically small, geographically isolated populations of this species are extremely vulnerable to collection pressure. Regulations have not been adequate to stem habitat loss and degradation or to address factors such as introduction of nonnative predators.

In Mexico, the collection of threatened species is prohibited; although individuals of this species have been reported in the Mexican pet trade (Diaz and Diaz 1997). The habitat of the Chiricahua leopard frog and other threatened species is protected from some activities in Mexico. The species is not protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which regulates international trade.

The Lacey Act (16 U.S.C. 3371 *et seq.*), provides some protection for the Chiricahua leopard frog. This legislation prohibits the import, export, sale, receipt, acquisition, purchase, and engagement in interstate or foreign commerce of any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State.

The Federal Land Policy Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. In addition, the Forest Service is required to manage habitat to maintain viable populations of existing native and desired nonnative vertebrate species in planning areas (36 CFR 219.19). These regulations have resulted in the preparation of a variety of land management plans by the Forest Service and the Bureau of Land

Management that address management and resource protection of areas that support, or in the past, supported populations of Chiricahua leopard frogs.

Nineteen of 41 sites confirmed as supporting extant populations of the Chiricahua leopard frog in New Mexico from 1994 to 1999, and 47 of 87 sites occupied from 1994 to 2001 in Arizona, are on National Forest lands. Forty-three of these sites occur on the Coronado and Gila National Forests. Additional sites occur on the Apache-Sitgreaves, Tonto, and Coconino National Forests. As a result, Forest Service land management plans are particularly important in guiding the management of Chiricahua leopard frog habitat. However, these plans have not always adequately protected this species' habitat. Many activities that affect the Chiricahua leopard frog and its habitat are beyond Forest Service control. For instance, the Forest Service does not have the authority to regulate off-site activities such as atmospheric pollution from copper smelters or other actions that may be responsible for global amphibian declines, including that of the Chiricahua leopard frog. The Forest Service has only limited ability to regulate introductions or stockings of nonnative species that prey on Chiricahua leopard frogs. An effort is underway to restore natural fire regimes to forest lands, but at present it is focused on areas of urban interface, and many decades will likely pass before natural fire cycles are restored on a landscape scale across the Southwest. Despite extensive planning efforts by the Forest Service and implementation of management actions to protect wetlands and maintain viable populations of native species on Forest Service lands, loss of Chiricahua leopard frog populations and metapopulations continues.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. NEPA requires Federal agencies to describe the proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. Federal agencies are not required to select the alternative having the least significant environmental impacts. A Federal action agency may select an action that will adversely affect sensitive species provided that these effects were known and identified in a NEPA document. Most actions taken by the Forest Service, the Bureau of Land Management, and other Federal agencies that affect the Chiricahua

leopard frog are subject to the NEPA process.

State and Federal air quality regulations strictly regulate emissions from copper smelters, historically a major source of acidic rainfall and atmospheric cadmium and arsenic in southeastern Arizona, pollutants that may adversely affect the Chiricahua leopard frog (Hale and Jarchow 1988). However, a major source of these pollutants has been copper smelters in Cananea and Nacozari, Sonora; which are not subject to the same regulations as in the United States (Hale *et al.* 1995; Blanchard and Stromberg 1987).

Wetland values and water quality of aquatic sites inhabited by the Chiricahua leopard frog are afforded varying protection under the Federal Water Pollution Control Act of 1948 (33 U.S.C. 1251–1376), as amended; and Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). The protection afforded by these and other Federal laws and regulations discussed herein has not halted population extirpation and the degradation of the habitat of this species.

The AGFD included the Chiricahua leopard frog on their draft list of species of concern (AGFD 1996); however, this designation affords no legal protection to the species or its habitat. State of Arizona Executive Order Number 89–16 (Streams and Riparian Resources), signed on June 10, 1989, directs State agencies to evaluate their actions and implement changes, as appropriate, to allow for restoration of riparian resources. Implementation of this regulation may reduce adverse effects of some State actions on the habitat of the Chiricahua leopard frog. The New Mexico Department of Game and Fish does not consider the Chiricahua to be threatened or endangered. The Department also adopted a wetland protection policy in which they do not endorse nor take any action that would promote any private or public project that would result in a net decrease in either wetland acreage or wetland habitat values. This policy affords only limited protection to Chiricahua leopard frog habitat because it is advisory only; destruction or alteration of wetlands is not regulated by State law.

*E. Other natural or manmade factors affecting its continued existence.* Because of the inherent dynamic nature of southwestern wetland and riparian habitats, coupled with the increased likelihood of extirpation characteristic of small populations, the viability of extant populations of the Chiricahua leopard frog is thought, in many cases, to be relatively short. Approximately 38

percent of sites occupied by Chiricahua leopard frogs from 1994 to 2001 were artificial tanks or impoundments constructed for watering livestock. These environments are very dynamic due to flooding, drought, and human activities such as maintenance of stock tanks. In addition, stock tank populations are often quite small. Small populations are subject to extirpation from random variations in such factors as the demographics of age structure or sex ratio, and from disease and other natural events (Wilcox and Murphy 1985). Inbreeding depression and loss of genetic diversity may also occur in small populations of less than a few hundred individuals; such loss may reduce the fitness of individuals and the ability of the population to adapt to change (Frankel and Soule 1981). Both of these genetic considerations result in an increased likelihood of extirpation (Lande and Barrowclough 1987).

The dynamic nature of stock tank habitats and the small size of the populations that inhabit them suggest that many of these populations are not likely to persist for long periods. As an example, siltation and drought dramatically reduced the extent of surface water at Rosewood Tank in the San Bernardino Valley, Arizona (Matt Magoffin, San Bernardino National Wildlife Refuge, pers. comm. 1997). Surface water and habitat for frogs were reduced in June 1994 to a surface area of approximately 60 square feet that supported a population of approximately eight adult Chiricahua leopard frogs and several hundred tadpoles. In this instance the landowner was only able to prevent the population from being extirpated by repeated efforts to intervene on behalf of the Chiricahua leopard frog in trucking water to the site, rebuilding the tank, and constructing a small permanent pond to maintain habitat for the species.

Some larger populations occurring in stream courses or other non-stock tank habitats also experience dramatic changes in population size, such as in Sycamore Canyon in the Pajarito Mountains, Arizona, and on the eastern slope of the Santa Rita Mountains, Arizona (S. Hale, pers. comm. 1994). These aquatic systems, although much larger than a stock tank, experience dramatic environmental phenomena such as floods, drought, and in the case of Sycamore Canyon, varied zinc to cadmium ratios and chytridiomycosis, all of which may cause populations to crash. This suggests that even these relatively large and natural habitats and the frog populations they support are very dynamic. As a result of this dynamic nature, leopard frog

populations are susceptible to extirpation.

As discussed in the "Background" section of this final rule, the viability of metapopulations is probably very different than small, isolated populations. In the absence of infectious disease, metapopulations are more likely to persist over time than small, more isolated populations, because individuals and genetic material can be exchanged among populations within the metapopulation, resulting in increased recolonization rates and fewer potential genetic problems. If infectious disease, such as chytridiomycosis is introduced, metapopulation structure and exchange of individuals among populations would facilitate disease transmission, possibly resulting in regional die-offs or extirpation, such as was observed in stock tank populations in Grant County, New Mexico (Declining Amphibian Populations Task Force 1993). To define metapopulations of the Chiricahua leopard frog, some knowledge of the ability of this species to move among aquatic sites is required. Amphibians, in general, have limited dispersal and colonization abilities due to physiological constraints, limited movements, and high site fidelity (Blaustein *et al.* 1994); however, the ability of the Chiricahua leopard frog, thought to be one of the more aquatic of the leopard frogs, to move through arid environments may be surprising to many. In August 1996, Rosen and Schwalbe (1998) found up to 25 young adult and subadult Chiricahua leopard frogs at a roadside puddle in the San Bernardino Valley, Arizona. They believed that the only possible origin of these frogs was a stock tank located 5.5 km (3.4 mi) away. Rosen *et al.* (1996a) found small numbers of Chiricahua leopard frogs at two locations in Arizona that supported large populations of nonnative predators. The authors suggested these frogs could not have originated at these locations because successful reproduction would have been precluded by predation. They found that the likely source of these animals were populations 2 to 7 km (1.2 to 4.3 mi) distant. In the Dragoon Mountains, Arizona, Chiricahua leopard frogs breed at Halfmoon Tank, but frogs occasionally turn up at Cochise Spring (1.3 km (0.8 mi) down canyon in an ephemeral drainage from Halfmoon Tank) and in Stronghold Canyon (1.7 km (1.1 mi) down canyon from Halfmoon Tank). There is no breeding habitat for Chiricahua leopard frogs at Cochise Spring or Stronghold Canyon, thus it appears observations of frogs at these sites represent immigrants from

Halfmoon Tank. Dispersal of Chiricahua leopard frogs probably occurs most often along drainages, particularly those with permanent water, but also along intermittent stream courses and overland during summer rains.

Where several populations of Chiricahua leopard frog occur in close proximity (separated by about 5 km or less), functional metapopulations may exist. Two areas of the Galiuro Mountains of Arizona have supported a total of 12 extant sites since 1994, including 4 sites in the northern end of the range and 8 in the southern end. A similar cluster of seven sites occurs in the Dragoon Mountains, AZ. In the Buckskin Hills of the Coconino National Forest, Arizona, 10 stock tank populations occur close enough together to consider them a metapopulation. Such metapopulations may exist elsewhere, for instance, in the southwestern quarter of the San Rafael Valley and the Crouch Creek area of Arizona, and in New Mexico, east and northeast of Hurley, and in the Frieborn Canyon-Dry Blue Creek area. However, with the exception of those in the Dragoon Mountains, the southern Galiuro Mountains, and the Buckskin Hills, metapopulations of which we are aware probably consist of five or fewer sites. Metapopulations, particularly the larger examples, are critical to long-term survival of the species. Also critical are large populations, such as on the Tularosa River, NM; and Sycamore Canyon and associated tanks in the Pajarito Mountains, AZ; which are expected to experience relatively low extinction rates and may serve as source populations for colonization of nearby suitable habitats. Unfortunately, these large populations and metapopulations, because they are not isolated, are the most likely to contract infectious disease. This increases our concern about disease and underscores the importance of minimizing the likelihood of human-caused disease transmission. Populations have recently declined or been extirpated near Hurley, and these declines are associated with chytridiomycosis. The metapopulation in the Galiuro Mountains may have also crashed recently, although the extent and cause of decline is unknown.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Chiricahua leopard frog in developing this final rule. Based on this evaluation, our preferred action is to list the Chiricahua leopard frog as threatened. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of

its range. The Act defines a threatened species as any species likely to become endangered within the foreseeable future throughout all or a significant portion of its range. This species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and therefore meets the Act's definition of threatened.

Within its range in the United States, the Chiricahua leopard frog is believed absent from more than 75 percent of historical sites, and has undergone regional extirpation in areas where it was once well-distributed. The status of populations in Mexico is poorly understood, but the species is considered threatened by the Mexican Government. The species is not in immediate danger of extinction, because at least a few relatively robust populations and metapopulations still exist (e.g., Tularosa River, Dragoon Mountains, Buckskin Hills) and Chiricahua leopard frogs were found at 129 sites from 1994 to the present. However, if present threats and declines continue, the Chiricahua leopard frog is likely to become an endangered species in the foreseeable future (Painter 1996, Rosen *et al.* 1996a). Therefore, we believe that the Chiricahua leopard frog meets the definition of a threatened species under the Act.

#### Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon 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 species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) and 4(b)(6)(C) 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. The designation of critical habitat is not prudent (50 CFR 424.12(a)(1)) 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, or (2) such designation would not be beneficial to the species.

Critical habitat designation would require publishing in the **Federal Register** locations of Chiricahua leopard frog populations and habitats essential for the conservation of the species. As discussed under Factor B in the "Summary of Factors Affecting the Species," the Chiricahua leopard frog may be threatened by collection. Publishing site data would facilitate collection as it would provide collectors with specific, previously unknown, information about the location of this species. Collection has contributed to the decline of other rare anurans, including the endangered Wyoming toad (*Bufo hemiophrys baxteri*), threatened California red-legged frog (*Rana aurora draytonii*) (Stebbins and Cohen 1995, Jennings and Hayes 1995), and a number of other anuran species worldwide (Vial and Saylor 1993).

Scientists have not documented collection, to date, as a cause of population decline or loss in the Chiricahua leopard frog. However, such collection would be difficult to document and collection of large adult frogs for food, fish bait, pets, scientific, or other purposes, particularly after a winter die-off or other event that severely reduces the adult population, could hasten the extirpation of small populations. Recognition of the Chiricahua leopard frog as a threatened species may increase its value to collectors. The Chiricahua leopard frog is an attractive, often bright green frog that probably does quite well in captivity. The northern leopard frog, *Rana pipiens*, a very similar animal, is common in the pet trade and we are aware of internet trade in "leopard frogs," which could include Chiricahua leopard frogs. Chiricahua leopard frogs should be as attractive as the northern leopard frog to collectors, or perhaps more so because of their rarity. Diaz and Diaz (1997) report sale of Chiricahua leopard frogs as pets in Mexico (although the identity of these frogs to species is questionable). Painter (2000) notes that individuals have repeatedly joked to him that these frogs make good "bass-bait."

Import and export data provided by our Division of Law Enforcement document a substantial amount of international trade in *Rana* spp. Specifically, for the period of January 1, 1996, to October 31, 1998, 9,997 live individuals of *Rana* spp. were imported and 51,043 live individuals were

exported from the United States. Because shipments of wildlife from the United States are not as closely monitored as imports, and are sometimes not recorded to the genus level (this is also true for imports as well), the number of exports documented for this timeframe is likely an under representation of what actually occurred.

In 1995, many large adult Ramsey Canyon leopard frogs (which are very similar in appearance and closely related to the Chiricahua leopard frog) were reportedly illegally collected from a site in the Huachuca Mountains, Arizona, following publicity about the rare status of the frog (from Service notes of the May 25, 1995, meeting of the Ramsey Canyon Leopard Frog Conservation Team). The site, which occurs within the range of the Chiricahua leopard frog, was considered extirpated until Ramsey Canyon leopard frogs were reestablished in 2000. Collection probably contributed to the demise of this population. Following newspaper publicity regarding our proposal to list the Arroyo toad (*Bufo microscaphus californicus*), a former U.S. Forest Service employee found that a main pool near the road, formerly with a high density of calling males, was absent of males, some previously tagged. The tagged males could not be located elsewhere and it is not thought that their absence was due to natural movement or predation (Nancy Sandburg, U.S. Forest Service pers. comm. 1999). Publishing maps for the best populations and habitats of Chiricahua leopard frog could cause or contribute to similar declines or extirpations. The evidence shows, therefore, that threat of collection would increase substantially if we disclosed specific location information for all or the most important Chiricahua leopard frog populations and habitats.

Publishing site data could also facilitate vandalism of habitats where Chiricahua leopard frogs occur. Platz (1995) noted the disappearance of large tadpoles at a Ramsey Canyon leopard frog site in Brown Canyon, Huachuca Mountains in 1991–1992, and suggested their disappearance may have, in part, resulted from an act of vandalism. Many Chiricahua leopard frog habitats are small and could be easily contaminated with toxicants or taken over by nonnative predators, resulting in extirpation of frog populations. The majority of extant populations also occur on public lands (primarily National Forest lands) with public access routes that lead to the populations or pass nearby. Public access to these sites is reasonably

expected to facilitate collections or vandalism.

Publishing maps of Chiricahua leopard frog sites could also facilitate disease transmission. Chytridiomycosis and other amphibian diseases can be spread by people visiting a Chiricahua leopard frog site. If a person visits a site where disease is present and then travels to another site, disease can be spread via muddy or wet boots, nets, vehicles or other equipment (Speare *et al.* 1998, David Green, National Wildlife Health Center, Madison, Wisconsin, pers. comm. 2000). Although other hypotheses have been proposed (Carey *et al.* 1999), Daszak *et al.* (1999) find that the pattern of amphibian deaths and population declines associated with chytridiomycosis is consistent with an introduced pathogen. The chytrid fungus is not known to have an airborne spore, but rather disperses between individuals and populations via zoospores that swim through water or during contact between infected animals (Daszak 1998). If chytridiomycosis is a recent introduction on a global scale, then dispersal by way of global or regional commerce, translocation of frogs and other organisms, and travel between affected and unaffected areas by anglers, scientists, tourists, and others are viable scenarios for transmission of this disease (Daszak *et al.* 1999, Halliday 1998). Furthermore, amphibians in the international pet trade (Europe and USA), outdoor pond supplies (USA), zoo trade (Europe and USA), laboratory supply houses (USA), and species recently introduced (cane toad (*Bufo marinus*) in Australia and bullfrog in the USA) have been found infected with chytrids, suggesting human-induced spread of the disease (Daszak 2000). Until the spread of chytridiomycosis is better understood, and the role of this and other diseases in the decline of the Chiricahua leopard frog is clarified, visitation of Chiricahua leopard frog sites should not be encouraged. Publishing maps of Chiricahua leopard frog sites could facilitate visitation by collectors or those who want to view the frog. Increased visitation increases the risk of infectious disease transmission. Because of a lack of isolation, metapopulations of frogs, which are critical to the survival and recovery of the Chiricahua leopard frog, may be most at risk from human-facilitated disease transmission.

The prohibition of destruction or adverse modification of critical habitat is provided under section 7 of the Act, and therefore only applies to actions funded, authorized, or carried out by Federal agencies. "Destruction or adverse modification" is defined under

50 CFR 402.02 as an action that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species. Similarly, section 7 prohibits jeopardizing the continued existence of a listed species. "Jeopardize the continued existence" is defined as an action that would be expected to reduce appreciably the likelihood of survival and recovery of a listed species.

Given the similarity in the above definitions, in most cases Federal actions that would appreciably reduce the value of critical habitat for the survival and recovery of the Chiricahua leopard frog would also reduce appreciably the likelihood of survival and recovery of the species. The Chiricahua leopard frog occurs mostly in relatively small populations that are highly vulnerable to extirpation. Habitat alteration of a severity to result in destruction or adverse modification of critical habitat would likely also jeopardize the continued existence of the species. Similarly, reasonable and prudent alternative actions that would remove the likelihood of jeopardy would also remove the likelihood of destruction or adverse modification of critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because 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 is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. One of our peer reviewers recommended designating critical habitat in major montane canyons and valley bottom cienegas, which today are largely overrun by nonnative predators and unoccupied by Chiricahua leopard frogs. This comment is addressed in issue 10 of the "Summary of Comments and Recommendations" herein. We concluded that designation of critical habitat in these areas is not currently prudent because a variety of aquatic and semiaquatic nonnative predators render them unsuitable as Chiricahua leopard frog habitat, we do not know how to remove those predators, and if Chiricahua leopard frogs could and did occupy these areas, just as with the currently occupied habitats, we would be concerned about increased human visitation and associated collection, vandalism, and disease transmission. We believe that any added benefit of

critical habitat due to section 7 consultations in unoccupied habitat or recognition of areas important for recovery would be outweighed by the publication of detailed maps that would subject the species to the threat of collection, vandalism and disease transmission.

In balancing the benefits of critical habitat designation against the increased threats, we believe the records show that there are few benefits to be derived in this particular instance from designation of critical habitat. We believe that any potential benefits of critical habitat designation, beyond those afforded by listing, when weighed against the negative impacts of disclosing site-specific sites, does not yield an overall benefit. We, therefore, determine that critical habitat designation is not prudent for the Chiricahua leopard frog. If information comes to light in the future indicating critical habitat is prudent, we will reconsider designation. Critical habitat designation will also be reconsidered in the recovery planning process.

#### Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is 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) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a

Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

The Chiricahua leopard frog occurs on Federal lands managed by the Coronado, Apache-Sitgreaves, Tonto, Coconino, and Gila National Forests; the Bureau of Land Management; and our refuges. Examples of Federal actions that may affect the Chiricahua leopard frog include, but are not limited to, dredge-and-fill activities, grazing programs, construction and maintenance of stock tanks, logging and other vegetation removal activities, management of recreation, road construction, fish stocking, issuance of rights-of-ways, and discretionary actions authorizing mining. These and other Federal actions require section 7 consultation if the action agency determines that the proposed action may affect listed species. Since the Chiricahua leopard frog was proposed, we have conferred with several National Forests in Arizona and New Mexico on proposed operation of grazing leases, and in cooperation with the Forests, we have drafted criteria for guiding determinations of effect in regard to section 7 grazing consultations or conferences on the frog. These conferences are discussed in more detail in our response to Issue 8 in the "Summary of Comments and Recommendations" section of this rule.

Development on private or State lands requiring permits from Federal agencies, such as permits from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions that are not federally funded or permitted, would not require section 7 consultation. However, prohibitions under section 9 of the Act (discussed below) would apply.

Important regional efforts are currently underway to establish viable metapopulations of Chiricahua leopard frogs. We are currently working with Arizona Game and Fish Department, New Mexico Department of Game and Fish, the University of Arizona, and several Federal and private landowners in these efforts. An ongoing regional conservation planning effort in the San Bernardino Valley, Arizona, being undertaken by this agency, the Forest Service, State, and private individuals is a good example of such efforts. Owners of the Magoffin Ranch, in particular, have devoted extensive efforts to conserving leopard frogs and habitat at stock tanks on that ranch. As part of the San Bernardino Valley conservation

effort, a high school teacher and his students rear tadpoles in Douglas, Arizona, and established populations of Chiricahua leopard frogs in small constructed wetlands at Douglas area public schools (Biology 150 Class, Douglas High School 1998). In another regional conservation effort, the Tonto National Forest, Arizona Game and Fish Department, and the Phoenix Zoo have developed a Chiricahua leopard frog "conservation and management zone" in which frogs have been reared and released into the wild to establish new populations (Sredl and Healy 1999). Another effort to remove nonnative predators and reestablish Chiricahua leopard frogs is underway at Buenos Aires National Wildlife Refuge, Arizona (Schwalbe and Rosen 2001). A similar regional conservation plan, involving The Nature Conservancy, Dr. Randy Jennings, and New Mexico Department of Game and Fish, is underway on the Mimbres River, New Mexico.

We commend the individuals involved in these efforts. These regional conservation plans are proving grounds for developing the techniques to recover the species rangewide. As such, we strongly support them, and encourage others to develop regional conservation plans. We will provide assistance and use our authorities to the fullest extent possible to help develop and implement site-specific conservation activities for this species. When the Chiricahua leopard frog is listed, handling, rearing, translocation or other forms of direct or incidental take resulting from conservation activities can continue under section 10 permits from us. Incidental take associated with conservation plans may also be permitted pursuant to an incidental take statement in a biological opinion for activities under Federal jurisdiction. Prior to the species listing, we will attempt work with the individuals involved in these conservation efforts to ensure that permits are issued promptly and that the process does not interrupt or hinder ongoing recovery actions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, including the regulations codified at 50 CFR part 17, make it illegal for any person subject to the jurisdiction of the United States to "take" a species, which is defined as killing a species or significantly harming it, including harassment or habitat destruction which causes death or significant injury to the species. These prohibitions also make it illegal to import or export, transport in

interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any threatened species unless provided for under a special rule. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions will apply to persons acting in an agency capacity on the behalf of the Service and to activities associated with cooperative State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is our policy (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Based on the best available information, the following are examples of actions that would not likely result in a violation of section 9:

(1) Actions that may affect Chiricahua leopard frog that are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act, or for which such action will not result in take;

(2) Actions that may result in take of Chiricahua leopard frog when the action is conducted in accordance with a permit under section 10 of the Act;

(3) Recreational activities such as sightseeing, hiking, camping, and hunting in the vicinity of Chiricahua leopard frog populations that do not destroy or significantly degrade Chiricahua leopard frog habitat, and do not result in take of frogs;

(4) Release, diversion, or withdrawal of water from or near Chiricahua leopard frog habitat in a manner that does not displace or result in desiccation or death of eggs, tadpoles, or adults; does not disrupt breeding activities of frogs; does not favor introduction of nonnative predators; and does not alter vegetation

characteristics at or near Chiricahua leopard frog sites to an extent that it exposes frogs to increased predation;

(5) Logging activities that do not result in erosion or siltation of stream beds and other aquatic habitats occupied by Chiricahua leopard frogs, do not adversely affect water quality, and do not denude shoreline vegetation or terrestrial vegetation in occupied habitat; and

(6) In accordance with the special rule, activities associated with the use and maintenance of livestock tanks, such as, but not limited to: trampling by livestock, cleaning sediment from the tanks, and clearing or grazing of vegetation around the tanks.

Activities that we believe could potentially result in "take" of the Chiricahua leopard frog, include, but are not limited to the following:

(1) Unauthorized collection, capture, or handling of the species;

(2) Intentional introduction of nonnative predators, such as nonnative fish, bullfrogs, crayfish, or tiger salamanders into occupied frog habitat;

(3) Any activity not carried out pursuant to the special rule described in "§ 17.43 Special rules-vertebrates" that results in destruction or significant alteration of habitat of Chiricahua leopard frog including, but not limited to, the discharge of fill material into aquatic habitat occupied by the species, the diversion or alteration of stream flows and aquatic habitats occupied by the species or withdrawal of water to the point at which habitat becomes unsuitable for the species, grazing in occupied habitat or overgrazing in the watersheds of occupied habitat, and the alteration of the physical channels within the stream segments and aquatic habitats occupied by the species;

(4) Water diversions, groundwater pumping, water releases or other water management activities that result in displacement or death of eggs, tadpoles, or adult frogs; disruption of breeding activities; introduction of nonnative predators; or significant alteration of vegetation characteristics at or near occupied sites. However, pursuant to the special rule for this species, operation and maintenance of livestock tanks on private, State, or Tribal lands that result in incidental mortality of frogs would not be considered a violation of section 9;

(5) Discharge or dumping of hazardous materials, silt, or other pollutants into waters supporting the species;

(6) Possession, sale, delivery, transport, or shipment of illegally taken Chiricahua leopard frogs; and

(7) Actions that take Chiricahua leopard frogs that are not authorized by either a permit under section 10 of the Act or an incidental take statement under section 7 of the Act, or are not exempted from the section 9 take prohibitions as described in the special rule “§ 17.43 Special rules-amphibians” for this species; the term “take” includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capture, or collecting, or attempting any of these actions.

Not all of the activities mentioned above will result in violation of section 9 of the Act; only those activities which result in “take” of Chiricahua leopard frog would be considered violations of section 9. We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public. Please direct your questions regarding whether specific activities will constitute a violation of section 9 to the Field Supervisor, Arizona Ecological Services Field Office (see ADDRESSES section).

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits for threatened species are at 50 CFR 17.32. Address your requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, NM 87103 (telephone (505)248-6920, facsimile (505)248-6922).

**Required Determinations**

(1) Civil Justice Reform. A decision on whether the Chiricahua leopard frog should be listed is required by the Endangered Species Act and the need for this threatened designation is well documented herein. Special rules may be issued by the Secretary of the Interior pursuant to section 4(d) of the Act when such regulation is deemed “necessary and advisable to provide for the

conservation of the species.” The special rule will promote the conservation of the Chiricahua leopard frog by allowing ranchers to continue to maintain their stock tanks, which provide habitat for the frog, as they have in the past without additional regulatory burdens being imposed as a result of the listing of the frog as threatened. The rule clearly states that existing and future stock tanks on non-Federal land can be used and maintained without fear of violating section 9 of the Act. Since the special rule will benefit the Chiricahua leopard frog without imposing a burden on the public; we do not expect it to be challenged. As a result, in accordance with Executive Order 12988, the Office of the Solicitor has determined that the listing and special rule do not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

(2) National Environmental Policy Act. We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). In addition, we have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with regulations adopted pursuant to section 4(d) when they accompany listings, as in this case.

(3) Government-to-Government Relationship with Tribes. In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951) Executive Order 13175 and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

(4) Paperwork Reduction Act. This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget Control Number 1018-0094, which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Control Number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

**References Cited**

You may request a list of all references cited in this document, as well as others, from the Arizona Ecological Services Field Office (see ADDRESSES section).

**Author**

The primary author of this notice is James Rorabaugh (see ADDRESSES section).

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

We amend Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

**PART 17—[AMENDED]**

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

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

2. Amend § 17.11(h) by adding the following in alphabetical order, under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, Chiricahua leopard.	<i>Rana chiricahuensis</i>	U.S.A. (AZ, NM), Mexico.	Entire .....	T	726	NA	§ 17.43(b)
*	*	*	*	*	*		*

3. Amend § 17.43 by adding paragraph (b) to read as follows:

**§ 17.43 Special rules—amphibians.**

\* \* \* \* \*

(b) Chiricahua leopard frog (*Rana chiricahuensis*).

(1) *What activities are prohibited?*  
 Except as noted in paragraph (b)(2) of this section, all prohibitions of § 17.31

will apply to the Chiricahua leopard frog.

(2) *What activities are allowed on private, State, or Tribal land?* Incidental take of the Chiricahua leopard frog will not be considered a violation of section 9 of the Act, if the take results from livestock use at or maintenance activities of livestock tanks located on private, State, or Tribal lands. A livestock tank is defined as an existing

or future impoundment in an ephemeral drainage or upland site constructed primarily as a watering site for livestock.

Dated: June 6, 2002.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-14730 Filed 6-12-02; 8:45 am]

**BILLING CODE 4310-55-P**



# Federal Register

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**Thursday,  
June 13, 2002**

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**Part IV**

## **Environmental Protection Agency**

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**40 CFR Part 63**

**National Emission Standards for  
Hazardous Air Pollutants From  
Phosphoric Acid Manufacturing Plants  
and Phosphate Fertilizers Production  
Plants; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[FRL-7229-5]

RIN 2060-AE44

**National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; amendments.

**SUMMARY:** The EPA is taking final action to amend the national emission standards for hazardous air pollutants (NESHAP) for phosphoric acid manufacturing plants and the NESHAP for phosphate fertilizers production plants which were promulgated on June 10, 1999 under authority of section 112 of the Clean Air Act (CAA). The NESHAP apply to owners and operators of phosphoric acid and phosphate fertilizers production facilities that are major sources of hazardous air pollutants (HAP). The EPA is amending specific provisions in the NESHAP to resolve issues and questions raised after promulgation of the final rules. The amendments do not significantly change EPA's original projections for the

environmental benefits, compliance costs, and burden on industry, and do not affect the number of affected facilities.

**EFFECTIVE DATE:** June 13, 2002.

**ADDRESSES:** Docket No. A-94-02, containing information relevant to the final rule amendments, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: Air and Radiation Docket and Information Center (6102), U.S. EPA, 401 M Street, SW., Room 1500, Washington, DC 20460 or by phoning the Air Docket Office at (202) 260-7548. Refer to Docket No. A-94-02. The Docket Office may charge a reasonable fee for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Mr. Keith Barnett, Minerals and Inorganic Chemicals Group, Emission Standards Division (MC-C504-05), U.S. EPA, Research Triangle Park, North Carolina 27709, telephone number (919) 541-5605, facsimile number (919) 541-5600, electronic mail (e-mail) address: [barnett.keith@epa.gov](mailto:barnett.keith@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Docket.* The docket is an organized and complete file of all the information considered by EPA in the development of the final 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. The docket number for the rulemaking is A-94-02.

*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.* Today's action applies to process components at new and existing phosphoric acid manufacturing plants and phosphate fertilizers production plants. Regulated categories and entities include:

Source category	SIC	NAICS	Examples of regulated entities
Industrial .....	2874	325314	Phosphoric acid manufacturing facilities (wet process phosphoric acid process line, superphosphoric acid process line, phosphate rock dryer, phosphate rock calciner, purified phosphoric acid process line).
Industrial .....	2874	325314	Phosphate fertilizers production (diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line, granular triple superphosphate storage building).

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 of the rules. 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 the 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 August 12, 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 the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

*Outline.* The information presented in this preamble is organized as follows:

- I. Background
- II. Amendments Specific to Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
- III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
- IV. Administrative Requirements

- A. Executive Order 12866, Regulatory Planning and Review
- B. Executive Order 13132, Federalism
- 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 Fairness 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

The EPA promulgated NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants on June 10, 1999 (64 FR 31358). The NESHAP established standards to control HAP emissions from facilities producing phosphoric acid and phosphate fertilizers.

On August 4, 1999, The Fertilizer Institute (TFI) filed a petition for judicial review of the NESHAP, as provided for in CAA section 307(b), with respect to certain provisions regarding emissions standards for phosphate rock calciners, monitoring requirements in general, and applicability of the general provisions. On November 3, 1999, TFI filed an administrative petition for reconsideration raising these and other issues, and subsequently submitted supplementary materials in support of its petition.

On December 17, 2001 (66 FR 65072), we published a direct final rule with a parallel proposal that amended several sections of the final rule including the particulate matter (PM) emissions standards for existing phosphate rock calciners (regulating PM as a surrogate for HAP metals). We received an adverse comment on the revised PM emissions standards for existing sources and subsequently withdrew the direct final rule. In the final rule amendments, we are responding to the adverse comment and finalizing the phosphate rock calciner PM emissions standards proposed on December 17, 2001 (66 FR 65079). In addition, we are correcting two errors found in the operating requirements in §§ 63.604 and 63.624 of the final rule.

## II. Amendments Specific to Subpart AA—National Emissions Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

The EPA is amending 40 CFR part 63, subpart AA, to revise the emissions limit for existing phosphate rock calciners. The EPA promulgated standards for phosphate rock calciners based on performance of the floor technology which was identical wet scrubbing technology installed on six identical calciners at one facility, plus data from a calciner with wet scrubbers at a second facility. The promulgated standard under 40 CFR 63.602 for existing calciners of 0.1380 grams per dry standard cubic meter (g/dscm) (0.060 grains per dry standard cubic foot (gr/dscf)) was based on emissions data for the floor technology which was available to EPA at that time.

Subsequent to receiving TFI's petition for reconsideration, we determined that the phosphate rock calciner at the second facility had been shutdown. Also, additional emissions and operating data from compliance tests of the six wet scrubbers installed at the same facility were submitted to EPA. Those data covered an 11-year period from 1991 to 2001.

The results of those data ranged from 0.060 to 0.22 g/dscm (0.026 to 0.097 gr/dscf). However, the petitioner indicated that the oldest 2 years of data would not be indicative of current operation. If those 2 years are excluded, the range of the data is 0.06 to 0.182 g/dscm (0.026 to 0.079 gr/dscf).

The comment we received on the proposed rule stated that EPA should not use information from all six calciners in revising the emission limit for existing sources. The commenter stated that all wet scrubbers are not identical and listed several operating parameters including pressure drop, liquid flow rate, and mist eliminator design. They stated that, therefore, the inability of one of the six calciners to meet the existing standard does not affect the ability of other better designed scrubbers to meet the standard. The commenter also mentioned that differences in the manufacturing process can affect the amount of particulate entering the control device. Finally, they stated that EPA has disregarded the finding of *Cement Kiln Recycling Coalition V. EPA*, 255 F.3d 855 (D.C. Cir. 2001) that "floors reflect what the best performers actually achieve".

We believe that the final rule amendments are consistent with the holding of *Cement Kiln Recycling Coalition*. In that case, the court considered a challenge to the Agency's practice of looking at sources outside the group of best performing sources to determine the variability of the best performers. The court held that, where factors other than the control technology affected the emissions level, such practice was not consistent with CAA section 112(d) because it failed to reflect a reasonable estimate of the emissions level of the best performing sources (255 F.3d at 866). The court noted that the Agency's practice may, however, comply with the statute where the record demonstrates "that MACT technology significantly controls emissions, or that factors other than the control technology have a negligible effect." (*Id.*)

That is the case here. The record demonstrates that the wet scrubbing MACT technology selected for phosphate calciners significantly

controls emissions and that factors other than control technology have a negligible effect. The MACT floor for categories with less than 30 sources is the average of the top performing five. However, we could find no basis to distinguish any reason that those six sources, which are located at the same facility, are not identical, with the only difference in emissions being due to normal process variation that is beyond the control of the facility.

All six calciners were designed to be identical. The phosphate rock inputs come from a common source. All six use the same fuel and have identical fuel systems. One operator runs four calciners, and one runs the other two. All operators receive the same training. The scrubbers have the same venturi pressure drop, liquid flow rates, and gas/liquid separation sections. Because factors other than the MACT technology do not affect emissions levels, consideration of data from all six sources to determine the variability experienced by the best performers is consistent with *Cement Kiln Recycling Association* and the requirements of section 112(d).<sup>1</sup>

As discussed above, the data from the six facilities covered a range of 0.060 to 0.181 g/dscm (0.026 to 0.079 gr/dscf), which exceeds the promulgated standards.<sup>2</sup> Therefore, we are changing the emission standard under 40 CFR 63.602 for existing calciners to 0.184 g/dscm (0.080 gr/dscf).

## III. Amendments to Both Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants and Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

The EPA is amending the sections on operating requirements in 40 CFR part 63, subparts AA and BB.

In the final rule published on June 10, 1999 (64 FR 31358), we made a number of changes to the monitoring requirements in §§ 63.604 and 63.624 of the proposed rule. We created new §§ 63.604 and 63.624 titled operating requirements and moved the monitoring requirements to §§ 63.605 and 63.625. In the final versions of §§ 63.604 and 63.624, we stated that the owner/

<sup>1</sup> It should also be noted that the decision to exclude the data from the calciner that was recently shut down would not change the outcome of the floor determination.

<sup>2</sup> The commenter also stated that if EPA accepts data after the close of the public comment period, it must consider newer data from other plants. As noted above, EPA has all of the available data for the existing phosphate calciners.

operator must maintain the 3-hour averages of the pressure drop across each wet scrubber and the liquid flow rate to each scrubber within the allowable ranges established during the performance test.

However, in the final version of §§ 63.605 and 63.625 (monitoring requirements), we consistently refer to daily averages, not 3-hour averages. The discussion in the preamble of the final rule stated that our intent was that any exceedance of the operating range averages over 24 hours is a violation of the operating requirement. Based on that, our intent was to require that facilities maintain the averages of the pressure drop across each wet scrubber and the liquid flow rate to each scrubber within the allowable ranges established during the performance test on a daily average basis, not a 3-hour basis. Therefore, the reference to 3-hour averages in §§ 63.604 and 63.624 of the final rule was an error. In the final rule amendments, we are correcting §§ 63.604 and 63.624 to reflect our original intent by changing “3-hour average” to “daily average.”

#### IV. 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 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.

Pursuant to the terms of Executive Order 12866, it has been determined that the amendments do not constitute a “significant regulatory action” because they do not meet any of the above criteria. Consequently, the final rule

amendments were 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 final rule amendments do 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. The final rule amendments will not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs to control emissions. Thus, Executive Order 13132 does not apply to the final rule amendments.

##### 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 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” The final rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments are known to own or operate phosphoric acid manufacturing facilities or phosphate fertilizers production facilities. Thus, Executive Order 13175 does not apply to the final rule amendments.

##### D. 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 EPA 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 EPA.

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 rule amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule amendments have been determined not to be “economically significant” as defined under Executive Order 12866.

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

The final rule amendments are not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 Fed. Reg. 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 by State, local, and tribal governments, in the 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 objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-

costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because today's amendments do not add new requirements or costs, the EPA has determined that the final rule 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. Thus, the final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule 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 RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the final rule amendments on small entities, the EPA found that 2 of the 21 firms that potentially could be subject to the standards are small firms. Of the two, data indicate that one is an area source which would not be covered by the standards. The second source could be major and subject to the requirements

of the standards. Information available to EPA shows, however, that the second source is able to achieve the control levels associated with the promulgated rules using existing equipment. The second source would not be significantly impacted by the final rule amendments because it clarifies and makes corrections to the promulgated rules but imposes no additional regulatory requirements.

Because today's final rule amendments impose no additional regulatory requirements on owners or operators of phosphoric acid manufacturing plants or phosphate fertilizers production plants, the EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

*H. Paperwork Reduction Act*

The OMB has approved the information collection requirements contained in the phosphoric acid manufacturing and phosphate fertilizers production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB Control No. 2060-0361. An Information Collection Request (ICR) document has been prepared by EPA, and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1672.

The amendments contained in this 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*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104-113 (March 7, 1996), 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 otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus 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.

The final rule amendments do not involve the use of any new technical standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to the final rule amendments.

*J. Congressional Review Act*

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

**List of Subjects in 40 CFR Part 63**

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 5, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended to read 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 AA—[Amended]**

2. Section 63.602 is amended by revising paragraph (d) to read as follows:

**§ 63.602 Standards for existing sources.**

\* \* \* \* \*

(d) *Phosphate rock calciner.* On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected source any gases which contain particulate matter in excess of 0.1810 gram per dry standard cubic

meter (g/dscm) (0.080 grains per dry standard cubic foot (gr/dscf)).

\* \* \* \* \*

3. Section 63.604 is revised to read as follows:

**§ 63.604 Operating requirements.**

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.606 is required to be completed, the owner/operator using a wet scrubbing emission control system must maintain daily averages of the pressure drop across

each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.605(d)(1) or (2).

**Subpart BB—[Amended]**

4. Section 63.624 is revised to read as follows:

**§ 63.624 Operating requirements.**

On or after the date on which the performance test required to be conducted by §§ 63.7 and 63.626 is

required to be completed, the owner/operator using a wet scrubbing emission control system must maintain daily averages of the pressure drop across each scrubber and of the flow rate of the scrubbing liquid to each scrubber within the allowable ranges established pursuant to the requirements of § 63.625(f)(1) or (2).

[FR Doc. 02-14758 Filed 6-12-02; 8:45 am]

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# Federal Register

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**Thursday,  
June 13, 2002**

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**Part V**

## **Department of the Interior**

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**Bureau of Indian Affairs**

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**Trust Reform Task Force—Report; Notice**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Trust Reform Task Force—Report**

**AGENCY:** Bureau of Indian Affairs.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Tribal Leaders/ Department of the Interior Trust Reform Task Force (Task Force), composed of Tribal Leaders and representatives of the Department of the Interior (Department), has developed a number of proposed alternatives to the Bureau of Indian Trust Asset Management (BITAM) proposed by the Department in November, 2001. The elements of the various proposals are not necessarily exclusive of each other and are designed to be flexible concepts for discussion among Tribal Leadership. The Task Force believes that, with sound implementation, the options the Task Force recommends for further consultation could serve as the basis for determining the appropriate organizational structure for the Department to make progress in fulfilling its trust responsibilities toward American Indians and Alaska Natives. During the next two months, the Department will engage in a series of regional and national consultation sessions with tribal leaders on these proposals. At the recent Task Force meeting in Minneapolis, Minnesota, the Task Force agreed to initiate consultation in early June, hold regional meetings throughout June and early July, and hold a national consultation meeting in Bismarck, North Dakota on June 19, 2002. Tribal leaders are urged to provide their comments on the proposed alternatives. The Task Force believes that there is a need for reform, and that the status quo is not acceptable. The Task Force notes that significant progress has been made in the spirit and success of self-determination and self-governance policies. To date, the Task Force has largely focused on consideration of high-level reorganization options. However, the Task Force intends to address the regional and field-level organizational structure in full detail in the future, after receiving input regarding the upper-level structure. The Report the Task Force submitted to the Secretary of the Interior contains some illustrations of regional- and agency-level organizational structures, these are purely descriptive illustrations, they are not proposed options, which are included in the supplemental information section.

**DATES:** Comments on the Trust Reform Task Force Report are due on July 12, 2002, and/or may be submitted personally at any of the meetings as identified in the listing in this Notice.

**FOR FURTHER INFORMATION CONTACT:** Aurene M. Martin, Acting Deputy Assistant Secretary of Indian Affairs, at 202-208-7163.

**SUPPLEMENTARY INFORMATION:** The following paragraphs contain the Task Force's Report submitted to Secretary Norton on June 4, 2002, except for the summary information contained at the front of the Report.

**I. Background**

Pursuant to treaties, statutes, executive orders, judicial decisions and in the course of dealing with the Indian Nations, the United States government has acquired a broad trust relationship with Indian tribes. That trust relationship obligates the Federal government to protect tribal self-government, to provide services to Indian communities, and to exercise the highest degree of fiduciary responsibility with tribal and Indian lands and resources.

The Federal government has held funds in trust for American Indian tribes since 1820. In 1887, the enactment of the General Allotment Act extended the Federal government's fiduciary duties to individual Indians. The Allotment Act allocated parcels of reservation lands to Indian heads of households and opened "surplus" lands to non-Indian settlement. The allotted lands were to be held in trust by the United States for a designated period. Individual trust accounts were to be set up for each Indian with a stake in those lands.

The Indian Reorganization Act of 1934 ("IRA") ended the allotment of tribal lands, provided for the return of "surplus" Indian lands to tribal ownership, and extended indefinitely the period for holding allotted lands in trust. Trust fund accounts primarily consist of money received through the sale or lease of trust lands, including such transactions as timber sales, agricultural fees, and oil and gas leases. Tribal trust accounts may also include funds awarded from judgments against the United States.

More recently, reports filed by the General Accounting Office and Congressional committees and lawsuits filed by Indian tribes have pointed out serious problems with the government's long-standing management of funds and resources entrusted to its care.

Congress sought to correct some of these problems through the American Indian Trust Fund Management Reform

Act of 1994. That Act set out the Secretary of the Interior's responsibilities for the accounting and management of Indian trust funds and provided the opportunity for Indian tribes to directly manage their trust funds. Additionally, the Act established a Special Trustee for American Indian trust funds to prepare a comprehensive, strategic plan for management reform and to ensure that the reforms take place throughout the Department of the Interior.

The purpose of the Trust Reform Task Force as defined in the protocol agreement is as follows:

develop and evaluate organizational options to improve the integrity, efficiency, and effectiveness of the Departmental \* \* \* Indian Trust Operations consistent with Indian treaty rights, Indian trust law, and the government-to-government relationship.

Although the Task Force mission is to develop options for an organizational structure, the Task Force has engaged in discussions addressing the underlying problems that the reorganization must address. The purpose of the trust reform reorganization is to improve various aspects of trust responsibilities including trust accounting and trust resources management, while complementing and protecting tribal self-government and trust services. However, the Task Force only desires to expand its scope of work as authorized by the tribal leadership which they represent from their respective regions.

The Task Force has approached the development of its options in a manner that affirms tribal authority over the management of tribal lands and natural resources. Statutes such as the Indian Reorganization Act, the Indian Self-Determination and Education Assistance Act, and specific resource management statutes, such as the Indian Forest Resources Management Act, confirm the tribes' rights to be primary managers of their tribal lands and natural resources. Additionally, the Task Force recognizes that under Titles I and IV of the Indian Self-Determination and Education Assistance Act, tribes have assumed trust management responsibilities and have a proven record of effectiveness in performing those functions.

The Task Force has concluded that trust reform must be driven by the beneficiaries and must assure that the government-to-government relationship between Indian tribes and the United States is improved and strengthened, not diminished or weakened.

The Task Force was formed after Tribal Leaders throughout the country expressed serious concerns regarding

Secretary Norton's November 2001, establishment of a new Assistant Secretary position and the creation of a new agency, the Bureau of Indian Trust Asset Management (BITAM). The Secretary's plan reorganized and consolidated all Indian trust asset management functions into a new and separate organizational unit headed by a new Assistant Secretary, BITAM. This proposal provided for important additional senior management attention to this high-priority program to be retained within the Department. The Secretary believed this newly established Assistant Secretary would have the needed authority and responsibility for improved trust reform efforts and Indian trust asset management. However, through several public meetings, it became clear that the Tribal Leaders were opposed to BITAM.

At the meeting held on December 16, 2001, in Albuquerque, New Mexico, Tribal Leader Tex Hall proposed the formation of a Task Force charged with providing concrete advice to the Department to guide its trust reform efforts. The purpose of the Task Force was to evaluate all available options and to submit to the Department one or more alternatives to BITAM. To further develop an improved reorganization plan and achieve broader consensus, Secretary Norton agreed to the creation of a Task Force.

## II. Task Force Members

The composition of the Tribal Membership of the Task Force was determined by the tribes and represents a broad cross-section of tribal interests. The Task Force consists of two elected tribal leaders from each region, with a third tribal leader, from each region, acting as an alternate. Tex Hall, Chairman/President of the Three Affiliated Tribes, and Susan Masten, Chairwoman of the Yurok Tribe serve as the Tribal Co-chairs. Senior Department officials also serve on the Task Force, including Deputy Secretary Griles, and Assistant Secretary for Indian Affairs Neal McCaleb, who serve as the Department's Co-chairs.<sup>1</sup> Tribal Representatives are the following:

*Alaska Region:* Ed Thomas, President, Central Council of Tlingit Haida Indian Tribes of Alaska; Mike Williams, Aniak Village; *Alternate* Joe Williams, President, Organized Village of Saxman.

<sup>1</sup> Other Departmental representatives to the Task Force included: the Associate Deputy Secretary, the Special Trustee, the Director of the Office of Trust Transition, the Associate Solicitor for Indian Affairs, the Director of Congressional and Legislative Affairs, the Director of Communications and the Counselor to the Assistant Secretary of Indian Affairs.

*Eastern Oklahoma Region:* Bill Anoatubby, Governor, Chickasaw Nation; Charles O. Tillman, Jr., Principal Chief Osage Nation; *Alternate* Grace Bunner, Mekko, Thlopthlocco Tribal Town.

*Eastern Region:* Keller George, President, United South and Eastern Tribes, Inc. (USET); Tim Martin, Executive Director, United South and Eastern Tribes, Inc. (USET); *Alternate* Peter Schultz, Vice-Chair, Mohegan Tribe.

*Great Plains Region:* Mike Jandreau, Chairman, Lower Brule Sioux Tribal Council; Richard Monette, Chairman, Turtle Mountain Band of Chippewa Indians; *Alternate* Tex Hall, Chairman/President, Three Affiliated Tribes/NCAI.

*Midwest Region:* Melanie Benjamin, Chief Executive, Mille Lacs Band Reservation Business Committee; Paul Ninham, Oneida Tribe of Indians of Wisconsin; *Alternate* Troy Swallow, President, Ho-Chunk Nation.

*Navajo Region:* Ervin Keeswood, Navajo Council Delegation; George Arthur, Navajo Council Delegation; *Alternate* Alfred Yazzie, Navajo Nation.

*Northwest Region:* Ernie Stensgar, Chairman, Coeur d'Alene Tribe; W. Ron Allen, Chairman, Jamestown S'Klallam Tribe; *Alternate* Colleen Cawston, Chairperson, Colville Confederated Tribes.

*Pacific Region:* Susan Masten, Chairwoman, Yurok Tribe; Rachel Joseph, Chairperson, Lone Pine Reservation; *Alternate* Mary Belardo, Chairperson, Torres-Martinez Desert Cahuilla Indians.

*Rocky Mountain Region:* Alvin Windy Boy, Chairman, Chippewa Cree Business Council; Ivan Posey, Chairman, Shoshone Business Committee; *Alternate* Geri Small, President, Northern Cheyenne Tribal Council.

*Southern Plains Region:* Gary McAdams, President, Wichita & Affiliated Tribes; James Potter, Treasurer, Prairie Band Potawatomi Tribe of Kansas; *Alternates* Alonzo Chalepah, Vice Chairman, Apache Tribe of Oklahoma, and Russell Ellis, Treasurer, Absentee-Shawnee Tribe of Oklahoma.

*Southwest Region:* Joe A. Garcia, San Juan Pueblo; Harry E. Early, Governor, Pueblo of Laguna; *Alternates* Clement Frost, Vice Chairman, Southern Ute Indian Tribe and Gregory Ortiz, Lt. Governor, Acoma Pueblo.

*Western Region:* Edward Manuel, Chairman, Tohono O'odham Nation; Alvin Moyle, Chairman, Fallon Paiute Shoshone; *Alternate* Dennis Smith, Sr., Shoshone Paiute Tribes of Duck Valley,

Rose Taveapont, Vice-chair, Northern Ute Indian Tribe.

To date, the Task Force has held several multi-day meetings. These meetings have been held in Shepherdstown, West Virginia (February 2002); Phoenix, Arizona (March 2002); San Diego, California (April 2002); and Minneapolis, Minnesota (May 2002). Additionally, monthly meetings have been scheduled for the next six months to continue the activities and tasks identified by the Task Force.

From the very first joint meeting, which was held in Shepherdstown, the Task Force and the Department have earnestly attempted to achieve progress on trust reform. At the February meeting in Shepherdstown, presentations highlighted the scope of the Federal trust responsibility and the important differences from private or commercial fiduciary trust management. Subcommittees were created with specific goals.

## III. Task Force Sub-Committees

The Task Force established several subcommittees as follows:

1. *Protocol Sub-Committee:* This subcommittee was charged with the development of protocols for the Task Force's activities. The Tribal Leaders serving on the Protocols Subcommittee were Tim Martin-Chair, Ervin Keeswood, Joe Williams, Ron Allen, Joe Garcia, and Rachel Joseph. This subcommittee developed the ground rules for the Task Force actions which have been followed throughout the task force process.

2. *EDS Sub-Committee:* Another subcommittee was directed to examine the scope of work for the Electronic Data Systems' (EDS) proposal. The Tribal Leaders serving on this subcommittee were Tim Martin—Chair, Alvin Moyle, Charles Tillman, George Arthur, Geri Small, Ed Thomas, Ed Manuel, and Joe Garcia. This subcommittee reviewed the EDS proposal and is also involved in reviewing and commenting on the development of the Department's Strategic Plan for Trust Reform.

3. *Legislative Sub-Committee:* The Task Force recognized that there was significant interest in trust reform legislation in the Legislative Branch of the Federal government. This year, both the House Committee on Resources and the Senate Committee on Indian Affairs have held hearings regarding trust reform. The Task Force also recognized the need to develop a consensus among the various parties—the tribes, the allottees, the Department and the Congress— if any legislation is to be passed and effectively implemented.

Therefore, in Phoenix, Arizona, the Task Force decided to establish the Legislative Subcommittee as its forum for that discussion. The members of the Legislative Subcommittee are Governor Anoatubby-Chair, Ervin Keeswood, Alvin Windy Boy, Grace Bunner, Joe Williams, and Colleen Cawston. The Legislative Subcommittee will continue to review options for trust reform legislation and work with the Task Force and Congress in the development of any trust reform legislation. The Chairman of this Subcommittee, Governor Anoatubby, has kept key Congressional Staff apprised of the Task Force's activities, invited staff to attend Task Force Meetings, and worked with key committees regarding hearings related to Task Force activity.

4. *Alternative Proposal Subcommittee:* Another subcommittee was formed to review the alternative proposals to BITAM that had been submitted. The Subcommittee's Tribal Leaders were, Alvin Windy Boy—Chair, Mike Jandrea, Tim Martin, Ed Thomas, Ervin Keeswood, Ernie Stensgar, Ervin Carlson, Governor Anoatubby, Grace Brunner, Ron Allen, Alvin Moyle, Rachel Joseph and Joe Garcia.

#### IV. Creating a Better Alternative Than BITAM

By the end of April, a total of twenty-nine separate alternative proposals (or submissions with observations) had been received. These alternative proposals provide a wide variety of options for consideration; the options ranged from the status quo to a new Department of Indian Affairs. The alternative proposals or comments were from the following:

- Affiliated Tribes of Northwest Indians
- Agua Caliente
- BIA Regional Directors
- Cherokee Nation (OK)
- Cheyenne River Sioux
- Chippewa Cree
- Cobell Plaintiffs Receiver
- Confederated Salish & Kootenai
- Forest J. Gerard
- Fort Peck Business Council
- Hoopa Valley
- Hualapai and Yavapai
- Intertribal Timber Council
- Lower Brule
- Mille Lacs Band of Ojibwe
- Native American Mutual
- Navajo Nation
- Nixon Peabody
- Northwest Region
- OST Advisory Board
- Oglala Sioux
- Raven-Pack Central
- Resolution Trust Corporation
- Salt River Pima—Maricopa Indian Community

- Bureau of Indian Trust Assets Management
- Seminole Nation of Oklahoma
- United South and Eastern Tribes (USET)
- Van Ness Feldman P.C.
- Senate Bill 2212

The Task Force charged its Alternative Proposals Subcommittee to evaluate each of the proposals. Each proposal was reviewed for key features and relevant nuances. The proposals contain unique features intended to address a variety of concerns, but reflect many common perspectives. Most of the proposals state opposition to the BITAM proposal. Some proposals state a preference to place the Department's trust responsibilities outside of the Department. Some proposals address preferences for higher levels of authority within the Department for officials charged with handling Indian Affairs. Others feature organizational attributes such as the need for performance standards, improved computer systems, or a focus on "breach" issues identified by the District Court in the Cobell case.

To facilitate consultation with the broader tribal community, the Subcommittee chose to create several generic composite options that reflected the best features and major elements presented by the entire body of the alternative proposals. These options focus on high level positions responsible for providing policy direction for American Indian and Alaska Natives programs. Following consultation, the Task Force will provide the Secretary of the Interior with comments and analyses of the options regarding the configuration of the Bureau of Indian Affairs and its subordinate line management positions.

The paragraphs that follow describe the alternative options identified by the Subcommittee for consideration by the Task Force. These descriptions also briefly describe some of the advantages and disadvantages associated with the selection of a particular option. However, the paragraphs that follow are highlights and do not fully reflect the totality of the discussion, study and consideration the Subcommittee and Task Force gave each generic option prior to determining whether it merited further consideration.

#### V. Cross-Cutting Principles

In addition to the organizational options stated below, the Task Force recommended that certain cross-cutting principles be incorporated into any organizational option receiving further consideration. Each option meriting further consideration would include

these principles. These cross-cutting principles include:

- Support for the role of Tribal self-determination/self-governance (direct service, Title I-638, and Title IV).
  - Recognition that Tribal and individual Indian interests are closely related.
  - Creation of an independent oversight entity that would have responsibility for trust administration.
  - Phasing out of the Office of Special Trustee.
  - Regrouping of operations-related functions currently under control of the Special Trustee with other Bureau of Indian Affairs' functions.
  - Departmental auditing and internal and external controls capability.
  - A clear definition of the Department's "fiduciary responsibility" to manage Indian trust assets.

#### VI. Options/Advantages/Disadvantages

- Option 1(a): Create A New Department of Indian Affairs—This alternative envisioned a new Cabinet position and organization. All of the American Indian and Alaska Natives related functions within the Department would be moved to this new organization.

##### *Advantages:*

- Higher profile within the Executive Branch.
- Consolidates American Indian and Alaska Natives functions into one Department.
- Improves coordination between American Indian and Alaska Native programs.

##### *Disadvantages:*

- Politically difficult to achieve.
- Executive Branch implementation would be difficult.
- Small Department, with inadequate clout.

While this alternative has attractive features, it was determined there was no need for further consultation by the Task Force. This option was viewed as being too difficult to pursue—it would take substantial effort and political capital to seek "Departmental" status and the likelihood of success is not high. [See Figure 1]

- Option 1(b): Create A New Independent Agency Within The Executive Branch of Government—This alternative envisioned a new independent agency, possibly temporary, outside of the Department, that would be dedicated to managing all of the American Indian and Alaska Native-related trust functions within the Department.

##### *Advantages:*

- Outside entity with line authority to make changes.
- Improved ability to foster organizational change.

*Disadvantages:*

- Tribal involvement may be constrained.
- Executive branch implementation would be difficult.
- Small organization with limited clout.

While this alternative had attractive features, it was determined there was no need for further consultation by the Task Force for reasons similar to the reservations stated in 1(a). [See Figure 1]

- **Option 2: Create A New Deputy Secretary for Indian Affairs**—This alternative envisioned the creation of a new top-level Interior official who would be responsible for all of the Indian-related functions within the Department.

*Advantages:*

- Raises profile of American Indian and Alaska Native programs within the Department.
- Makes span of control more manageable.
- Provides clear lines of authority over all trust functions.
- Improves coordination with other Departmental Bureaus.
- Ensures consistent policy of American Indian and Alaska Native Affairs.

*Disadvantages:*

- Inconsistent with Reorganization Act (one Deputy Secretary per Department).
- Difficult to obtain sufficient support.
- Recruitment & confirmation of a Deputy Secretary.

The Task Force determined this option merited further consultation. [See Figure 2]

- **Option 3: Create An Organizational Structure With Two Assistant Secretaries**—This alternative envisioned the creation of a new Assistant Secretary's position to manage portions of the Department's Indian trust responsibilities.

*Advantages:*

- Higher profile within the Department.
- Improved span of control.
- Improved ability to focus on key program areas.

*Disadvantages:*

- Too similar to the BITAM proposal
- May undermine BIA's historical trust obligations.
- May result in confused chain of command

Although this option was not patterned after the BITAM proposal, the similarity

was sufficient for the Task Force to determine this option did not merit further consultation. [See Figure 3]

- **Option 4: Create An Organizational Subdivision At the Bureau Level**—This alternative envisioned the subdivision of the BIA into two or more subordinate organizations. The Subcommittee identified three logical groupings of current BIA functions—Education, Trust Funds and Trust Resources, and Trust Services. The functional grouping facilitates reasonable “span of control” considerations and permits the agency to increase management attention to key trust responsibilities.

*Advantages:*

- Flexible organizational structure—contains several options.
- Improves program focus and accountability.
- Ability to direct and coordinate Trust activities with other Bureaus of the Department of the Interior including the Fish and Wildlife Service, the Bureau of Land Management, and the Minerals Management Service.

*Disadvantages:*

- May be perceived as fragmenting Indian services.

The Task Force determined this option merited further consultation. [See Figure 4]

- **Option 5: Create A New Leadership Position of Under Secretary and Group BIA Functions**—This option envisions the creation of an Under Secretary of Indian Affairs and the grouping of BIA functions into logical units. In large part, it is a composite option reflecting the key features of Option 2 and Option 4.

*Advantages:*

- New Under Secretary as single executive sponsor.
- Ability to direct and coordinate Trust activities with other Bureaus of the Department of the Interior including the Fish and Wildlife Service, the Bureau of Land Management, and the Minerals Management Service.

- Under Secretary position more likely to be approved (versus a new Deputy Secretary position).

- Coordinates all American Indian and Alaska Native functions within the Department.

- High-profile position elevates American Indian and Alaska Native Affairs.

*Disadvantages:*

- Recruitment & confirmation of an Under Secretary.

The Task Force determined this option merited further consideration. [See Figure 5]

## VII. Further Consideration of the Acceptable Options

The Task Force recommended option 2, which would create a New Deputy Secretary for Indian Affairs, option 4 which would create an organizational subdivision at the Bureau Level, and option 5, which would create a new leadership position of Under Secretary and group BIA functions, for consultation, consideration and input from Tribal Leaders. The principal focus of further consultation involves the configuration of line management officials, from top to bottom, in each alternative as well as the grouping of staff support functions.

## VIII. Line Management

Most duties and responsibilities within the Department, including Indian Affairs, are assigned by the President, Congress, or the Courts to the Secretary of the Interior. The Secretary groups these functions into compatible groups and delegates most of them to subordinate Assistant Secretaries. The Assistant Secretaries further delegate most responsibilities to subordinate Bureau Directors. The process goes on to successively lower layers of the organization until the delegation rests with the individuals responsible for implementing program responsibilities. In most cases, the delegation process moves from high-level policy related decision making, through strategic/priority/budget decision making, to field implementation.

The Task Force supports the continuation of a line management structure that would facilitate tribal self-determination through direct services as well as contracting/compacting pursuant to self-determination agreements. Within the Department, the line management structure for Indian Affairs involves five levels—see Figure 7 for further illustration. The options selected for further consideration include possible changes to the status quo.

## IX. Changes Needed at Successive Levels of Authority

- *Level 1: Secretary of the Interior*—Because the Task Force determined there was no need for further consultation regarding the new Department of Indian Affairs and Independent Agency options, no changes have been recommended at this level. The creation of a separate Deputy Secretary or Under Secretary of Interior for Indian Affairs would elevate the visibility of Indian Affairs within the Department. These positions would have direct line authority over all

aspects of Indian Affairs within the Department, including the coordination of trust reform efforts across all relevant agencies and programs, such as the U.S. Fish and Wildlife Service. Option 4 would involve the Department making formal changes to the Departmental Manual to clearly designate the current (or incumbent) Deputy Secretary as the single accountable executive in charge of Indian Trust responsibilities within the Department on an ongoing basis. Currently, the Secretary has tasked the Deputy Secretary with these responsibilities, in addition to being the Chief Operating Officer for the entire Department. Option 2 would require the creation of a separate Deputy Secretary for Indian Affairs position. A similar provision, sponsored by Senators Daschle and McCain, has been included in Senate Bill 2212. As mentioned earlier, this position may be difficult to obtain.

Option 5 would not alter the duties of the Deputy Secretary, but would accomplish the same objective of elevating Indian Affairs with the creation of an Under Secretary for Indian Affairs. This new Under Secretary would be responsible for coordinating and directing all Indian Affairs programs within the Department including the various bureaus, and would be positioned above the Assistant Secretary for Indian Affairs. The Task Force recognized that the creation of a new Under Secretary may be more readily achievable than creating a second Deputy Secretary position within a cabinet agency.

- *Level 2: Assistant Secretary*—The Task Force determined there was no need for further consultation on the bifurcation of Indian-related functions at the Assistant Secretary level. The Task Force and Indian Country broadly rejected the subdivision of Indian trust responsibilities under two (or more) Assistant Secretaries as was suggested by the BITAM proposal. Therefore, all options for further consideration envision the continuation of just one Assistant Secretary for Indian Affairs.

- *Level 3: Bureau Director*—Currently, the Bureau Director level is titled Commissioner (which has been vacant) and Deputy Commissioner. The Task Force has discussed a number of options at this level of the line organization (see Figure 4 for more details). Depending upon the results of further consultation, the Bureau Director level could involve the BIA (with Office Directors), separate organizations with Bureau Directors or the use of Deputy Assistant Secretaries in lieu of Bureau Directors.

- *Level 4: Regional Directors*—Currently, the BIA hosts several line management structures for various purposes. Education Services has five regions. Law Enforcement also has five regions. Most trust programs are subdivided into twelve (12) different regions, each under the supervision of a Regional Director.

Each trust program's regional office is responsible for most Bureau activities within a geographical area. Within the regional boundaries, Regional Directors are responsible for representing the BIA in its interaction with Tribal, State and local governments, other Federal agencies, and the public; and directing and assisting in the application and implementation of overall policies and programs by agency and field offices, along with a number of other coordinating roles. Regional offices are supported by agency offices and, in some cases, by discrete field offices.

- *Level 5: Agency Offices*—Currently, there are approximately eighty-five agency offices throughout the BIA. These offices, under the supervision of a Superintendent, represent geographical subdivisions within each Region. Agency offices represent the BIA in interactions with local tribal governing bodies, municipal and county governments, other Federal agencies, and with the general public. The Agency Superintendent, assisted by one or more specialists, directs and supervises the operation of programs administered by the BIA and monitors, supports and provides technical assistance to the tribal governments when an agency program is administered under a self-determination award. Agency offices may be further supported by sub-agency offices.

The Task Force supports the continuation of a line-management structure that would facilitate direct services to tribes as well as activities pursuant to self-determination agreements. As Figure 4 demonstrates, there are several approaches for providing management direction at the Bureau Director level. There are distinct advantages and disadvantages to each approach. Comments received during the consultation process will help the Task Force define more clearly the most beneficial way to organize the Bureau Director level and below. Following consultation, the Task Force will provide the Secretary of the Interior with additional comments and analysis of the options regarding the configuration of the BIA in its regional and agency positions.

## X. Key Program Staff Positions

Each layer of line management may be supported by one or more staff positions; these staff support positions may range from Senior Executive Service (SES) individuals to lower-graded positions (General Schedule (GS) grades 5–15) depending upon the program and location.

Indian Education programs report directly to the Assistant Secretary for Indian Affairs, and the Task Force did not discuss any change in this reporting relationship. Other key support functions, currently reporting to the Deputy Commissioner, are grouped into the following program areas: Administration, Facilities Management and Construction, Tribal Services, Trust Responsibilities, Law Enforcement, Indian Gaming Management, Economic Development, Planning, Budget and Management Support, Information and Technology Support.

Depending upon the results of the consultation process, these staff functions may be grouped in other ways at the Bureau level. An assessment of the BIA suggests that there are significant commonalities in the program staff offices (and functions) located in the Regional Offices and Agency Office levels. For example, the Bureau Level "Information and Technology Support" function may have subordinate staff attention at the Regional and Agency organizational levels.

Pending decisions on the Bureau level functions and higher, the Task Force has not yet addressed the lower-level staff organizations in detail. Once the higher-level organizational decisions are made, it is the intent of the Department to compile the detailed information needed to facilitate organizational realignment at these subordinate levels and to discuss the results with the Task Force. To the extent practicable, efforts will be made to streamline decision making and to align program functions between organizational layers. [See Figure 7 for an illustrative example.]

## XI. Evaluation Criteria

The Task Force also discussed a set of criteria, and is planning to use these criteria, to evaluate various organizational options. A summary of the key criteria is presented below to facilitate further consultation:

Does the option ensure that the United States faithfully discharges its trust duties to tribal governments as set forth in treaties, statutes, Executive Orders and case law?

Does the option support tribal self-determination and self-government?

Does the option ensure full and continuing accountability for management of Indian trust assets?

Does the option address the various costs of implementation?

Does the option ensure that individuals responsible for Indian trust asset management are adequately trained?

Does the option deal with potential conflicts of interest?

Does the option address the key issues identified in the Cobell litigation?

Does the option allow for sufficient flexibility to accommodate tribal needs, special laws or treaties?

This summary of the criteria is not exhaustive and does not include all of the questions designed to evaluate various organizational proposals. However, the criteria list does indicate a rigorous process to evaluate the strengths and weaknesses of the current organization and the potential to improve program performance through organizational change.

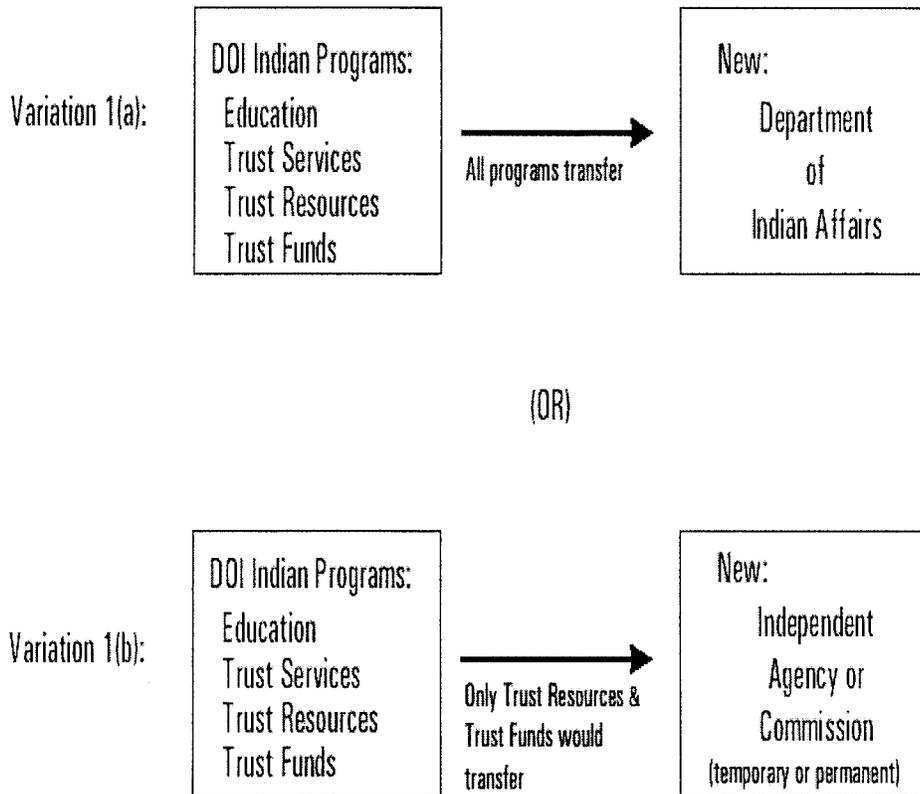
#### **XII. Conclusion**

This report is intended to facilitate consultation with the broader Indian community. The package presents several high-level options for organizing

Indian Affairs within the Department of the Interior. Upon making decisions on the higher-level functional areas, the Department and the Task Force can proceed to make lower-level decisions at the Regional and Agency level of the organization. Many questions remain. However, it is useful to make some decisions along the way. The views of Indian Country are valuable to ensure well-informed organizational decisions are made, which will enhance the long-term success of the Department's trust reform efforts.

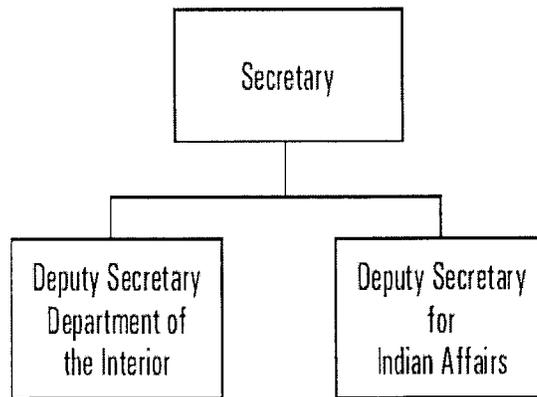
**BILLING CODE 4310-02-P**

### Option 1



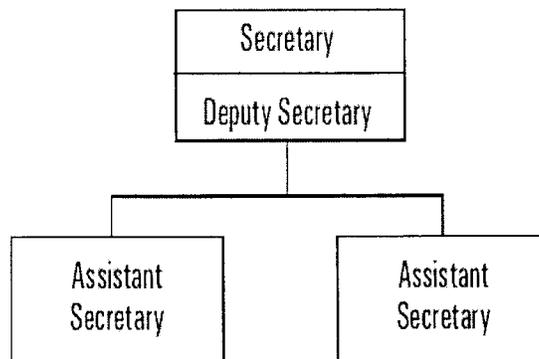
While attractive in some respects, the Task Force did not recommend these options. The Task Force concluded that these options would be politically difficult to achieve and would be disruptive to implement. However, the Task Force recognizes other views may be expressed during consultation.

Option 2



The Task Force recommended this option for further consideration.

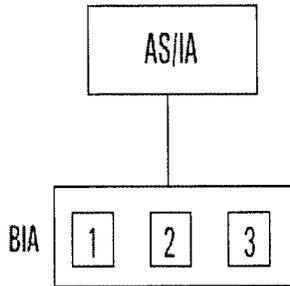
Option 3



The Task Force did not recommend this option for further consideration.

### Option 4

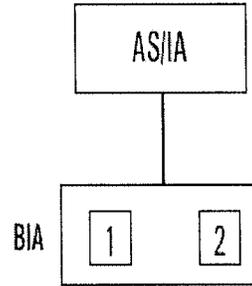
Variation 4(a):



GROUP & SUBDIVIDE PROGRAM FUNCTIONS WITHIN BIA

1. Education
2. Trust (Resources & Funds)
3. Other Trust (Services)

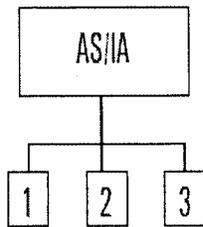
Variation 4(b):



GROUP & SUBDIVIDE PROGRAM FUNCTIONS WITHIN BIA

1. Education
2. Trust (Resources/Funds/Services)

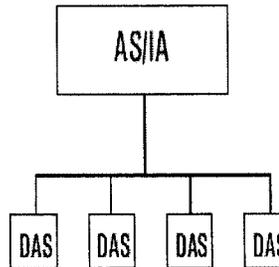
Variation 4(c):



DIVIDE BIA INTO THREE SEPARATE BUREAUS

1. Bureau of Education
2. Bureau of Trust (Resources & Funds)
3. Bureau of Other Trust (Services)

Variation 4(d):

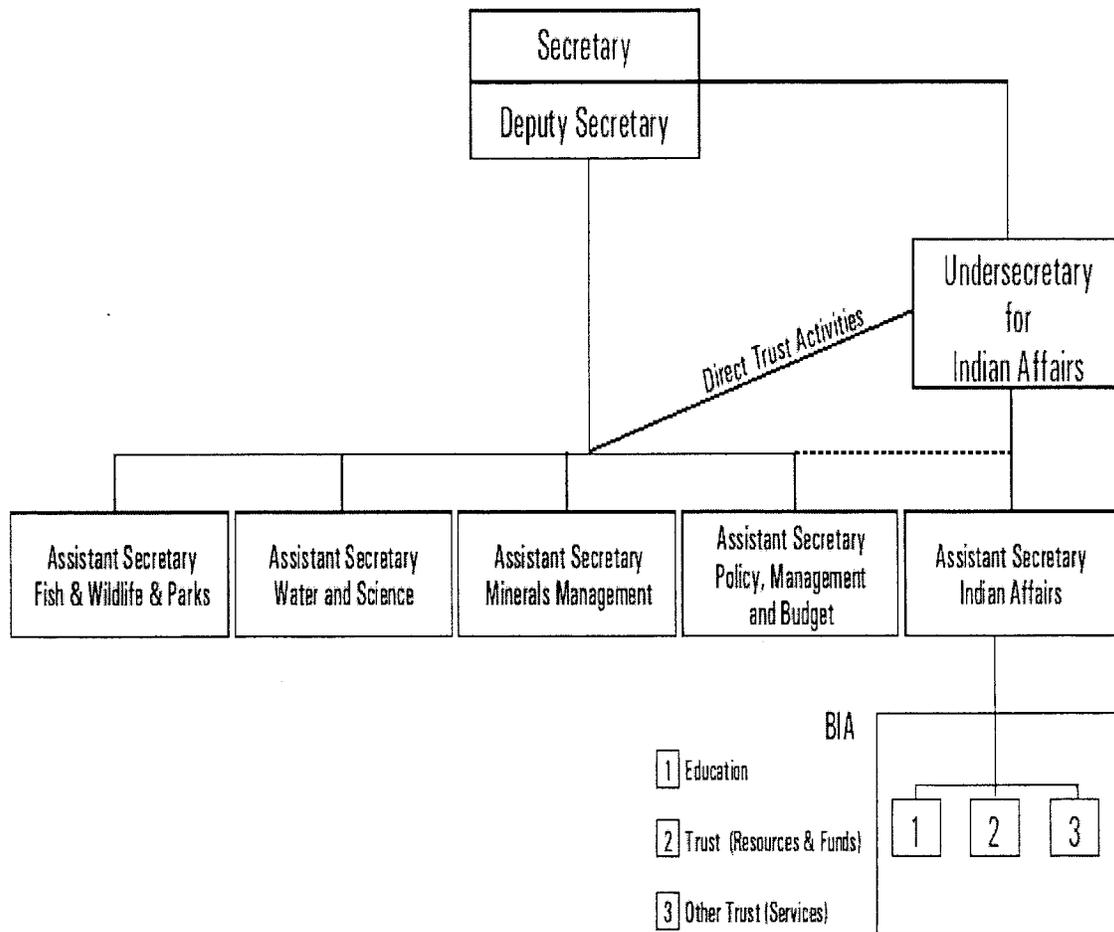


NO BUREAU LEVEL ORGANIZATIONAL STRUCTURE.

Major program responsibilities would be managed by Deputy Assistant Secretaries (DAS).

The Task Force recommended this option, which contains several possible variations; other similar variations may be explored during consultation.

### Option 5



The Task Force recommended this option for further consideration. Lower level decisionmaking (Regional/Agency) needs to be discussed during the consultation process.

Figure 1  
Current Line Organization

Line Organization:

Delegations of decision-making authority flow from top to bottom.

Policy decisions tend to be made near the top; implementation actions tend to be lower.

Key program responsibilities may be placed at higher levels to add management attention and focus.

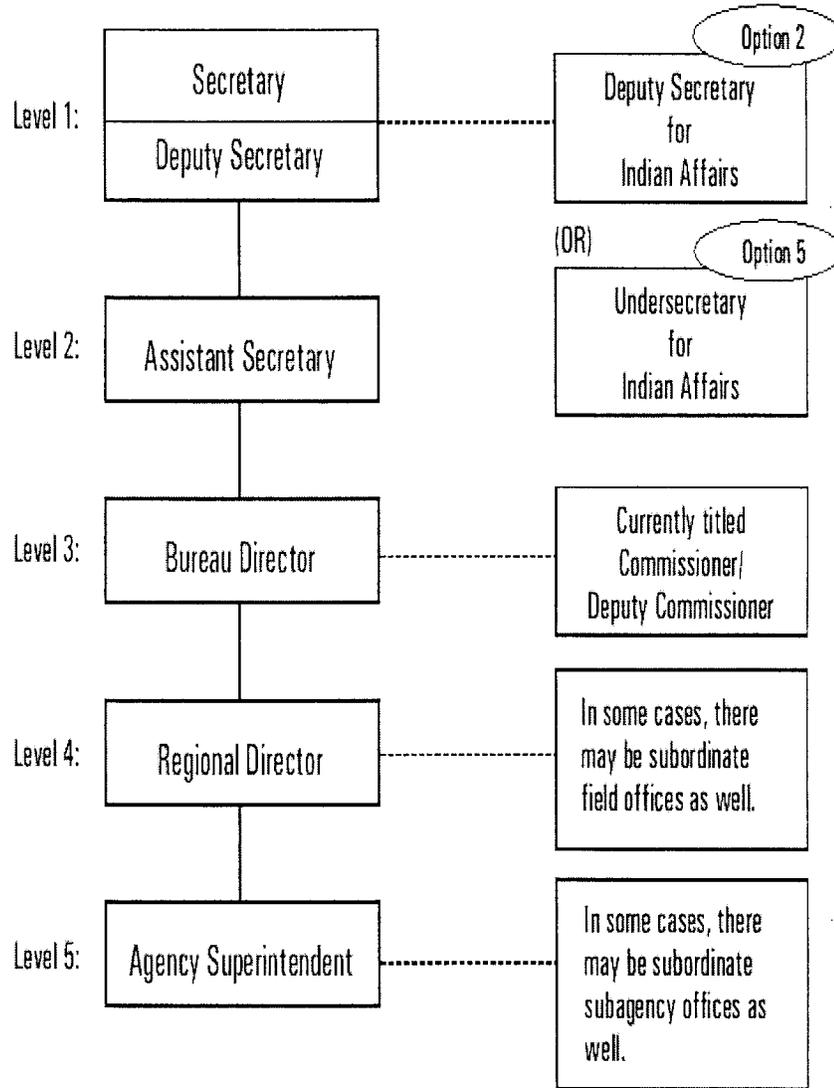
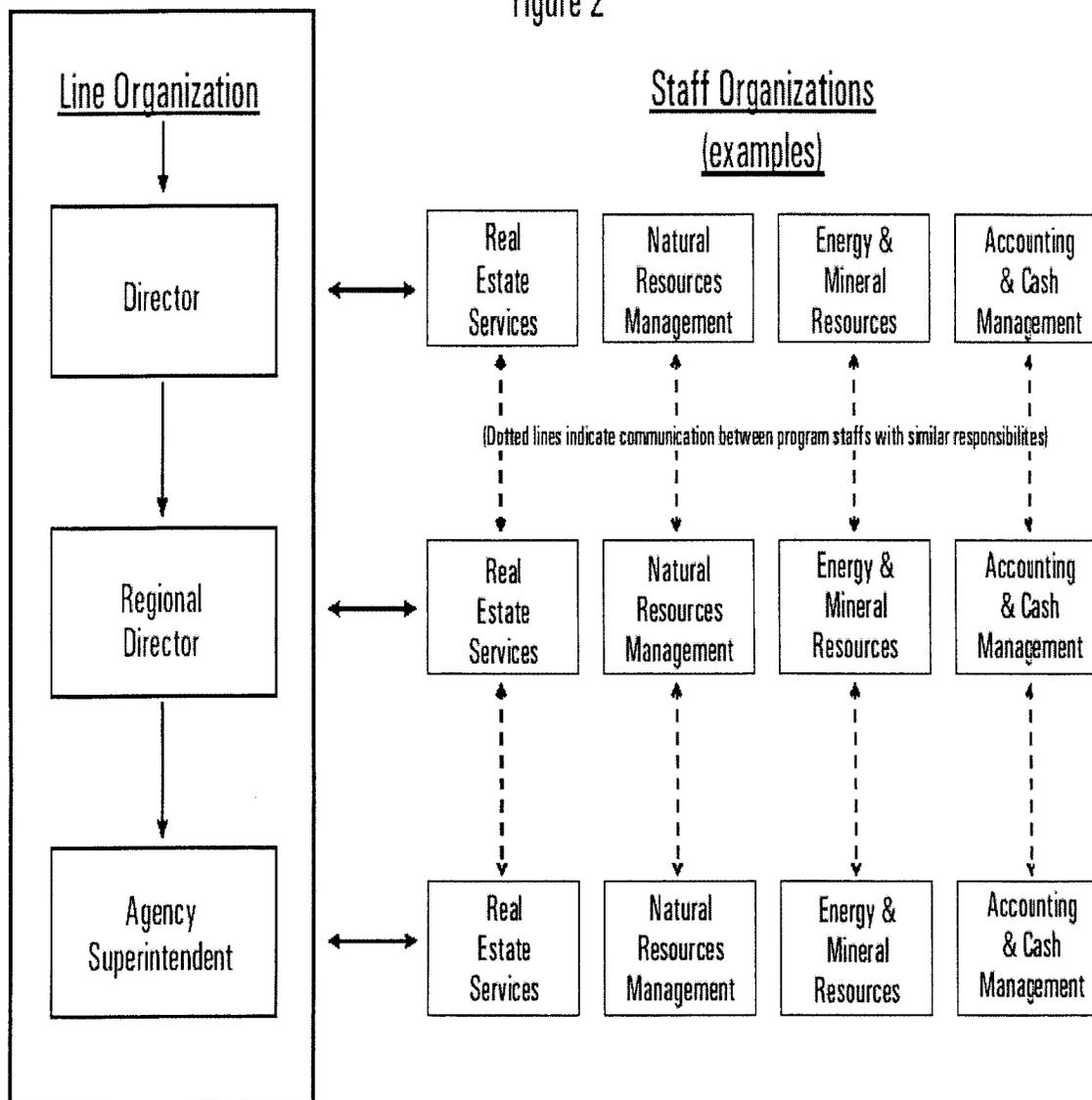


Figure 2



The line management organizational structure is uncomplicated. Description of staff support organizations tend to vary by region and agency. The Department, with task force consultation, will seek to standardize the delegations of authority and functional grouping to improve program communication and accountability.

A tentative schedule for consultation and further Task Force efforts was developed at the Task Force Meeting in Minneapolis	
Activity	Date
Draft Consultation Package	May 29, 2002
Task Force Teleconference	May 31, 2002
Tribal and Public Notice	Early June
Regional Meetings	June 5 on-going to July 11
Compile Available Comments	June 12, 2002
Alternative Proposal Committee Evaluation	June 13, 2002
Task Force Meeting; Bismarck, ND	June 13-15, 2002
Presentation by Co-Chairs to NCAI Midyear; Bismarck, ND	June 18, 2002
Consultation with Interior (Sec. Norton Tentative); Bismarck, ND	June 19, 2002
Senate Committee on Indian Affairs Hearing	June 26, 2002
Develop a Legislative Package	July 6, 2002
Comment Period Ends	July 12, 2002
Task Force Meeting; Portland, OR	July 22-24, 2002
Develop Report to Secretary	July 25, 2002
Task Force Meeting; Anchorage, AK	August 26-28, 2002
Task Force Meeting, Eastern Region	September 25-2, 2002
Task Force Meeting; Billings, MT	October 23-25, 2002

Dated: June 10, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02-15033 Filed 6-11-02; 9:04 am]

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## FEDERAL REGISTER PAGES AND DATE, JUNE

38193-38340.....	3
38341-38582.....	4
38583-38840.....	5
38841-39240.....	6
39241-39594.....	7
39595-39840.....	10
39841-40136.....	11
40137-40580.....	12
40581-40832.....	13

## CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

**Proclamations:**

7568.....	38583
7569.....	38585
7570.....	39241
7571.....	39595
7572.....	40137
7573.....	40139

**Executive Orders:**

12345 (Revoked by EO 13265).....	39841
13180 (Amended by 13264).....	39243
13264.....	39243
13265.....	39841

**Administrative Orders:**

Presidential Determinations:	
No. 2002-19 of May 27, 2002.....	39245
No. 2002-20 of May 30, 2002.....	39247

### 5 CFR

534.....	39249
591.....	39249
930.....	39249

**Proposed Rules:**

831.....	38210
842.....	38210
870.....	38210
890.....	38210

### 7 CFR

927.....	39634
930.....	39637
1280.....	39249
1467.....	39254

**Proposed Rules:**

1033.....	39871
-----------	-------

### 8 CFR

100.....	38341
103.....	38341, 39255
212.....	39255
214.....	40581
236.....	38341, 39255
238.....	39255
239.....	39255
240.....	39255
241.....	39255
245a103.....	38341
264.....	40581
274a.....	38341
287.....	39255
299.....	38341

**Proposed Rules:**

241.....	38324
----------	-------

### 9 CFR

77.....	38841
---------	-------

### 10 CFR

72.....	39260
430.....	38324

**Proposed Rules:**

50.....	38427, 40622
---------	--------------

### 11 CFR

100.....	38353, 40586
104.....	38353, 40586
109.....	40586
113.....	38353

### 12 CFR

25.....	38844
208.....	38844
369.....	38844
Ch. IX.....	39791
1710.....	38361

**Proposed Rules:**

550.....	39886
551.....	39886
702.....	38431
741.....	38431
747.....	38431

### 13 CFR

**Proposed Rules:**

121.....	39311
----------	-------

### 14 CFR

23.....	39261, 39262, 39264
25.....	40587
39.....	38193, 38371, 38587, 38849, 38852, 39265, 39267, 39843, 39844, 40141, 40143, 40145, 40147, 40589
71.....	39473, 40591, 40592
97.....	38195, 38197, 40594, 40595
1260.....	38855

**Proposed Rules:**

39.....	38212, 39311, 39314, 39640, 39900, 40239, 40249, 40623, 40626
71.....	40252, 40627

### 15 CFR

732.....	38855
734.....	38855
738.....	38855
740.....	38855
742.....	38855
748.....	38855
770.....	38855
772.....	38855
774.....	38855

**Proposed Rules:**

50.....	38445
---------	-------

### 16 CFR

305.....	39269
----------	-------

<b>17 CFR</b>	<b>29 CFR</b>	39616, 39619, 39854, 39856,	540.....39858
3.....38869	1979.....40597	39858	550.....39858
11.....39473	<b>Proposed Rules:</b>	61.....39622	551.....39858
40.....38379	35.....39830	62.....39628	555.....39858
<b>Proposed Rules:</b>		63.....38200, 39301, 39622,	560.....39858
240.....38610, 39642, 39647	<b>30 CFR</b>	39794, 40044, 40478, 40578,	<b>Proposed Rules:</b>
<b>18 CFR</b>	18.....38384	40814	298.....40260
35.....39272	44.....38384	70.....39630	
<b>Proposed Rules:</b>	46.....38384	71.....38328	<b>47 CFR</b>
284.....39315	48.....38384	72.....40394	2.....39307, 39862
<b>19 CFR</b>	49.....38384	75.....40394	15.....38903, 39632
10.....39286	56.....38384	80.....38338, 38398, 40169	25.....39307, 39308, 39862
12.....38877	57.....38384	144.....38403, 39584	52.....40619
<b>Proposed Rules:</b>	70.....38384	146.....38403	64.....39863
133.....39321	71.....38384	180.....38407, 38600, 40185,	73.....38206, 38207, 38423,
141.....39322	75.....38384	40189, 40196, 40203, 40211,	39864
151.....39322	90.....38384	40219	87.....39862
201.....38614	917.....39290	271.....38418, 40229	<b>Proposed Rules:</b>
204.....38614	<b>Proposed Rules:</b>	<b>Proposed Rules:</b>	64.....39929
206.....38614	917.....38446, 38621, 38917,	52.....38218, 38453, 38626,	73.....38244, 38456, 38924,
207.....38614	38919	38630, 38924, 39658, 39659,	39932, 39933, 39934, 39935,
<b>20 CFR</b>	<b>31 CFR</b>	39926, 39927	40632
416.....38381	<b>Proposed Rules:</b>	61.....39661	<b>48 CFR</b>
<b>Proposed Rules:</b>	1.....40253	62.....39661	<b>Proposed Rules:</b>
404.....39904	<b>32 CFR</b>	63.....38810, 39324, 39661	29.....38552
416.....39904	<b>Proposed Rules:</b>	70.....39662	31.....40136
<b>21 CFR</b>	320.....38448	80.....38453, 40256	52.....38552
822.....38878	199.....40597	141.....38222	1813.....38904
<b>Proposed Rules:</b>	806b.....38450	258.....39662	1847.....38908
101.....38913	<b>33 CFR</b>	260.....39927, 40508	1852.....38904, 38909
<b>22 CFR</b>	1.....38386	261.....39927, 40508	<b>49 CFR</b>
41.....38892	117.....38388, 40606	264.....40508	571.....38704
42.....38892	165.....38389, 38390, 38394,	268.....40508	590.....38704
<b>23 CFR</b>	320.....38590, 38593, 38595, 39292,	270.....40508	595.....38423
172.....40149	39294, 39296, 39299, 39597,	271.....40260	624.....40100
<b>24 CFR</b>	39598, 39600, 39846, 39848,	273.....40508	<b>50 CFR</b>
200.....39238	39850, 39852, 40162, 40608,	300.....39326	11.....38208
1006.....40774	40610, 40611, 40613, 40615,	413.....38752	16.....39865
1007.....40774	40617	433.....38752	17.....40790
<b>26 CFR</b>	<b>Proposed Rules:</b>	438.....38752	37.....38208
1.....38199, 40157	110.....38625	463.....38752	635.....39869
<b>Proposed Rules:</b>	155.....40254	464.....38752	648.....38608, 38909
1.....38214, 40629	165.....38451, 39917, 39919,	467.....38752	660.....39632, 40232
41.....38913	39922, 39924	471.....38752	679.....40621
48.....38913	<b>36 CFR</b>	<b>41 CFR</b>	<b>Proposed Rules:</b>
145.....38913	1230.....39473	Ch. 301.....38604	17.....39106, 39206, 39936,
301.....39915	<b>38 CFR</b>	101-9.....38896	40633, 40657
<b>27 CFR</b>	<b>Proposed Rules:</b>	101-192.....38896	18.....39668
<b>Proposed Rules:</b>	20.....40255	<b>43 CFR</b>	20.....40128
4.....38915	<b>39 CFR</b>	422.....38418	223.....38459, 39328, 40679
<b>28 CFR</b>	20.....38596	3730.....38203	224.....39328
<b>Proposed Rules:</b>	111.....40164	3820.....38203	226.....39106, 40679
16.....39838	<b>40 CFR</b>	3830.....38203	622.....40263
	51.....39602	3850.....38203	648.....39329
	52.....38396, 38894, 39473,	<b>46 CFR</b>	660.....38245, 39330
		502.....39858	679.....40680
		503.....39858	
		515.....39858	
		520.....39858	
		530.....39858	
		535.....39858	

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT JUNE 13, 2002****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Raisins produced from grapes grown in—

California; published 5-14-02

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Western Pacific pelagic; published 5-14-02

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Phosphoric acid manufacturing and phosphate fertilizers production plants; published 6-13-02

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Federal Deposit Insurance Act:

Post-insolvency interest payment in receiverships with surplus funds; published 5-14-02

**FEDERAL ELECTION COMMISSION**

Independent expenditure reporting; published 6-13-02

**TRANSPORTATION DEPARTMENT****Coast Guard**

Ports and waterways safety:

Missouri River, NE; security zone; published 6-13-02

Upper Mississippi River, IL; security zone; published 6-13-02

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Class D airspace; published 4-2-02

Airworthiness directives:

Hartzell Propeller, Inc.; published 5-9-02

Honeywell; published 5-9-02

Class E airspace; published 5-8-02

Class D airspace; published 5-8-02

Class D airspace; correction; published 5-29-02

Class D and Class E airspace; published 5-8-02

Class D and Class E airspace; correction; published 5-29-02

Class E airspace; published 3-11-02

Class E airspace; correction; published 4-22-02

Federal airways; published 4-23-02

IFR altitudes; published 5-8-02

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):

Texas (splenic) fever in cattle—

State and area classifications; comments due by 6-17-02; published 4-16-02 [FR 02-09209]

Overtime services relating to imports and exports:

Fee increases; comments due by 6-21-02; published 4-22-02 [FR 02-09827]

**COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration**

Endangered and threatened species:

Sea turtle conservation—  
Mid-Atlantic Exclusive Economic Zone; closure to large-mesh gillnet fishing; comments due by 6-19-02; published 3-21-02 [FR 02-06772]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aluetian Islands groundfish and Gulf of Alaska groundfish; Steller sea lion protection measures; comments due by 6-17-02; published 5-16-02 [FR 02-12278]

Gulf of Mexico stone crab; comments due by 6-17-02; published 4-18-02 [FR 02-09520]

Magunuson-Stevens Act provisions—

Domestic fishing; general provisions; comments due by 6-17-02; published 4-18-02 [FR 02-09462]

West Coast States and Western Pacific fisheries—

Western Pacific pelagics; comments due by 6-20-02; published 5-6-02 [FR 02-11026]

**COMMERCE DEPARTMENT Patent and Trademark Office**

Trademarks:

Paper forms use for submission of registration applications and other documents; processing fee; comments due by 6-17-02; published 5-17-02 [FR 02-12156]

**CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**

Foster Grandparent Program; amendments; comments due by 6-17-02; published 4-17-02 [FR 02-09200]

Senior Companion Program; amendments; comments due by 6-17-02; published 4-17-02 [FR 02-09199]

**DEFENSE DEPARTMENT**

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—  
Deductibles waiver and prime enrollment period clarification; comments due by 6-17-02; published 4-18-02 [FR 02-09244]

**ENERGY DEPARTMENT****Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act):

Generator interconnection agreements and procedures; standardization; comments due by 6-17-02; published 5-2-02 [FR 02-10663]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution control:

State operating permits programs—  
Indiana; comments due by 6-17-02; published 5-16-02 [FR 02-12281]  
Indiana; comments due by 6-17-02; published 5-16-02 [FR 02-12282]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 6-19-02; published 5-20-02 [FR 02-12410]

Louisiana; comments due by 6-19-02; published 5-20-02 [FR 02-12616]

Maine; comments due by 6-19-02; published 5-20-02 [FR 02-12469]

Minnesota; comments due by 6-19-02; published 5-20-02 [FR 02-12414]

Utah; comments due by 6-19-02; published 5-20-02 [FR 02-12412]

Radiation protection programs: Rocky Flats Environmental Technology Site—

Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability; comments due by 6-19-02; published 5-20-02 [FR 02-12684]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 6-17-02; published 5-16-02 [FR 02-12145]

Water supply:

National primary drinking water regulations—

Agency review results; comments due by 6-17-02; published 4-17-02 [FR 02-09154]

**FEDERAL COMMUNICATIONS COMMISSION**

Digital television stations; table of assignments:

California; comments due by 6-17-02; published 4-29-02 [FR 02-10479]

Michigan; comments due by 6-17-02; published 4-29-02 [FR 02-10478]

Pennsylvania; comments due by 6-17-02; published 4-29-02 [FR 02-10476]

Vermont; comments due by 6-17-02; published 4-29-02 [FR 02-10477]

Television broadcasting:

Cable modem service; high-speed Internet; broadband access over cable and other facilities; appropriate regulatory treatment; comments due by 6-17-02; published 4-17-02 [FR 02-09102]

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

Thrift Savings Plan:

Administrative errors correction, expanded and

continuing eligibility, death benefits, and loan program—

Uniformed Services Employment and Reemployment Rights regulations, etc.; comments due by 6-17-02; published 5-17-02 [FR 02-12344]

## HEALTH AND HUMAN SERVICES DEPARTMENT

### Food and Drug Administration

Color additives:

Sodium copper chlorophyllin; comments due by 6-19-02; published 5-20-02 [FR 02-12544]

## INTERIOR DEPARTMENT

### Fish and Wildlife Service

Endangered and threatened species:

Florida manatee; protection areas; comments due by 6-17-02; published 4-16-02 [FR 02-09224]

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc.

Meetings; comments due by 6-21-02; published 6-11-02 [FR 02-14664]

## INTERIOR DEPARTMENT

### Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Illinois; comments due by 6-17-02; published 5-17-02 [FR 02-12463]

Kentucky; comments due by 6-20-02; published 6-5-02 [FR 02-14077]

Utah; comments due by 6-17-02; published 5-17-02 [FR 02-12459]

## JUSTICE DEPARTMENT

### Immigration and Naturalization Service

Immigration:

Immigration detainees in non-Federal facilities; public disclosure of information; comments due by 6-21-02; published 4-22-02 [FR 02-09863]

Nonimmigrant classes:

Student and Exchange Visitor Information System; F, J, and M

nonimmigrants; information retention and reporting; comments due by 6-17-02; published 5-16-02 [FR 02-12022]

Correction; comments due by 6-17-02; published 5-24-02 [FR C2-12022]

## PERSONNEL MANAGEMENT OFFICE

Pay administration:

Premium pay limitations; comments due by 6-18-02; published 4-19-02 [FR 02-09537]

## POSTAL RATE COMMISSION

Practice and procedure:

Electronic filing of documents over Internet; comments due by 6-21-02; published 5-21-02 [FR 02-12644]

## SMALL BUSINESS ADMINISTRATION

New Markets Venture Capital Program:

Miscellaneous amendments; comments due by 6-19-02; published 5-20-02 [FR 02-12198]

Small business investment companies:

Small business concern, control; sale of equity securities in portfolio concern to competitor of that portfolio concern; comments due by 6-17-02; published 5-17-02 [FR 02-12466]

Small business size standards:

Nonmanufacturer rule; waivers—

Small arms ammunition manufacturing; comments due by 6-19-02; published 6-7-02 [FR 02-14246]

## SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Hematological disorders and malignant neoplastic diseases; medical criteria evaluation; comments due by 6-17-02; published 4-18-02 [FR 02-09468]

## STATE DEPARTMENT

Visas; nonimmigrant documentation:

INTELSAT; addition as international organization

Clarification of status of organization and

personnel affected; comments due by 6-17-02; published 4-17-02 [FR 02-08549]

## TRANSPORTATION DEPARTMENT

### Coast Guard

Drawbridge operations:

Minnesota; comments due by 6-17-02; published 4-16-02 [FR 02-09108]

Ports and waterways safety:

Chicago Captain of Port Zone, Lake Michigan, IL; security zones; comments due by 6-21-02; published 5-22-02 [FR 02-12734]

Manchester Bay, MA; safety zone; comments due by 6-17-02; published 5-17-02 [FR 02-12421]

Milwaukee Captain of Port Zone, WI; safety zones; comments due by 6-17-02; published 4-18-02 [FR 02-09417]

## TRANSPORTATION DEPARTMENT

### Federal Aviation Administration

Airworthiness directives:

Bell; comments due by 6-17-02; published 4-17-02 [FR 02-09173]

Boeing; comments due by 6-17-02; published 4-18-02 [FR 02-09390]

Bombardier; comments due by 6-19-02; published 5-20-02 [FR 02-12518]

Diamond Aircraft Industries GmbH; comments due by 6-17-02; published 5-20-02 [FR 02-12519]

Enstrom Helicopter Corp.; comments due by 6-17-02; published 4-17-02 [FR 02-09144]

Glaser-Dirks Flugzeugbau GmbH; comments due by 6-17-02; published 5-20-02 [FR 02-12520]

Gulfstream; comments due by 6-21-02; published 5-22-02 [FR 02-12516]

Rolls-Royce plc; comments due by 6-17-02; published 4-18-02 [FR 02-09394]

## TRANSPORTATION DEPARTMENT

### Maritime Administration

Vessel documentation:

Fishery endorsement; U.S.-flag vessels of 100 feet or

greater in registered length; comments due by 6-17-02; published 4-16-02 [FR 02-09005]

## LIST OF PUBLIC LAWS

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### H.R. 3167/P.L. 107-187

Gerald B. H. Solomon Freedom Consolidation Act of 2002 (June 10, 2002; 116 Stat. 590)

Last List June 03, 2002

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